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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

HELEN SANTOS, an individual, on behalf of
herself and others similarly situated,

PLAINTIFF,

v.

AIR CULINAIRE WORLDWIDE, LLC; and
DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO. 20STCV40648

[Case Assigned for All Purposes to Hon.
William F. Highberger in Dept. 10]

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

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

Date: June 7, 2022

Time: 1:30 p.m.

Dept.: 10

Complaint Filed: October 23, 2020

Trial Date: None Set

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

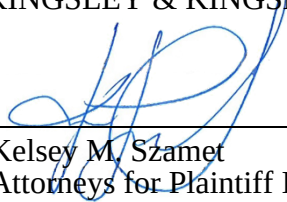
2 **PLEASE TAKE NOTICE** that on June 7, 2022 at 1:30 p.m. in Department 10 of the
3 above-entitled court, Plaintiff HELEN SANTOS will move the Court for an Order of Preliminary
4 Approval of the Joint Stipulation of Class Action Settlement and Release of Claims (“Settlement”
5 or “Settlement Agreement”), a copy of which is filed concurrently herewith.

6 The Motion will be made on the grounds that the proposed Settlement is fair, adequate,
7 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 Declaration of Kelsey M. Szamet, the Settlement and Release, all other papers
10 and records on file in this action, and on such oral and documentary evidence as may be presented
11 at the hearing on this Motion.

12
13 DATED: April 15, 2022

KINGSLEY & KINGSLEY, APC

14
15 By: 

16 Kelsey M. Szamet
17 Attorneys for Plaintiff Helen Santos and the
18 Proposed Class
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff HELEN SANTOS (“Plaintiff”) submits this Memorandum of Points and
4 Authorities in support of Plaintiff’s Motion for Preliminary Approval of the Joint Stipulation of
5 Class Action Settlement and PAGA Settlement and Release of Claims reached between Plaintiff
6 and Defendant AIR CULINAIRE WORLDWIDE, LLC (“Defendant”) (Plaintiff and Defendant
7 together, the “Parties”).

8 By this Motion, Plaintiff requests that the Court:

9 (1) Grant preliminary approval of the fully executed Joint Stipulation of Class Action
10 Settlement and PAGA Settlement and Release of Claims (“Settlement” or “Settlement
11 Agreement”). A true and correct copy of the Settlement is attached to the concurrently filed
12 declaration of Kelsey M. Szamet as Exhibit “1”;

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

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. Litigation Overview and Procedural History**

21 On October 23, 2020, Plaintiff filed a Class Action Complaint and provided written notice
22 to the California's Labor and Workforce Development Agency ("LWDA") regarding her intent to
23 file an action seeking civil penalties under PAGA. (Declaration of Kelsey M. Szamet (“Szamet
24 Decl.”) ¶4.)

25 The operative Complaint alleges claims for: (1) Failure to Pay Wages and/or Overtime
26 Under Labor Code §§ 510, 1194, 1194.2, and 1199; (2) Failure to Provide Meal Breaks Pursuant
27 to Labor Code §§ 226.7 and 512, (3) Failure to Provide Rest Breaks Pursuant to Labor Code §
28 226.7; (4) Violation of Labor Code § 226(a); (5) Penalties Pursuant to Labor Code § 203; and, (6)

1 Violation of Business & Professions Code § 17200. (Szamet Decl. ¶5.)

2 On April 4, 2022, the Parties filed a stipulation to permit Plaintiff to file a First Amended
3 Complaint ("FAC"), adding a PAGA claim based on the facts asserted in the October 23,2020
4 notice letter and previously alleged in the Complaint. (Szamet Decl. ¶6.)

5 B. The Discovery Process

6 After the matter was at issue, the Parties began to engage in informal discovery to
7 understand the nature of the allegations and the scope of potential liability. Defendant provided
8 Plaintiff's counsel with pertinent data for the Class Members so that the Parties could fully-
9 investigate the claims at issue and understand their strengths and weaknesses. (Szamet Decl. ¶7.)

10 On October 22,2021, the Parties attended a full-day mediation with experienced mediator
11 Todd A. Smith and reached a settlement, as provided herein, to settle Plaintiff s claims on a class-
12 wide basis. (Szamet Decl. ¶8.)

13 Defendant denies any liability or wrongdoing of any kind associated with the claims
14 alleged in the Action, disputes the damages and penalties claimed by Plaintiff, and further contends
15 that, for any purpose other than settlement, Plaintiff's claims are not appropriate for class or
16 representative action treatment. (Szamet Decl. ¶9.) Defendant contends, among other things, that,
17 at all times, it has complied with the California Labor Code, and the Industrial Wage Commission
18 Orders, and with all other applicable state, federal and local laws related to the alleged Class
19 Members' employment. (*Id.*)

20 Based on their own independent investigation and evaluation, Class Counsel is of the
21 opinion that the Settlement with Defendant is fair, reasonable and adequate, and in the best interest
22 of the settlement classes in light of all known facts and circumstances, including the risk of
23 significant delay, defenses asserted by Defendant, uncertainties regarding a class and
24 representative action trial on the merits, and numerous potential appellate issues. (Szamet Decl.
25 ¶10.) Although Defendant denies any liability, Defendant is agreeing to this Settlement, which is
26 a compromise of disputed claims, solely to avoid the cost of litigation, and this Settlement shall
27 not be construed or used as an admission by or against Defendant as to the merits of any claims
28 against it. (*Id.*) Accordingly, the Parties and their counsel desire to fully, finally, and forever

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

3 **III. THE PROPOSED SETTLEMENT CLASS SHOULD BE CERTIFIED FOR**
4 **SETTLEMENT PURPOSES**

5 Originally creatures of equity, class actions have been statutorily embraced by the
6 Legislature whenever “the question [in a case] is one of a common or general interest, of many
7 persons, or when the parties are numerous, and it is impracticable to bring them all before the
8 court” (Code Civ. Proc. § 382; *see, e.g., Fireside Bank v. Sup. Court* (2007) 40 Cal.4th 1069,
9 1078.) They serve an important function by “establishing a technique whereby the claims of many
10 individuals can be resolved at the same time” thereby “eliminat[ing] the possibility of repetitious
11 litigation and provid[ing] small claimants with a method of obtaining redress.” (*Richmond v. Dart*
12 *Industries, Inc.* (1981) 29 Cal.3d 462, 469.) Public policy supports the use of class actions to
13 enforce wage and overtime laws for the benefit of workers. (*See Sav-on Drug Stores, Inc. v. Sup.*
14 *Court* (2004) 34 Cal.4th 319, 340.)

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

21 The California Supreme Court has identified three certification requirements: (1) “the
22 existence of an ascertainable and sufficiently numerous class”; (2) “a well-defined community of
23 interest”; and, (3) “substantial benefits from certification that render proceeding as a class superior
24 to the alternatives.” (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.)
25 The “community of interest” requirement includes three additional requirements: (1) common
26 questions of law or fact predominant over individual questions; (2) the class representatives have
27 claims or defenses typical of the class; and (3) the class representatives can adequately represent
28 the class. (*Ibid, citing Fireside Bank, supra*, 40 Cal.4th at 1089.)

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

5 A. Plaintiff Contends the Proposed Class Is 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.) Here, Plaintiff maintains that the proposed
12 Settlement Class is ascertainable for several reasons. First, the Settlement Class members are
13 Defendant’s employees and Defendant is required to keep such employment records as a matter of
14 law. (Szamet Decl. ¶11.) Second, Defendant has agreed in the Settlement to provide a class list
15 to the Settlement Administrator containing each Settlement Class Member's full name; last known
16 address; last known home telephone number; social security number; dates of employment, and
17 Compensable Work Weeks for all putative class members after issuance of the preliminary
18 approval order. (Szamet Decl. ¶12; Ex. 1 at § I, ¶4.)

19 2. Numerosity

20 There is no set number that is required as a matter of law to maintain a class action. (*See,*
21 *e.g., Rose v. City of Hayward, supra*, 126 Cal.App.3d at p. 934.) Here, the proposed Settlement
22 Class contains, based upon information and belief, approximately 194 hourly non-exempt
23 employees in the State of California. (Ex. 1 at § III, ¶30.) Therefore, Plaintiff is confident she will
24 be able to establish that the proposed Settlement Class is ascertainable and sufficiently numerous.
25 (Szamet Decl. ¶13.)

26 ///

27 ///

1 B. Plaintiff Contends There Is a Well-Defined Community of Interest

2 1. Plaintiff Contends There Are Predominant Questions of Law and Fact

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

12 Here, Plaintiff argues that there are questions of law and fact common to the proposed
13 Settlement Class that predominate over any questions affecting only individual Class Members.
14 (Szamet Decl. ¶14.) Plaintiff alleges that Settlement Class Members worked in the same capacity
15 for the same employer and were subject to the same relevant employment policies and practices,
16 namely the uniform failure to pay all wages and/or overtime under Labor Code §§ 510, 1194,
17 1194.2, and 1199, failure to provide meal breaks pursuant to Labor Code §§ 226.7 and 512, failure
18 to provide rest breaks pursuant to Labor Code § 226.7, failure to provide compliant itemized wage
19 statements under Labor Code § 226(a)(2) and (9) by failing to include the total hours worked by
20 Class Members, the corresponding rates and the number of hours worked at each corresponding
21 rate during the pay period, failure to pay compensation due and owing upon termination of
22 employment pursuant to Labor Code § 203, Defendant engaging in unfair competition in violation
23 of Business and Professions Code § 17200, and violation § 2699, *et seq.* of the Labor Code by
24 engaging in the acts previously alleged. (Szamet Decl. ¶15.) For purposes of settlement, Plaintiff
25 contends that the evidence reviewed by Class Counsel demonstrates that common policies applied
26 to the proposed Settlement Class Members and certification for settlement purposes is appropriate.
27 (Szamet Decl. ¶16.)

28 ///

1 2. Plaintiff Contends That She Has Claims Typical of the Proposed Class

2 A putative class representative's claim must be "typical," but not necessarily identical, to
3 the claims of other class members. The test of typicality "is whether other members have the same
4 or similar injury, whether the action is based on conduct which is not unique to the Class
5 Representatives, and whether other class members have been injured by the same course of
6 conduct." (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502.) Thus, it is sufficient
7 that the representative is similarly situated so that he or she will have the motive to litigate on
8 behalf of all class members. (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502.) Thus,
9 it is sufficient that the representative is similarly situated so that he or she will have the motive to
10 litigate on behalf of all class members. (*See, e.g., Classen v. Weller* (1983) 145 Cal.App.3d 27,
11 45.) It is not necessary that the class representative have personally incurred all of the damages
12 suffered by each of the other class members. (*Wershba v. Apple Computer, Inc.* (2001) 91
13 Cal.App.4th 224, 238.) Here, Plaintiff worked for Defendant as a non-exempt hourly employee
14 and contends that she worked without being paid all wages and/or overtime, worked without being
15 provided meal and rest periods as required by law, worked without being provided accurate
16 itemized wage statements, and worked without being paid all wages due upon separation. (Szamet
17 Decl. ¶17.) She also alleges that she experienced derivative claims for unfair business competition
18 (B&P Code § 17200) and Labor Code § 2699, *et seq.* (*Id.*) Thus, Plaintiff believes that her claims
19 are typical of those of the Settlement Class. (Szamet Decl. ¶18.)

20 3. Plaintiff Contends That As The Class Representative She Has and Will Fairly
21 Represent the Interests of the Settlement Class Members

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

26 Plaintiff believes that she is capable of fairly representing and adequately protecting the
27 interests of the proposed Settlement Class Members. (Szamet Decl. ¶19.) Plaintiff's interests in
28 this litigation are coextensive with the interests of the proposed Settlement Class Members. The
members of the proposed Settlement Class all worked for Defendant during the relevant time

1 period and incurred the same type of alleged damages with regard to Defendant’s alleged violations
2 of the law. (Szamet Decl. ¶20.) Moreover, Plaintiff has agreed to serve as Class Representative
3 and has retained qualified Counsel who is experienced in prosecuting wage and hour class actions.
4 (Szamet Decl. ¶21.) This demonstrates Plaintiff’s commitment to bringing about the best possible
5 results for the benefit of the proposed Settlement Class. (Szamet Decl. ¶22.) Plaintiff has provided
6 her Counsel with all necessary and pertinent information. (Szamet Decl. ¶23.) Plaintiff has
7 actively participated in this and worked closely with Class Counsel to develop the theories of
8 liability. (Szamet Decl. ¶24.) Plaintiff was informed of and involved in all of the Settlement
9 negotiations. (Szamet Decl. ¶25.) Therefore, Plaintiff believes that she will continue to adequately
10 represent the proposed Settlement Class Members. (Szamet Decl. ¶26.)

11 C. Plaintiff Contends the Class Action Vehicle Is Superior to the Alternatives

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

26 All the same, Plaintiff maintains that class treatment would be the superior method of
27 managing this case. A class action is superior to individual litigation “when numerous parties
28 suffer injury of insufficient size to warrant individual action and when denial of class relief would

1 result in unjust advantage to the wrongdoer.” (*Blue Chip Stamps v. Superior Court* (1976) 18
2 Cal.3d 381, 385.) In cases such as this, where individual damages may be small, the class action
3 device is the most feasible method of recovery. (*See, e.g. Lockheed Martin, supra*, 29 Cal.4th at
4 1131.) In this regard, the superiority of class treatment is evident here because individual pursuit
5 of class members’ claims may not be economically viable. (Szamet Decl. ¶27.) The only
6 alternative to certification would be to require over 194 employees to join this action, file
7 individual, uniform actions, or abandon their legal rights altogether. (Szamet Decl. ¶28.) Plaintiff
8 maintains that this economic reality would result in a windfall for Defendant if this case were not
9 certified. (Szamet Decl. ¶29.)

10 **IV. THE SETTLEMENT**

11 **A. The Settlement Class**

12 For purposes of this Settlement only, the settlement class is defined as: “all persons who
13 are employed or have been employed as an hourly employee by Defendant in the State of
14 California during the Covered Period.” (“Class Members” or “Settlement Class Members”)
15 (Szamet Decl. ¶30.)

16 The Covered Period is the period from October 23, 2016 through November 24, 2021.
17 (Szamet Decl. ¶31; Ex. 1 at § I, ¶6.)

18 Based on documents and other information produced by Defendant, it is estimated that
19 there are approximately 194 Settlement Class Members. (Szamet Decl. ¶32; Ex. 1 at § III, ¶30.)
20 Of these, 152 are former employees. (Szamet Decl. ¶33.) There are approximately 15,220
21 workweeks at issue (7,610 pay periods.) (Szamet Decl. ¶34.)

22 **B. Gross Settlement Amount**

23 As detailed fully in the Settlement, the Settlement provides for Defendant to pay a Gross
24 Settlement Amount of \$425,000.00, which includes without limitation the Class Counsel Award,
25 Class Representative Enhancement Payment, Individual Settlement Payments, PAGA Payment,
26 and Settlement Administrator Costs. (Szamet Decl. ¶35; Ex. 1 at § I, ¶17.)

27 The Net Settlement Amount is the Gross Settlement Amount, less Court-approved Class
28 Counsel Award, Class Representative Enhancement Payment, payment to the LWDA, and

Settlement Administration Costs. (Szamet Decl. ¶36; Ex. 1 at § I, ¶20.)

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

Gross Settlement Amount:	\$	425,000.00
Class Representative Enhancement:	\$	5,000.00
Class Counsel's Fees:	\$	141,666.67
Class Counsel's Costs:	\$	12,000.00
PAGA Payment:	\$	30,000.00
		<i>(\$22,500.00 to the LWDA and \$7,500.00 to remain in the Net Settlement Amount)</i>
<u>Settlement Administrator Costs:</u>	<u>\$</u>	<u>15,000.00</u>
Anticipated Net Settlement Amount	\$	228,833.33

(Ex. 1 at § III, ¶15.)

The amount of each Participating Class Member's Individual Settlement Payment is an individualized amount that is based on the number of Compensable Work Weeks worked by the Participating Class Member during the Covered Period. (Ex. 1 at § I, ¶18; *see also* Ex. A to the Settlement at pp. 3 [Class Notice].) This individual amount shall be determined according to the settlement payment formula set forth in the Settlement. (*See* Ex. 1 at § III, ¶17; *Id.* at Ex. A to the Settlement [Class Notice].) The Settlement provides for a specific and detailed Work Week dispute process. (*See* Ex. 1 at § III, ¶9.)

C. Process for Administering Settlement after Preliminary Approval

The detailed Notice Procedure established by the Settlement will efficiently and accurately ensure that Notice is provided to the Settlement Class Members. (Ex. 1 at § III, ¶¶7-8.)

The Parties have agreed to use a reputable third-party claims administrator, ILYM Group, Inc. ("ILYM" or "Settlement Administrator"), to administer the Settlement. (Ex. 1 at § I, ¶34.)

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

As detailed in the Settlement Agreement, Settlement 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. (*See* Ex. 1 at § III, ¶¶11-12; *see also* Ex. A to the Settlement at pp. 2 and 4 [Class Notice].) The Settlement and Class Notice contain details about the process to request exclusion or object. (*Id.* at Ex. 1 at § III, ¶¶11-12; *see also* Ex. A to the Settlement at pp. 2 and 4 [Class Notice].)

1 **V. ARGUMENT**

2 A. Plaintiff Requests Approval of This Class Action Settlement

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

10 The proposed settlement satisfies each of these factors. Class Counsel conducted extensive
11 informal discovery before entering into meaningful settlement negotiations in this matter. (*Id* at
12 Szamet Decl. ¶¶7-8.) This informal discovery and settlement negotiations permitted Class Counsel
13 to fairly evaluate the strength of the case and the risks associated with ongoing litigation. (Szamet
14 Decl. ¶37.) Class Counsel is experienced in handling wage and hour class actions and, after
15 weighing all of the following factors, supports this Settlement. (Szamet Decl. ¶38.)

16 1. The Strength of Plaintiff’s Case

17 a) The Risks Associated with the Wages and/or Overtime Claim

18 i) Defendant’s Failure to Blend

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

1 for an employee.” (Lab. Code, § 510, subd. (a).) California law also requires that any
2 compensation must be included in the regular rate of pay for the purpose of determining the correct
3 overtime rate.

4 Here, Plaintiff contends that she and all Class Members were forced to work on a regular
5 and consistent basis without receiving compensation for all hours worked at the proper rate.
6 (Szamet Decl. ¶39.) Specifically, Plaintiff contends that Defendant failed to blend Plaintiff’s and
7 the Class Members’ “LTD” pay into the regular rate of pay for the purposes of calculating the
8 overtime rate during pay periods that Class Members worked overtime and also earned LTD pay.
9 (Szamet Decl. ¶40.) However, Defendant put forth strong arguments that the LTD pay is not any
10 type of bonus or non-discretionary pay that must be blended. (Szamet Decl. ¶41.) Instead,
11 Defendant provided evidence that LTD pay is short for “long term disability pay”. (Szamet Decl.
12 ¶42.) Contrary to Plaintiff’s assertions, Defendant argues that this type of pay actually cannot be
13 blended because it is not a wage payment at all. (Szamet Decl. ¶43.) Were Defendant to succeed
14 on this argument, this claim would have little to no value so Plaintiff perceived great risk associated
15 with this claim. (Szamet Decl. ¶44.)

16 ii) Defendant’s “Auto-Deduct” Meal Policy

17 In addition, Plaintiff alleged that Defendant has an unlawful policy of automatically
18 deducting 30 minutes of time for a meal period regardless of whether the employee actually was
19 able to take a fully thirty (30) minute meal period within the first five (5) hours of work. (Szamet
20 Decl. ¶45.) Plaintiff contends that this unlawful “auto-deduct” policy and practice resulted in
21 Defendant allegedly failing to pay Plaintiff and all Class Members for all wages at the appropriate
22 rate for all hours worked. (*Ibid.*)

23 b) The Risks Associated with the Meal Break Claim

24 Under California Labor Code section 512 and IWC Wage Order No. 16, no employer shall
25 employ any person for a work period of more than five hours without providing a meal period of
26 not less than thirty minutes. The first meal period must be permitted to commence no later than
27 after five hours of work, or the start of the sixth hour of work (5.0 hours on the clock). (*Brinker*
28 *Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1049.) The second meal period must be

1 permitted to commence no later than after ten hours of work, or the start of the eleventh hour of
2 work (10.0 hours on the clock). (*Ibid.*) The California Supreme Court succinctly described Section
3 512’s mandate: “Employers must afford employees uninterrupted half-hour periods in which they
4 are relieved of any duty or employer control and are free to come and go as they please.” (*Brinker*
5 *Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1037.)

6 It is well settled that if an employer fails to maintain a uniform policy that authorizes and
7 permits the meal periods or rest breaks called for under the law (as specified in the applicable
8 Wage Order), “it has violated the wage order and is liable.” (See *Brinker*, 53 Cal.4th at p. 1033.)
9 Following *Brinker*, California courts have confirmed that liability for meal and rest period
10 violations arises when an employer adopts a uniform policy that fails to comply with the Labor
11 Code. (See *Faulkinbury v. Boyd & Associates, Inc.* (2013) 216 Cal.App.4th 220, 235, [“In
12 *Faulkinbury I*, we concluded that even if [defendant]’s on-duty meal break policy was unlawful,
13 [defendant] would be liable only when it actually failed to provide a required off-duty meal break.
14 *Brinker* leads us now to conclude [defendant] would be liable upon a determination that
15 [defendant]’s uniform on-duty meal break policy was unlawful.” (emphasis added)]; accord
16 *Bradley v. Networkers International LLC* (2012) 211 Cal.App.4th 1129; *Benton v. Telecom*
17 *Network Specialists, Inc.* (2013) 220 Cal.App.4th 701, 725–726 [finding that the employer would
18 become liable upon a showing that it failed to maintain a policy authorizing required breaks, which
19 does not require an individual technician to provide he or she actually missed breaks as a result of
20 the employer’s policies. Rather, “the Wage Order . . . imposes an affirmative obligation on every
21 employer to authorize and provide legally-required meal and rest breaks; if it fails to do so, it has
22 violated the law and is liable.”].) Plaintiff contends that Defendant must pay an additional hour at
23 the employee’s regular rate of compensation for each workday the employer failed to provide a
24 lawful meal period to each employee. (See Lab. Code, § 226.7, subd. (c).) Defendant, therefore,
25 allegedly owes Plaintiff and all Class Members a meal period penalty for every shift of five or
26 more hours in length.

27 Here, as described above, Plaintiff contends that Defendant maintained an unlawful “auto-
28 deduct” policy wherein it automatically deducts 30 minutes of time from the employee’s total

1 hours worked for the day regardless of whether a lawful meal period was actually provided under
2 California law. Plaintiff contends that she routinely was unable to take a first meal period and,
3 despite often working over 10 hours, was not able to take a second meal period. (Szamet Decl.
4 ¶46.) Plaintiff contends there is at least one meal period violation per person, per day during the
5 covered period. (Szamet Decl. ¶47.) Plaintiff argues that the time records show ubiquitous meal
6 period violations. (Szamet Decl. ¶48.)

7 Plaintiff argues that because the records show meal period violations the burden would
8 shift to Defendant. In *Donahue v. AMN Services*, the Court adopted the rebuttable presumption
9 discussed by Justice Werdegar in her concurring opinion in *Brinker Restaurant Corp. v. Superior*
10 *Court*, 53 Cal. 4th 1004 (2012). Under this presumption, “[i]f an employer’s records show no meal
11 period for a given shift over five hours, a rebuttable presumption arises that the employee was not
12 relieved of duty and no meal period was provided.” (*Donohue v. AMN Services, LLC* (2021) 11
13 Cal.5th 58, 74.) The Court further explained that this presumption applies not only to records
14 showing “missed meal periods” but also when records show “short and delayed meal periods” (*Id.*
15 at 76.) and “the presumption goes to the question of liability and applies at the summary judgment
16 stage, not just at the class certification stage.” (*Id.*)

17 Plaintiff anticipated that Defendant would argue, that while *Donahue* does create a
18 presumption it is significant that “[a]pplying the presumption does not mean that time records
19 showing missed, short, or delayed meal periods result in ‘automatic liability’ for employers.” (*Id.*
20 at 77; Szamet Decl. ¶49.) To the contrary, Air Culinaire would argue that it “can rebut the
21 presumption by presenting evidence that employees were compensated for noncompliant meal
22 periods or that they had in fact been provided compliant meal periods during which they chose to
23 work.” (*Id.*) Defendant would argue that since its written policy was to “provide” a meal period
24 per *Brinker*, that to determine liability on this claim would necessitate asking each and every Class
25 Member “whether they were provided a compliant meal period but chose to work”. (*Id.* at 78;
26 Szamet Decl. ¶50.) Defendant also argued that the records do show many meal period premiums
27 were paid. (Szamet Decl. ¶51.)

28 Plaintiff believes this is not enough for Air Culinaire to overcome the strong presumption

1 set forth in Donohue. Indeed, Donohue provided specific guidance: It explains that employers
2 must “give employees a mechanism for recording their meal periods” and “ensure that employees
3 use the mechanism properly.” (*Id.* at 78.) One such way is to incorporate a “dropdown menu” in
4 the timekeeping system that comes up if an employee misses a meal break, or takes a late or a short
5 break, and requires the employee to explain the reason for the noncompliant break (i.e., whether a
6 proper break was not provided or whether it was the employee’s choice). Because this solution
7 was explicitly endorsed by the Court and not the type of system Defendant used, Plaintiff believes
8 Air Culinaire will not be able to overcome that presumption set forth in Donohue and that Plaintiff
9 will be able to use Defendant’s records to prove liability for each and every non-compliant meal
10 period. (Szamet Decl. ¶52.) Nonetheless, Plaintiff acknowledges that shifts showing a meal period
11 premium was paid should be excluded for damages purposes. (Szamet Decl. ¶53.)

12 c) The Risks Associated with the Rest Break Claim

13 Under IWC Wage Order No. 16, every employer shall authorize and permit all employees
14 to take rest periods. Employees are entitled to a paid ten-minute rest break for every four hours
15 worked, or major fraction thereof. (Cal. Code Regs., tit. 8, § 11160, subd. 11(A).)

16 The *Brinker* court clarified what steps an employer must take to make rest breaks available
17 to its employees:

18 An employer is required to authorize and permit the amount of rest break time
19 called for under the wage order for its industry. If it does not—if, for example, it
20 adopts a uniform policy authorizing and permitting only one rest break for
21 employees working a seven-hour shift when two are required—it *has violated the*
22 *wage order and is liable*. No issue of waiver ever arises for a rest break that was
required by law but never authorized; if a break is not authorized, an employee has
no opportunity to decline to take it.

23 (*Ibid.*)

24 The California Supreme Court further refined requirements for rest periods, holding that
25 employees must be relieved of all duty and employer control and free to leave the premises during
26 rest breaks. (*Augustus v. ABM Sec. Servs., Inc.*, 2 Cal. 5th 257, 270 (2016) “[A] rest period means
27 an interval of time free from labor, work, or any other employment-related duties. And employees
28 must not only be relieved of work duties, but also be freed from employer control over how they

1 spend their time.”].)

2 The 10-minute rest break must be a net 10-minutes in a suitable rest area. None of the time
3 allotted for rest breaks can be consumed by the time it takes to get to a suitable rest area. *See*
4 *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257, 267-268 (2016) (relying on 1/3/86 and
5 2/22/02 DLSE Letters wherein the DLSE ruled that the net ten-minute language for rest breaks
6 means 10-minutes of time in a rest area and cannot include time it takes to get to and from the rest
7 area). The employer must show that it clearly articulates the right to rest periods and rest periods
8 of net ten minutes, which means it must clearly communicate “net” ten minutes means and that,
9 regardless of what happens along the way to or from the rest area, employees are entitled to a full
10 ten-minutes in the rest area. *See Buñil v. Dollar Fin. Grp., Inc.* (2008) 162 Cal.App.4th 1193, 1199
11 (the “onus is on the employer to clearly communicate the authorization and permission [to take
12 meal and rest breaks] to its employees.”)

13 Labor Code section 226.7, subdivision (c), requires an employer to pay an additional hour
14 of compensation for each workday the employer fails to provide a rest period according to law.
15 Plaintiff contends that Defendant, therefore, owes Plaintiff and all Class Members a rest period
16 penalty for every shift of three- and one-half hours in length or more.

17 Here, Plaintiff contends that Defendant routinely failed to provide Plaintiff and the Class
18 with rest breaks of not less than ten (10) minutes as required by the Labor Code during the relevant
19 time period. (Szamet Decl. ¶54.) She contends that Defendant also required Plaintiff and the Class
20 Members to stay on the premises. (Szamet Decl. ¶55.) She contends that was required to ask for
21 permission to leave the premises, was routinely unable to take a compliant first rest period and was
22 not able to take a second (or third) rest period. (Szamet Decl. ¶56.) As such, Plaintiff contends
23 there is at least one rest period violation per person, per day during the covered period. (Szamet
24 Decl. ¶57.)

25 As with meal periods, Defendant argued that it maintained a facially compliant policy that
26 “provided” all required rest periods, it did not require employees to stay on the premises, and it
27 never interfered with Plaintiff or any Class Members’ ability to take all complaint rest periods.
28 (Szamet Decl. ¶58.) Plaintiff acknowledges that rest period claims can be difficult to prove on a

1 classwide basis due to the lack of records. (Szamet Decl. ¶59.) This is especially true when an
2 employer maintains a facially complaint rest period policy. (Szamet Decl. ¶60.) Defendant argued
3 that this would devolve into a series of mini-trials where the trier of fact would be entitled to hear
4 from each class member as to whether they were in fact provided the opportunity to take all require
5 rest periods per day. (Szamet Decl. ¶61.) Of course, Defendant argued this would defeat class
6 certification and make it nearly impossible to prove this claim on a classwide basis. (Szamet Decl.
7 ¶62.) Based on this risk, Plaintiff believed it was appropriate to discount this claim. (Szamet Decl.
8 ¶63.)

9 d) The Risks Associated with the Wage Statement Claim

10 In relevant part, Labor Code § 226(a) requires that employers furnish to his or her
11 employee, an accurate itemized statement in writing showing... all applicable hourly rates in effect
12 during the pay period and the corresponding number of hours worked at each hourly rate by the
13 employee. (Labor Code §§ 226(a)(9)). This is a derivative section 226(a) claim.

14 Here, Plaintiff alleged that Defendant failed to issue Plaintiff and the Class Members
15 accurate itemized wage statements showing all applicable hourly rates in effect during the pay
16 period and the corresponding number of hours worked at each hourly rate by the employee as the
17 itemized wage statements show LTD pay that was not properly blended. (Szamet Decl. ¶64.)

18 Defendant contends that this is a derivative argument and Plaintiff did not plead a direct
19 violation of section 226(a). (Szamet Decl. ¶65.) Thus, if Defendant were to succeed on the wage
20 claim based on the arguments set forth above, that Plaintiff's section 226(a) claim would also fail.
21 (Szamet Decl. ¶66.) Defendant also argued that under *Maldonado v. Epsilon Plastics, Inc.*, 22
22 Cal.App.5th 1308 (2018)[The Court set out a simple rule for determining what falls under those
23 certain circumstances: hours worked versus wages earned. The court held that "only the absence
24 of the hours worked will give rise to an inference of injury," and "the absence of accurate wages
25 earned will be remedied by the violated wage and hour law itself."] Defendant would apply
26 Maldonado to argue that a potential mistake on a wage statement (i.e. a potential failure to blend
27 cannot give rise to section 226(a) liability, only completely missing information that is required to
28 be shown such as total hours worked.) (Szamet Decl. ¶67.)

1 e) The Risks Associated with the Waiting Time Penalty Claim

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

8 Here, Plaintiff and numerous Class Members are no longer employed by Defendant.
9 (Szamet Decl. ¶68.) Due to Defendant's alleged failure to properly blend all compensation into
10 the regular rate of pay, Plaintiff argues that Defendant failed to pay all wages owed and due upon
11 their termination and/or resignation. (Szamet Decl. ¶69.)

12 The viability of this claim is tied to the wage claim. (Szamet Decl. ¶70.) If Plaintiff
13 prevailed on the wage claim discussed above, Plaintiff would argue that Defendant's actions were
14 willful, as they have intentionally failed or refused to perform an act which was required to be
15 done. (See *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201.) "The failure to pay
16 is willful if the employer 'knows what [it] is doing [and] intends to do what [it] is doing', and does
17 not also require proof that the employer acted with "a deliberate evil purpose to defraud work[ers]
18 of wages which the employer knows to be due.'" (*Diaz v. Grill Concepts Services, Inc.* (2018) 23
19 Cal.App.5th 859, 868.) If, however, Plaintiff's wage claim failed, this claim would also likely fail.

20 f) The Risks Associated with the PAGA Claim

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

26 Plaintiff discounted the PAGA claim for multiple reasons. First, the aggrieved employees'
27 PAGA claims are arguably derivative of all the foregoing class claims. (Szamet Decl. ¶71.)
28 Second, and most importantly, a court has discretion to award less than the maximum penalty.

(Szamet Decl. ¶72; 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 Cal.Rptr.3d 647, 669 (affirming award of 10% of maximum PAGA penalty). *See Nordstrom Commissions Cases*, 186 Cal.App.4th 576, 589 (2010) (affirming settlement allocating \$0 of \$6.4 million settlement to PAGA penalties).¹ Third and finally, the Settlement Class is compensated for these violations in the proposed Joint Stipulation of Settlement, and thus any PAGA recovery for these same violations could arguably be construed as duplicative. (Szamet Decl. ¶73.) As such, Plaintiff contends that the Settlement’s contemplated PAGA payment of \$4,000 is appropriate. (Szamet Decl. ¶74.)

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 now. (Szamet Decl. ¶75.) If the Court did eventually certify a class, trial of a case involving approximately 194 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. (Szamet Decl. ¶76.) 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. (Szamet Decl. ¶77.) 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 of Maintaining Class Action Status through Trial

This case has not been certified to be tried as a class action. (Szamet Decl. ¶78.) 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. (*Ibid.*) In attempting to certify a class, the Parties would

¹ After a trial, Los Angeles Superior Court Complex Judge Ann Jones awarded only \$55,000 in back wages after trial plus \$770,000 in civil penalties which was just 2% of the \$41 million amount workers were seeking in back pay and PAGA penalties. *Sanchez et al. v. McDonald’s Restaurants of California Inc. et al.*, Case No. BC499888.

1 need to conduct multiple depositions, including of the Class Representative and of several
2 person(s) most knowledgeable regarding Defendant's policies. (*Ibid.*) There is a risk for both sides
3 as to what these depositions will reveal and whether they will support class certification to the
4 extent expected. (*Ibid.*)

5 4. The Amount Offered in Settlement

6 It was very difficult for the Parties to reach this Settlement of \$425,000.00. (Szamet Decl.
7 ¶79.) This Settlement is the result of adversarial, non-collusive, and arms-length negotiations.
8 (Szamet Decl. ¶80.) The Parties arrived at it after extensive informal discovery and settlement
9 negotiations, careful evaluation of the law, risks, and all information substantiating the amount of
10 penalties reasonably likely to be awarded to the class were the trier of fact to find Defendant liable.
11 (*Ibid.*)

12 a) Plaintiff's Assessment of Defendant's Maximum Exposure

13 Plaintiff worked with an expert to review Defendant's sample of time and pay records and
14 put together a damage model. (Szamet Decl. ¶81.)

15 Plaintiff assessed full value of the Minimum Wage/Overtime claim, without any discount,
16 at approximately \$4,182. (Szamet Decl. ¶82.) This calculation assumed that LTD pay was not
17 properly blended into regular rate of pay for purposes of determining the correct overtime rate in
18 pay periods where both overtime was worked and LTD was paid. (Szamet Decl. ¶83.) Expert
19 analysis revealed that this was infrequent, and the core potential wage liability was therefore
20 limited. (Szamet Decl. ¶84.)

21 The full value of the Meal Period claim, without any discount, was approximately
22 \$308,726.81. (Szamet Decl. ¶85.) The full value of the Rest Period claim, without any discount,
23 was approximately \$308,726.81. (Szamet Decl. ¶86.)

24 Plaintiff valued the Wage Statement Claim, without discount, at \$84,850.00. (Szamet Decl.
25 ¶87.) Plaintiff used \$50 for the initial pay period (not \$100) and puts a \$4,000 cap on wage
26 statement penalties per employee. (Szamet Decl. ¶88.) Due to the risk discussed above that 226(a)
27 liability wouldn't attach under *Maldonado*, Plaintiff determined that a steep discount of this claim
28 was fair for settlement purposes. (Szamet Decl. ¶89.)

1 Plaintiff valued the Waiting Time Claim, tied to the Wage/Overtime claim for the 144
2 former employees, at \$509,191.56. (Szamet Decl. ¶90.) Considering the dispute over whether
3 class members were owed any wages for allegedly unblended LTD pay (which if proven was a
4 small dollar amount), Plaintiff determined that accepting a discount on this claim was appropriate.
5 (Szamet Decl. ¶91.)

6 Finally, Plaintiff calculated the value of the PAGA claim at \$761,000 for Settlement Class
7 Members (using 7,610 pay periods x \$100/per pay period). (Szamet Decl. ¶92.) The main risk
8 taken into account with PAGA is the discretionary nature of the penalty award. (Szamet Decl.
9 ¶93.) A judge can award the statutory maximum or – in theory – one cent per wage statement.
10 (Szamet Decl. ¶94.) While there is a dearth of available authority, in Plaintiff’s view, were she to
11 succeed on any of the underlying Labor Code violations, it is not likely that a Judge would also
12 award a large amount of penalties of top of any damages recovered. (Szamet Decl. ¶95.)

13 Per Plaintiff’s assessment, the maximum potential value of all of Plaintiff’s and the
14 Settlement Class Members’ claims was approximately \$1,976,677. (Szamet Decl. ¶96.) However,
15 as a result of the forgoing risks on the merits, Class Counsel believes the Gross Settlement Amount
16 of \$425,000.00 is fair and reasonable. (Szamet Decl. ¶97.)

17 5. The Extent of Discovery Completed and Stage of the Proceedings

18 As outlined above, Class Counsel conducted a thorough investigation into the facts of the
19 claims alleged. (Szamet Decl. ¶98.) The agreement to settle did not occur until Class Counsel
20 exchanged and possessed sufficient information to make an informed judgement regarding the
21 likelihood of success on the merits and the results that could be obtained through further litigation.
22 (*Ibid.*)

23 6. The Experience and Views of Counsel

24 Finally, counsel’s experience and success in similar class actions also weigh in favor of
25 preliminary approval. *See Wershba, supra*, 91 Cal.App.4th at 245. Kingsley & Kingsley, APC is
26 very experienced in prosecuting complex employment litigation, and the firm has focused its
27 practice since the year 2000 on complex wage, hour, and working condition violations. (Szamet
28 Decl. ¶¶99-101.) The firm is well versed in class action litigation and has diligently and

1 aggressively pursued this action. (*Id.*) Kingsley & Kingsley, APC currently serves as Class
2 Counsel for dozens of pending class action lawsuits in Northern, Central, and Southern California.
3 (*Id.*) A list of representative cases that Kingsley & Kingsley, APC has handled is included in the
4 accompanying declaration of Kelsey M. Szamet. (*Id.*) After factoring in the risks explained above,
5 Class Counsel believes that the proposed settlement is fair and reasonable. (Szamet Decl. ¶102.)

6 7. The Presence of a Governmental Participant

7 There is no governmental participant in this action except, arguably, the LWDA as there is
8 a PAGA claim at issue. (Szamet Decl. ¶103.)

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

10 Since the proposed settlement is only at the preliminary approval stage, Notice has not yet
11 been disseminated to the Class. (Szamet Decl. ¶104.) Nonetheless, Plaintiff has every reason to
12 believe the proposed Settlement will be well received by the Class. (Szamet Decl. ¶105.) At the
13 final approval state, Plaintiff will provide detailed information regarding the reaction of the Class
14 to the proposed Settlement. (Szamet Decl. ¶106.)

15 B. The Proposed Plan of Allocation Is Fair and Reasonable

16 Plans of allocation are subject to the same standard of review as class action settlements;
17 they must be “fair, adequate and reasonable.” (*See, e.g., Officers for Justice v. Civil Service*
18 *Comm’n* (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the proposed plan of allocation
19 compensates Settlement Class Members pro rata based on the number of Compensable Work
20 Weeks during which s/he worked in proportion to the aggregate number of workweeks worked by
21 all Settlement Class Members. (Ex. 1 at § I ¶ 18.) This allocation distributes Settlement funds
22 proportionally to each Class Member’s potential damages and should therefore be approved as
23 fair, adequate, and reasonable. (Szamet Decl. ¶107.)

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

26 Plaintiff requests that the Court approve the proposed plan and form of Class Notice. The
27 standard for determining the adequacy of notice is whether the notice has “a reasonable chance of
28 reaching a substantial percentage of the class members.” (*Cartt v. Superior Court* (1975) 50

Cal.App.3d 960, 974.) Pursuant to the Settlement, the Notice will be sent to the last known address of all Settlement Class Members, or to an updated address if one is located in the National Change of Address Database. (Ex. 1 at § III, ¶7). If any Notices are returned as undeliverable, the Settlement Administrator will undertake another reasonable address verification measure, *i.e.* skip-tracing, or other search using the name, address and/or social security number of the Settlement Class Member whose notice was undeliverable, to locate a valid mailing address and will promptly send the Notice to the new address within ten (10) days of receiving notice that a notice was undeliverable. Settlement Class Members who receive a re-emailed Notice of Class Action Settlement shall have their Response Deadline extended twenty (20) days from the original Response Deadline. (Ex. 1 at § III ¶ 8.) As such, the Notice is likely to reach most, if not all, Settlement 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 Settlement and the options to opt out of the Settlement or object to it at the Final Approval Hearing. (Ex. 1 at § III, ¶¶11-12.) In short, the Court should approve the proposed Class Notice because it describes the proposed settlement with enough specificity to allow Settlement Class Members to make an informed choice regarding whether to participate.

VI. THE SERVICE AWARD TO THE NAMED PLAINTIFF

Class Counsel requests an enhancement for Plaintiff’s effort and time expended in this matter. (Szamet Decl. ¶108.) The time spent by HELEN SANTOS is significant and includes providing information to Class Counsel regarding the nature of the work at AIR CULINAIRE WORLDWIDE, LLC; compiling documents; meeting with her attorneys to discuss the status of the case, the theories of liability, and responding promptly to Class Counsel’s communications

1 regarding settlement. (*Ibid.*) Thus, in addition to the sums paid to Settlement Class Members,
2 Plaintiff requests a proposed litigation enhancement in the amount of \$5,000.00, to be paid from
3 the Gross Settlement Amount. (Ex. 1 at § III, ¶21.)

4 Class Counsel considers this to be a fair and reasonable enhancement. (Szamet Decl.
5 ¶109.) The enhancement takes into consideration the time, effort, and expense incurred by Plaintiff
6 in coming forward to litigate this matter on behalf of all Settlement Class Members. (*Ibid.*)
7 Plaintiff will provide a detailed declaration with the Final Approval Motion detailing her
8 participation and further justification for the enhancement. (*Ibid.*)

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

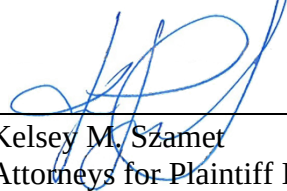
10 As indicated on the Proof of Service, Plaintiff’s Motion for Approval of Class Action
11 Settlement (“Motion”) will be concurrently uploaded to the LWDA website on the date this Motion
12 is filed as required by statute. Proof of submission of Plaintiff’s Motion, all related documents,
13 and copy of the email from the LWDA confirming receipt is attached to the Declaration of Kelsey
14 M. Szamet as Exhibit “2.” (Szamet Decl. ¶110.)

15 **VIII. CONCLUSION**

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

23
24 DATED: April 15, 2022

KINGSLEY & KINGSLEY, APC

25
26 By: 

27 Kelsey M. Szamet
28 Attorneys for Plaintiff Helen Santos 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 April 15, 2022, 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:

Clint D. Robison
Samantha L. Squillante
crobison@ohaganmeyer.com
ssquillante@ohaganmeyer.com
O'Hagan Meyer
21550 Oxnard Street, Suite 1050
Woodland Hills, CA, 91367

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

[XX] BY ELECTRONIC MAIL THROUGH CASE ANYWHERE: On interested parties set forth on the attached service list.

[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 April 15, 2022, at Woodland Hills, California.



Michelle A. Tanzer