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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

FARZAD AZIMA, individually and on behalf
of all others similarly situated,

PLAINTIFF,

v.

BIG HIT ENTERTAINMENT CO., LTD, a
corporation; FREENJOY, INC., a
corporation; and DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO. 20STCV43656

[Case Assigned for All Purposes to Hon. Laura
A. Siegle in Dept. 17]

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

*[Filed concurrently with Motion for Approval
of Attorneys' Fees and Costs; Declarations of
Eric B Kingsley, Farzad Azima and Madely
Nava, Proposed Order, and Judgment]*

Date: April 2, 2026

Time: 9:00 A.M.

Dept.: 17

Complaint Filed: November 16, 2020

FAC Filed: June 14, 2021

Trial Date: None Set

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

2 PLEASE TAKE NOTICE that on April 2, 2026 at 9:00 A.M. in Department 17 of the
3 above-entitled court, Plaintiff Farzad Azima (“Plaintiff”) will, and hereby does, move the Court
4 for an Order of Final Approval of the Class Settlement in this case. Plaintiff moves the Court for
5 an order:

6 1. Granting final approval of the settlement in the case pursuant to the Class Action
7 and PAGA Settlement Agreement (“Agreement”), a copy of which is attached to the concurrently-
8 filed Declaration of Eric B. Kingsley as Exhibit “1”;

9 2. Affirming Kingsley Szamet Employment Lawyers; Kim Legal, APC; and Helen
10 Kim Law, APC as Class Counsel;

11 3. Affirming Farzad Azima as Class Representative and awarding an enhancement
12 award of \$5,000.00;

13 4. Awarding Apex Class Action Administration claims administration fees of
14 4,500.00 for its services as Administrator; and,

15 5. Entering judgment.

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

19 The Motion will be based on this Notice of Motion, the attached Memorandum of Points
20 and Authorities, the Declarations of Eric B. Kingsley, Farzad Azima, Madely Nava, all other
21 papers and records on file in this action, and on such oral and documentary evidence as may be
22 presented at the hearing on this Motion.

23 DATED: March 10, 2026

KINGSLEY SZAMET EMPLOYMENT
LAWYERS

24
25 By: 

26 Eric B. Kingsley
27 Attorneys for Plaintiff FARZAD AZIMA and the
28 proposed class

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Farzad Azima (“Plaintiff”) submits this Motion for Final Approval of Class
4 Settlement and requests that the Court:

5 1. Grant final approval of the settlement in this case pursuant to the Class Action and
6 PAGA Settlement Agreement (“Agreement”), a copy of which is attached to the concurrently-filed
7 Declaration of Eric B. Kingsley as Exhibit “1”;

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

10 3. Award Apex Class Action Administration claims administration fees of \$4,500.00
11 for its services as Administrator;

12 4. Affirm named Plaintiff Farzad Azima as Class Representative and award a
13 cumulative Class Representative payment of \$5,000.00; and

14 5. Enter judgment.

15 **II. FACTUAL BACKGROUND**

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

17 Freenjoy is a production company that produced the Music Video “On” by BTS (“Music
18 Video”). (“Declaration of Eric B. Kingsley, “Kingsley Decl.”) ¶5.) Defendant hired Plaintiff as an
19 Extra on the Music Video, which is a nonexempt employee. (*Id.*) The Music Video was scheduled
20 to shoot from February 3-6, 2020, and Plaintiff worked on February 3 (Day 1) and February 6
21 (Day 4). (*Id.*) The Music Video “was a non-union, non-SAG production” and Plaintiff was non-
22 union. (*Id.*)

23 On November 16, 2020, Plaintiff filed a class action complaint against Defendants Big Hit
24 Entertainment Co., Ltd. and Freenjoy alleging a variety of wage and hour claims, and on June 14,
25 2021, Plaintiff filed a First Amended Complaint adding an additional cause of action for penalties
26 pursuant to Labor Code § 2699, et seq., the Private Attorneys General Act (“PAGA”) based on the
27 underlying Labor Code violations already pled. (Kingsley Decl. ¶6.) The operative complaint is
28 the Second Amended Complaint (“SAC”) filed on December 7, 2021 against Defendants for 1)

1 Failure to Provide Meal Breaks; 2) Failure to Provide Rest Breaks; 3) Failure to Pay Overtime
2 Wages; 4) Waiting Time Penalties; 5) Failure to Provide Itemized Wage Statements; 6) Violation
3 of the Private Attorneys General Act of 2014 (“PAGA”); and 7) Unlawful and Unfair Business
4 Practices. (Kingsley Decl. ¶7.) On November 24, 2020, Plaintiff sent a notice letter to the Labor
5 Workforce Development Agency (“LWDA”) regarding his intent to seek civil penalties for the
6 same Labor Code violations above, under Labor Code section 2699, et seq. (*Id.*) Plaintiff
7 dismissed Defendant Big Hit Entertainment Co., Ltd. on October 5, 2022. (*Id.*)

8 B. The Discovery Process and Mediation

9 The Parties engaged in extensive formal discovery in this Action before attending
10 mediation. (Kingsley Decl. ¶8.) Starting on June 26, 2021, Plaintiff served multiple rounds of
11 discovery, specifically Requests for Production of Documents and Special Interrogatories, to
12 Defendant. (*Id.*) Defendant also produced pay records for mediation purposes. (*Id.*)

13 On November 9, 2023, the Parties attended private mediation with Hon. Carl J. West (Ret.),
14 but the Parties ultimately could not come to an agreement to settle the Action. (Kingsley Decl. ¶9.)
15 On October 11, 2023, Defendant produced its tax returns, which Plaintiff’s Counsel thoroughly
16 analyzed. (*Id.*)

17 After continuous meet and confer efforts, the Parties decided to attend a second private
18 mediation with Hon. Carl J. West (Ret.) on March 12, 2025, which led to the Agreement to settle
19 the Action. (Kingsley Decl. ¶10.)

20 Plaintiff’s investigation was sufficient to satisfy the criteria for court approval set forth in
21 *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker*
22 *Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).

23 Defendant denies any liability or wrongdoing of any kind associated with the claims
24 alleged in the Action, disputes the damages and penalties claimed by Plaintiff, and further contends
25 that, for any purpose other than settlement, Plaintiff’s claims are not appropriate for class or
26 representative action treatment. (Kingsley Decl. ¶11.) Defendant contends, among other things
27 that, at all times, it has complied with the California Labor Code, and the Industrial Wage
28 Commission Orders. (*Id.*)

1 Based on their own independent investigation and evaluation, Class Counsel is of the
2 opinion that the Agreement with Defendant is fair, reasonable and adequate, and in the best interest
3 of the settlement class in light of all known facts and circumstances, including the risk of
4 significant delay, defenses asserted by Defendant, uncertainties regarding a class and
5 representative action trial on the merits, and numerous potential appellate issues. (Kingsley Decl.
6 ¶12.) Although Defendant denies any liability, Defendant is agreeing to this Agreement solely to
7 avoid the cost of litigation. (*Id.*) Accordingly, the Parties and their counsel desire to fully, finally,
8 and forever settle, compromise and discharge all disputes and claims arising from or relating to
9 the Action on the terms set forth here. (*Id.*)

10 C. Preliminary Approval

11 On October 1, 2025 the Court issued an Order preliminarily approving the settlement in
12 this case, approving the proposed Class Notice, ordering that the Administrator send notice to the
13 Class, and setting a date for the Final Approval and Fairness Hearing. (Kingsley Decl. ¶13.)

14 **III. THE PRELIMINARILY APPROVED SETTLEMENT**

15 A. The Settlement Class

16 For purposes of settlement, the Class is defined as:

17 “all current and former non-exempt employees of Freenjoy, Inc. in
18 California who worked on the “On” by BTS music video production
19 and were compensated by Freenjoy. Inc. based on a guaranteed
20 amount for 10 or 12 hours of work per day from February 3, 2020
to February 6, 2020. (the "Class").” (Agreement, ¶1.5, Kingsley
Decl. ¶14.).

21 The Class Period is February 3, 2020, until February 6, 2020. (Kingsley Decl. ¶15; Ex. 1
22 at § ¶1.12.) Based on documents and other information produced by Defendant, there are
23 approximately 80 members of the Class who worked a total of 80 total Workweeks. (Kingsley
24 Decl. ¶16; Ex. 1 at ¶4.1.)

25 B. The Aggrieved Employees

26 For purposes of settlement, the Aggrieved Employees are defined as:

27 “all current and former non-exempt employees of Freenjoy, Inc. in
28 California who worked on the “On” by BTS music video production
and were compensated by Freenjoy. Inc. based on a guaranteed
amount for 10 or 12 hours of work per day from February 3, 2020

to February 6, 2020.” (Ex., ¶1.4, Kingsley Decl. ¶17.).

The PAGA Period is February 3, 2020 to February 6, 2020. (Kingsley Decl. ¶18; Ex. 1 at ¶1.31.) Based on documents and other information produced by Defendant, there are approximately 80 Aggrieved Employees who collectively worked a total of 80 PAGA Pay Periods. (Kingsley Decl. ¶19; Ex. 1 at ¶4.1.)

C. Settlement Payments

As detailed fully in the Agreement, the Settlement provides for Defendant to pay a Gross Settlement Amount of \$550,000.00, which includes the sum of the Individual Class Payments, the Class Representative service award, the Class Counsel Award, PAGA Payment, and the Settlement Administration Costs. (Kingsley Decl. ¶20; Ex. 1 at ¶3.1.) Plaintiff now requests final approval of the allocation of the Gross Settlement Amount to determine the Net Settlement Amount for distribution to the Class as follows:

Gross Settlement Amount:	\$	550,000.00
Attorneys’ Fees (1/3):	\$	192,500.00
Requested Case Costs:	\$	35,000.00 ¹
Claims Administration:	\$	4,500.00
PAGA Penalties:	\$	15,000.00
		(\$11,250.00 to the LWDA; \$3,750.00 to remain in the Net Settlement Amount)
Named Plaintiff Enhancement:	\$	<u>5,000.00</u>
Net Settlement Amount:	\$	298,000.000

D. Individual Settlement Payments

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

The Individual PAGA Payment is an individualized amount based on the number of PAGA

¹ Class Counsel’s final costs are \$35,098.15, thus the maximum allocation of case costs is requested. (Kingsley Decl. ¶ 130.)

1 Period Pay Periods worked by the Aggrieved Employee during the PAGA Period. (Ex. 1 at
2 ¶3.2.5.1; see also Ex. A to the Agreement at pp. 3 [Class Notice].) It shall be calculated as follows:
3 twenty-five percent (25%) of the PAGA Payment (or \$3,750.00) divided by the total number of
4 PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and
5 multiplying the result by each aggrieved employee's PAGA Period Pay Periods. (See Ex. 1 at
6 ¶3.2.5.1; Id. at Ex. A to the Agreement [Class Notice].)

7 Based on these calculations, the average potential recovery is \$ \$3,679.01 per Settlement
8 Class Member. (Nava Decl. ¶16.)

9 E. Class Notice

10 The Court approved the proposed Class Notice, and directed the mailing of the Notice by
11 first-class mail to Settlement Class Members in accordance with the proposed implementation
12 schedule. (Kingsley Decl. ¶21.) The procedures for giving notice to the Settlement Class
13 Members, as set forth in the Agreement and Plaintiffs' Motion for Preliminary Approval and
14 approved by the Court, have been fully and properly carried out. (Nava Decl. ¶3;7.)

15 To date, Apex Class Action Administration received zero (0) request to be excluded ("opt-
16 outs") from the proposed Agreement and zero (0) objections. (Nava Decl. ¶¶11-13.)

17 F. Check Mailed Settlement – No Reversion

18 The Parties agreed to, and the Court preliminary approved, a checks-mailed settlement
19 without the possibility of reversion of settlement funds to Defendant. Under the Agreement, every
20 Settlement Class Member will receive a settlement check and Settlement Class Members do not
21 need to submit a claim in order to receive a settlement check. Any funds that remain uncashed
22 after 180 days shall be turned over by the Administrator, with information for each Settlement
23 Class Member who failed to timely cash his/her settlement check, to the State of California
24 Controller's Office Unclaimed Property Fund. (Ex. 1 at § 4, ¶4.4.3.)

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

26 Pursuant to California Code of Civil Procedure § 1781(f), "a class action shall not be
27 dismissed or compromised without the approval of the court, and notice of the proposed dismissal
28 or compromise shall be given to all members of the Class in such manner as the court directs"

1 In deciding whether to grant final approval to a proposed class action settlement under Code of
2 Civil Procedure § 382, the court’s overriding concern is whether the proposed settlement is “fair,
3 adequate, and reasonable.” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.)

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

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

10 As to the first *Dunk* factor, this settlement is the result of adversarial, non-collusive, and
11 arm’s-length negotiations overseen by an experienced mediator. All settlement discussions were
12 made by experienced and informed counsel, who believe that this settlement represents a favorable
13 resolution for the Settlement Class Members. (Kingsley Decl. ¶22.) The settlement negotiations
14 have been, at all times, adversarial and non-collusive, with the aid of a mediator, and no self-
15 dealing or other type of misconduct by either side has taken place. (Kingsley Decl. ¶23.)

16 Second, the Parties engaged in formal and informal discovery that permitted Class Counsel
17 to fairly evaluate the strength of the case and the risks associated with ongoing litigation.
18 (Kingsley Decl. ¶24.) In addition, Defendant produced additional data and documents informally
19 for purposes of settlement. This included Plaintiff’s personnel file and pay statements time and
20 pay data, and wage statements issued to Settlement Class Members. (Kingsley Decl. ¶25.) Receipt
21 of appropriate discovery allowed Class Counsel to fairly evaluate the exposure and risks associated
22 with each claim alleged in the lawsuit. (Kingsley Decl. ¶26.)

23 Third, Class Counsel have significant experience in cases of this type, including several
24 years prosecuting wage, hour, and working condition violations. (Kingsley Decl. ¶27.) Class
25 Counsel is thus qualified to evaluate the class claims and viability of the defenses. Class Counsel
26 believes that the settlement is fair, reasonable, adequate, and in the best interests of the class and
27 that the average recovery for each Settlement Class Member of \$3,679.01 is substantial, given the
28 risks inherent in litigation and the defenses asserted. (Kingsley Decl. ¶28.)

1 Finally, the fourth *Dunk* factor considers the percentage of objectors. Here, there were zero
2 (0) requests to be excluded and no objectors. (Nava Decl. ¶¶11-13.) As all of the *Dunk* factors are
3 satisfied, this settlement is entitled to a presumption of fairness.

4 B. The Court Should Approve This Class Action Settlement Because it Satisfies Each
5 of the *Kullar* Factors

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

13 The proposed settlement satisfies each of these factors. (Kingsley Decl. ¶29.) Class
14 Counsel conducted extensive informal discovery before entering into meaningful settlement
15 negotiations in this matter. (*Id.* at Kingsley Decl. ¶¶8-12.) This discovery permitted Class Counsel
16 to fairly evaluate the strength of the case and the risks associated with ongoing litigation. (Kingsley
17 Decl. ¶30.) Class Counsel is experienced in handling wage and hour class actions and, after
18 weighing all of the following factors, supports this Agreement. (Kingsley Decl. ¶31.)

19 1. The Strength of Plaintiffs' Case

20 a) The Risks Associated with the Unpaid Wages Claim

21 Plaintiff contends that Defendant failed to pay Plaintiff and the Class members of all
22 overtime wages due because 1) it unlawfully paid Plaintiff pursuant to a fixed salary agreement
23 that included compensation for overtime hours; and 2) failed to blend the non-discretionary flat
24 sum bonuses into the regular rate of pay for purposes of overtime.

25 There are three issues under this claim. First, Plaintiff maintains that Defendant subjected
26 Plaintiff and the Proposed Class to an unlawful Belo contract. (Kingsley Decl. ¶32.) Second,
27 Plaintiff contends that the base hourly rate of pay for Plaintiff and the Proposed Class was
28 incorrectly calculated because Defendant paid a fixed daily salary. (*Id.*) Third, Plaintiff alleges that

1 Defendant failed to blend nondiscretionary bonuses into the regular rate of pay. (*Id.*)

2 Unlawful Belo Contract. “Payment of a fixed salary to a nonexempt employee shall be
3 deemed to provide compensation only for the employee’s regular, nonovertime hours,
4 notwithstanding any private agreement to the contrary.” (Lab. Code, § 515(d)(2) [emphasis
5 added].) In addition to the statutory text and legislative history, courts look to interpretations of
6 the Division of Labor Standards Enforcement (“DLSE”), the agency tasked with enforcing
7 California’s labor laws and regulations, for guidance and accord IWC interpretations “considerable
8 judicial deference.” (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 262 [quotation
9 marks and citation omitted].) The California Supreme Court have reaffirmed the principle that
10 Labor Code protections are interpreted broadly, while exemptions are construed narrowly. (*Ferra*
11 *v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 865 [“[W]e adopt the construction that
12 best gives effect to the purpose of the Legislature and the IWC Time and again, we have
13 characterized that purpose as the protection of employees.”]; *Donohue v. AMN Services, LLC*
14 (2021) 11 Cal.5th 58, 67 [“we liberally construe the Labor Code and wage orders to favor the
15 protection of employees.”].)

16 Plaintiff contends that the statutory text and legislative history and intent are clear that
17 Defendant’s salary payment of \$225 per day must only cover non-overtime hours. Plaintiff
18 maintains that Defendant’s inclusion of overtime hours violates Labor Code section 515 essentially
19 renders the compensation agreement an unlawful Belo contract. (DLSE Enforcement Policies and
20 Interpretations Manual, § 48.1.6 [Belo Contracts are illegal because in California because they “do
21 not meet the overtime requirements” of the Wage Orders or Labor Code section 515(d).].)

22 Belo contracts have been disapproved by California, a rule which was further made clear
23 in Labor Code section 515(d). A creature of Federal law, Belo contracts permit employees who
24 may work irregular hours, to be “employed in excess of a 40-hour workweek if the contract was
25 entered into before performance of the work and meets other requirements for a minimum hourly
26 rate, overtime and a 60-hour maximum workweek.” (F. Payment of Overtime Compensation, Cal.
27 Prac. Guide Employment Litigation Ch. 11-F; DLSE Enforcement Policies and Interpretations
28 Manual, § 48.1.7 [“A Belo contract is one in which a specific hourly wage is set but the employer

promises a weekly guarantee.”].) In 1991, the Chief Counsel responding to an inquiry about “guaranteed compensation contracts,” or Belo Contracts, stated that these “do not meet the overtime requirements of the California Industrial Welfare Commission Orders.” (Chief Counsel H. Thomas Cadell, Jr., letter to Walter W. Whelan, Jan. 7, 1991, 1991.01.07-1.) “[T]he concept flies in the face of the very reasons that the IWC adopted premium pay for overtime.” (*Ibid.*) In 2000, the Chief Counsel again affirmed that Belo contracts are unlawful under California law. (Chief Counsel Miles E. Locker, Opinion letter to Rita Dermenjian, Sept. 29, 2000.) The compensation structure Defendant paid Plaintiff is like the Belo contract in the U.S. Supreme Court case, *Walling v. A. H. Belo Corp.* (1942) 316 U.S. 624, 62 S.Ct. 1223, upholding:

a dual payment system for irregular hours jobs that operated as follows: By the terms of the employment contract, there existed a specified regular rate wage and overtime pay one and one-half times the regular rate. This regular rate and overtime would apply to a worker's hours if he worked more than 54 hours in a given week. If he worked 54 hours or less, a fixed amount would be paid that equalled the regular rate plus overtime for the 54 hours. (62 S.Ct. at 1225-26) As noted above, in 1949 Congress felt it necessary to specifically approve payment plans (for certain situations) which set a regular rate and guarantee a fixed rate that is never less than the regular rate plus overtime for the hours actually worked. See 29 U.S.C. § 207(f).

(Chief Counsel Miles E. Locker, Opinion letter to Rita Dermenjian, Sept. 29, 2000.) This type of agreement is firmly rejected by California law. (*Ibid.*)

In 2012, Labor Code section 515(d) was amended to prohibit agreements to pay nonexempt employees a fixed salary that includes regular and overtime hours. (AB 2103 analysis, Ben Ebbink, Assembly Committee on Labor And Employment, April 18, 2012; See Lab. Code, § 515(d)(2).) The California Legislature passed Assembly Bill 2103 to overturn *Arechiga v. Dolores Press* (2011) 192 Cal.App. 4th 567, which had upheld an “explicit mutual wage agreement” guaranteeing “a fixed salary that purported to compensate the employee for all regular and overtime hours worked” relying on *Walling, supra*, 316 U.S. 624. (Id.; AB 2103 analysis, Kimberly Rodriguez, Assembly Committee On Appropriations, May 2, 2012 [declaring legislative intent to overturn *Arechiga*]; see *Arechiga v. Dolores Press, Inc.* (2011) 192 Cal.App.4th 567 [court referring to it as providing a “guaranteed salary”].) The Legislature viewed *Arechiga*’s ruling as “dangerous,” affirming that calculating overtime hours separately “promotes better record-keeping and a clear understanding of both parties what constitutes a regular workweek and what is additional overtime.” (AB 2103 analysis, Ben Ebbink, Assembly Committee on Labor And Employment,

1 April 18, 2012.) The legislative analyses also cite to the DLSE Manual’s prohibition of wage
2 agreements that provide a salary that compensates for hours over 40, relying on Labor Code section
3 515(d). (*Ibid.*; AB 2103 analysis, Kimberly Rodriguez, Assembly Committee On Appropriations,
4 May 2, 2012; AB 2103 analysis, Senate Rules Committee, Senate Floor Analysis, June 26, 2012.)
5 The reasoning behind the prohibition of Belo contracts is applicable to all fixed salary agreements
6 that purport to include overtime compensation:

7 Adopting a contract which provides for paying an individual on a regular basis to work
8 overtime simply encourages the working of overtime. The system provides no penalty
9 to the employer for employing the employee over eight hours in a day or forty hours
10 in a week; **in fact, the system encourages the employer to so employ the worker
11 because the overtime has, according to the plan, already been paid for.**

12 (DLSE Enforcement Policies and Interpretations Manual, § 48.1.8 [emphasis added].) The DLSE
13 also makes clear that all explicit mutual wage agreements to pay a nonexempt employee a salary
14 that purport to compensate for overtime, thereby “backing in the regular rate,” is not allowed.
15 (DLSE Enforcement Policies and Interpretations Manual, § 49.1.5.)

16 The above legislative history shows a disdain for any type of compensation structure to
17 nonexempt employees that purports to compensate for overtime hours. The law is clear that an
18 employer must not pay a salary that encompasses overtime hours. Here, Plaintiff maintains that
19 Defendant violated the law by paying a \$225 daily salary that includes hours 8-10 at Plaintiff’s
20 shoot and applied the same unlawful practice to the Class members.

21 Plaintiff specifically contends that Defendant’s compensation structure of \$225 for up to
22 10 hours of work, including overtime, is an unlawful agreement. (Kingsley Decl. ¶33.) This
23 structure of having a fixed salary for a stated amount of hours that incorporates a regular rate and
24 overtime rate for a set amount of hours, and then applies an overtime rate thereafter, is like the one
25 in Walling, supra, 316 U.S. 624. Defendant also admitted to paying Plaintiff a rate of \$225 per day
26 for up to 10 hours of work. (Kingsley Decl. ¶34.) Defendant also guaranteed a minimum of \$225
27 per day. (*Id.*) Plaintiff contends that Defendant’s compensation structure of \$225 includes payment
28 for 8 regular nonovertime hours and 2 overtime hours. (*Id.*)

However, Defendant argued that the \$225 is broken down into 8 hours at \$20.4545 per
hour, and 2 hours of overtime at \$30.6818 per hour. (Kingsley Decl. ¶35.) While Plaintiff contends
that this is Defendant’s attempt to end-run around overtime laws and “back in the regular rate”

1 (given the odd hourly rates to four decimal places), Plaintiff must acknowledge the risk that this
2 calculation does result in an overtime rate that equals 1.5 times the base rate and as such, would
3 adequately compensate Plaintiff and the Proposed Class for exactly 10 hours of work. (*Id.*)

4 Incorrect Base Rate. Plaintiff alleges that Labor Code section 515(d)(2) applies to Plaintiff
5 and the Proposed Class because Defendant structured its pay on a fixed daily salary of \$225, as
6 explained herein. “A salary is generally understood to be a fixed rate of pay as distinguished from
7 an hourly wage.” (*Negri v. Koning & Associates* (2013) 216 Cal.App.4th 392, 397 [analyzing
8 salary for exemption test].) A salary “can be based upon hours worked” but it “must still be a
9 predetermined amount that is not subject to reduction based upon the quantity or quality of work.”
10 (*Id.* at p. 399 [analyzing for exemption test].) Contrary to Defendant’s argument, the fact that the
11 \$225 was a daily salary does not preclude Labor Code section 515(d)(2)’s application to Plaintiff.
12 The wage order states “[w]ages’ includes all amounts for labor performed . . . whether the amount
13 is fixed or ascertained by the standard of time . . . or other method of calculation. (Wage Order
14 No. 12-2001, § 2(P); Lab. Code, § 200.) This definition includes a daily salary; the DLSE states
15 that “an amount of compensation may be paid to an employee for labor or services and may be
16 measured by hour, day, week, month, year, or any other subdivision of time (e.g., a yearly
17 “salary”).” (DLSE Enforcement Policies and Interpretations Manual, § 2.4.3 [emphasis added]; §
18 48.1.5.4 [for nonexempt employees, “contracted hours may be less than the legal maximum regular
19 hours in one workweek”].) “Neither the Legislature nor the IWC has set forth any criteria for
20 determining the interpretations of the word ‘salary’ for purposes of the IWC Orders.” (DLSE
21 Enforcement Policies and Interpretations Manual, § 51.6.1.)

22 Plaintiff maintains that Defendant paid Plaintiff based on a fixed salary of \$225 per day for
23 work performed on February 3 and 6, 2020 on the Music Video. (Kingsley Decl. ¶36.) Plaintiff
24 contends that it makes no difference under the Labor Code and Wage Orders that the salary was
25 earned daily, paid out at the end of a pay period consisting of two worked days, which was the
26 duration of Plaintiff’s employment. (*Ibid.*) Plaintiff maintains that the amount of \$225 was fixed;
27 Defendant paid overtime when Plaintiff worked over ten hours. (*Ibid.*) Plaintiff asserts this is in
28 line with a fixed salary, except additional compensation beyond the fixed salary must be paid for

1 all overtime hours after eight hours of work. (Lab. Code, § 515(d)(2).) (*Ibid.*) Plaintiff earned a
2 fixed salary each day he worked, i.e. a daily salary, for the duration of his employment. (*Ibid.*)
3 Importantly, the Court denied Defendant’s MSJ, holding that Plaintiff was paid a daily salary.
4 (*Ibid.*) This is applicable to all putative class members paid a daily rate, i.e. a daily salary, such
5 that this issue is appropriate for class certification. (*Ibid.*) Accordingly, Plaintiff contends that
6 Labor Code section 515(d)(2) applies to Plaintiff and the Class members, further contends that the
7 base hourly rate of pay should have been \$28.125, not \$20.45, and any additional hours of work
8 beyond 8 hours must be paid according to the overtime requirements of Wage Order 12-2001.
9 (*Ibid.*)

10 Plaintiff contends that his hourly rate of pay is determined by taking the salary, \$225,
11 divided by the number of non-overtime hours, 8. (Kingsley Decl. ¶37.) This equals an hourly rate
12 of \$28.125. (*Ibid.*) Any additional hours of work beyond 8 hours must be paid according to the
13 overtime requirements of Wage Order 12-2001. (*Ibid.*) That is, the overtime rate (1.5x) for the 9th
14 and 10th hour of work is \$42.1875, and the double time rate (2x) for the 11th hour and on is \$56.25.
15 (*Ibid.*) Plaintiff maintains that Defendant failed to pay Plaintiff at the appropriate rates of pay when
16 it paid Plaintiff at an hourly rate of \$20.4545. (*Ibid.*) Pursuant to Labor Code section 515(d)(2),
17 Plaintiff contends that Defendant has failed to compensate Plaintiff a) at the appropriate rates of
18 pay; and b) for overtime hours worked (since \$225 only covers nonovertime hours). (*Ibid.*)

19 However, Defendant argued that it did not pay a salary since Plaintiff and the Proposed
20 Class did not “regularly receive” this salary, given that they were only employed for a four-day
21 music video shoot. (Kingsley Decl. ¶38.) As explained above, Defendant vigorously argued that it
22 correctly paid overtime under its own calculations of \$20.4545 per hour for 8 regular hours, and 2
23 hours of overtime at \$30.6818 per hour. (Kingsley Decl. ¶39.) Furthermore, Defendant was
24 adamant that at trial, the factfinder would disagree that Plaintiff and the Proposed Class were paid
25 on a regular, “salary basis” given that the relevant time period where is a single workweek. (*Ibid.*)
26 While Plaintiff disagrees that Defendant’s argument is legally correct or persuasive, Plaintiff must
27 also acknowledge that for settlement purposes, the damages resulting from this claim is limited to
28 a relatively short time period. (*Ibid.*)

1 ***Failure to Blend Nondiscretionary Bonuses.*** Plaintiff maintains that Defendant
2 consistently failed to blend the non-discretionary flat sum bonuses into the regular rate of pay for
3 purposes of overtime. (Kingsley Decl. ¶40.) IWC Wage Order 12 applies to employees in the
4 Motion Picture Industry, including Extras. (Wage Order No. 12- 2001, § 1.) Plaintiff is an “Extra
5 Player” under the Wage Order. (Wage Order No. 12-2001, § 2(G) [defined as “any person
6 employed by an employer in the production of motion pictures to perform any work, including but
7 not limited to that of a general extra, . . . dress extra; or as extras employed in dancing[.]”].) Under
8 the Wage Order, Extras who work over eight hours in a workday “shall be paid daily overtime
9 compensation as follows: (1) One and one-half (1 1/2) times the extra player’s rate of pay for the
10 ninth (9th) and tenth (10th) work hours of employment and not less than double the extra player’s
11 rate of pay for all hours worked thereafter, computed in units of one-tenth (1/10) hours.” (Wage
12 Order 12-2001, § 3(D).)

13 “Under state and federal law, overtime compensation is based on an employee’s ‘regular
14 rate’” of pay. (*Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal.App.4th 893, 902.)
15 When a nonexempt employee is paid a salary, the rate of pay is calculated by dividing the salary
16 by not more than the legal maximum regular hours (in most cases 40 hours, but *this may be less*
17 *than 40 hours* where daily overtime is being computed) to determine the regular hourly rate of
18 pay. (See Labor Code § 515(d)) The contracted hours *may be less than the legal maximum regular*
19 *hours in one workweek*, in which case the contracted hours must then be used as the divisor and
20 the salary as the dividend to establish the regular hourly rate of pay. All hours over the legal
21 maximum regular hours in . . . *any one workday must be compensated at overtime rates.* (DLSE
22 Enforcement Policies and Interpretations Manual, § 48.1.5.4 [emphasis added]; see § 49.1.5.) “It
23 was the Commission’s intent that in establishing the regular rate of pay for salaried employees the
24 weekly remuneration is divided by the agreed or usual hours of work exclusive of daily hours over
25 eight.” (DLSE Enforcement Policies and Interpretations Manual, § fn. * to 48.1.4.)

26 When a nonexempt employee earns other includable compensation in addition to hourly
27 wages or salary, such as a flat sum bonus, his regular rate must account for this compensation.
28 (See DLSE Enforcement Policies and Interpretations Manual, § 49.1.2.3 [sums to be included in

1 calculations must include, but are not limited to, payment for hours worked, payment for
2 performing a duty, attendance bonus].) The California Supreme Court confirmed the method for
3 blending flat sum bonuses into an employee’s regular rate of pay in *Alvarado v. Dart Container*
4 *Corp. of California* (2018) 4 Cal.5th 542, as modified (Apr. 25, 2018). There, at issue was the
5 method of calculation of the regular rate of pay when the employee was paid a flat sum attendance
6 bonus that was incentive pay for completing an unpopular shift. (*Id.* at pp. 549, 554.) The court
7 held that “the bonus is properly treated as if it were fully earned by only the nonovertime hours in
8 the pay period, and therefore only nonovertime hours should be considered when calculating the
9 bonus's per-hour value.” (*Id.* at p. 562.) The court made clear that the “divisor should be the number
10 of nonovertime hours actually worked” to avoid “dramatically reducing the overtime pay rates of
11 part-time employees in California.”

12 Plaintiff maintains that he and Class members earned three flat sum bonuses – two smoke
13 bumps at \$20 each and 1 stunt bump at \$75 – for performing with certain conditions on set
14 (standing on rocks and smoky conditions). (Kingsley Decl. ¶41.) Plaintiff and Class members
15 volunteered to perform under these conditions in response to Defendant’s request for volunteers
16 and promise of pay. (*Id.*) Plaintiff asserts that these flat sums incentivized work under certain
17 conditions are flat sum bonuses required to be blended into Plaintiff and Class members’ regular
18 rate of pay. (*Id.*) Plaintiff contends that Defendant failed to blend bonuses into their regular rate of
19 pay for purposes of overtime and the meal period premiums.

20 In response, Defendant maintained that it was not required to include these bumps because
21 they are considered “talent fees,” and were properly excluded from the regular rate calculation.
22 (Kingsley Decl. ¶42.) “Talent fees,” Defendant argued, is an “extra payment made to
23 performers ...as an extra payment for services ... or for special services” and a “special service”
24 is a service “beyond the scope of the performer’s regular or ordinary duties as a staff performer
25 under the agreement applicable to the employment.” (29 C.F.R. §§ 550.1(a), 550.2(c).) Thus,
26 Defendant argued that under the FLSA, talent fees are excluded from the regular rate calculation
27 to performers. (*Id.*) Furthermore, Defendant asserts that the extra payments described as bumps
28 are a standardized amount required to be paid to union talent if their work includes contact with

1 smoke or a stunt—i.e., a “special service.” Thus, Defendant argues that bumps were only required
2 to be paid to union talent, and since this music video shoot was non-union, the bumps were not
3 required.

4 Again, Plaintiff does not believe Defendant’s arguments are legally correct or persuasive,
5 but nonetheless must acknowledge the risk that for settlement purposes, the damages due to the
6 alleged regular rate miscalculation due to Defendant’s failure to blend are relatively small.

7 b) The Risks Associated with the Meal and Rest Break Claims

8 Providing lawful breaks is an affirmative duty for the employer: “the Wage Order . . .
9 imposes an affirmative obligation on every employer to authorize and provide legally-required
10 meal and rest breaks.” (*Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th 701,
11 728.) Under IWC Wage Order 12, employers are required to provide a meal period of at least 30
12 minutes to employees who work more than six hours, to begin before the sixth hour, and to provide
13 a second meal period within the next six hours. (Wage Order 12-2001, § 11(A).) It is well settled
14 that if an employer fails to maintain a uniform policy that authorizes and permits the meal periods
15 called for under the law (as specified in the applicable Wage Order), “it has violated the wage
16 order and is liable.” (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004,1033.) When
17 an employer has not authorized legally required meal breaks, “the employer has violated the law
18 and the fact that an employee may have actually taken a break or was able to eat food during the
19 workday does not show that individual issues will predominate in the litigation.” (*Bradley v.*
20 *Networkers International, LLC* (2012) 211 Cal.App.4th 1129, 1151; see also *Lubin v. The*
21 *Wackenhut Corporation* (2016) 5 Cal.App.5th 926, 942.) Furthermore, “[e]mployers must afford
22 employees uninterrupted half-hour periods in which they are relieved of any duty or employer
23 control and are free to come and go as they please.” (*Id.* at p. 1037.) “Unless the employee is
24 relieved of all duty during a 30 minute meal period, the meal period shall be considered an ‘on
25 duty’ meal period and counted as time worked.” (Wage Order 12-2001, § 11(B).) An ‘on duty’
26 meal period is only allowed “when the nature of the work prevents” the relief of all duty and when
27 the parties have agreed to the on duty paid meal period in writing. (*Ibid.*)

28 Under IWC Wage Order 12, an employer must “authorize and permit all employees to take

rest periods” of ten (10) minutes per four (4) hours or major fraction thereof of work, “which insofar as practicable shall be in the middle of each work period.” (Wage Order 12-2001, § 12(A).)

The Brinker court also clarified what steps an employer must take to “make available” rest breaks to its employees. Under *Brinker*

An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required—it has violated the 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.

(*Brinker, supra*, 53 Cal. 4th at p. 1033.) Employees must be free to leave the premises during breaks. (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 269 [an employer that limits where an employee can take a meal or rest break does not “relinquish control over how employees spend their time”].)

Employers must pay employees an additional hour of wages at the employees’ regular rate of pay² for each missed or improper (e.g., less than the required time, interrupted, late) meal and rest period. (Wage Order 12-2001, § 11(C), 12(B); Lab. Code, § 226.7.)

Plaintiff maintains that Defendant violated California’s meal and rest break laws. First, Plaintiff contends that Defendant does not have any meal or rest break policies applicable to “extras” during the shooting of the Music Video. (Kingsley Decl. ¶43.) There is no policy to communicate information about breaks to “extras”, failing to authorize lawful breaks. (*Id.*) Second, Plaintiff and Class members were not free to come and go as they pleased during purported breaks. (Kingsley Decl. ¶45.) Plaintiff maintains that he and Class members were constrained to the premises of the shoot during the workdays and would have had to ask Defendant if they wanted to leave the holding area. (*Id.*) Specifically, on Day 4, Plaintiff asserts that it was an important filming day and they had to move quickly, so the meal break was on set rather than base, and at any moment they could have been called to shoot. (See *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th

² Pursuant to *Ferra v. Loews Hollywood Hotel, LLC*, the California Supreme Court set forth the formula for calculating the one extra hour of premium pay employees are owed if an employer fails to provide a compliant meal period or rest break. Specifically, the Court held that those premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary flat sum bonuses), and cannot simply be paid at an employee’s base hourly rate. (*Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 878.)

257, 270 [employees who must “remain at the ready” are performing work and not free to use time for their own purposes].) (*Id.*) Thus, Plaintiff contends that these are not the conditions of free, uninterrupted breaks, without any duties, required under California law.

Additionally, Plaintiff maintains that, on Day 1, Defendant was rushing Plaintiff and the Proposed Class to leave as soon as possible once filming was finished for the day. (Kingsley Decl. ¶47.) On Day 1, Plaintiff contends that he did not complete all work, including returning wardrobe, retrieving his phone, and making it back to the parking lot, until after 12:00 p.m. (*Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 582 [Under California’s control test, “an employee who is subject to an employer’s control does not have to be working during that time to be compensated.”]; *Id.* at p. 587 [Compulsory travel time, including time spent waiting on employer transportation, is compensable]; See *Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038, 1042, reh’g denied (May 13, 2020) [exit searches compensable].) (*Id.*) Plaintiff maintains that he would have been entitled to a meal break premium had the payroll record reflected his actual end time. (Kingsley Decl. ¶48.) While one version of his payroll record states that he ended at 12:00 p.m., another states that he worked ten hours with a proper meal period. (*Id.*) Furthermore, Plaintiff maintains that, while Defendant paid Plaintiff for a meal period premium on Day 4 and the data shows some premiums paid to Class members, they failed to pay them at their regular rate of pay and thus owe the difference. (See *Ferra*, 11 Cal.5th at p. 878.)

There are a couple risks on the meal and rest period claims that Plaintiff needed to factor when evaluating this settlement. (Kingsley Decl. ¶49.) The main risk is that Defendant did pay meal premiums on Day 4 to Plaintiff and other employees, which Defendant would argue that it did properly pay any and all meal premiums to the Proposed Class. (Kingsley Decl. ¶50.) Although Plaintiff does not agree with this, even if such practices or policies were credited, there remains a risk because, under *Ferra*, any missed or improperly provided meal periods require payment of an additional hour at the employee’s regular rate, including the value of nondiscretionary earnings such as flat sum bonuses. (*Id.*) However, the ultimate liability could vary depending on how the Court would evaluate the implementation of meal breaks and calculates premium pay. (*Id.*) This presented a risk on the meal period claim that Plaintiff considered when evaluating this settlement.

1 (Kingsley Decl. ¶51.)

2 Further, Plaintiff must acknowledge the rest claim poses serious risks as to establishing
3 liability because there are no time records to evaluate the rest period claim at all. (Kingsley Decl.
4 ¶52.) Plaintiff would have to rely on testimonial evidence and just as with meal periods, there is
5 risk as to both sides as to what declarations and depositions of class members might reveal. (*Id.*)

6 c) The Risks Associated with the Wage Statement Claim

7 California Labor Code §226(a) requires Defendant to provide its employees with an
8 accurate, itemized written wage statement that shows, in relevant part, total hours worked by the
9 employee, their name and address of the legal entity that is the employer, and all applicable hourly
10 rates and the corresponding number of hours worked. Specifically, Labor Code §226(a) requires
11 employers to furnish accurate itemized wage statements in writing that show total hours worked
12 by the employee and all applicable hourly rates in effect during the pay period and the
13 corresponding number of hours worked at each hourly rate by the employee. (Labor Code §§
14 226(a)(2) and (9) respectively.)

15 Labor Code §226 requires “employers [to] provide accurate itemized statements of wages
16 to their employees” that contain certain statutorily mandated information. (*Morgan v. United*
17 *Retail Inc.* (2010) 186 Cal.App.4th 1136, 1143. Specifically, the statute requires an employer to
18 “furnish each of his or her employees ... an accurate itemized statement in writing showing “(1)
19 gross wages earned, (2) total hours worked by the employee, . . . , (5) net wages earned, (6) the
20 inclusive dates of the period for which the employee is paid, . . . and (9) all applicable hourly rates
21 in effect during the pay period and the corresponding number of hours worked at each hourly rate
22 by the employee. (Lab. Code, § 226(a).) “[A]n employer's obligation under Labor Code section
23 226 to report wages earned includes an obligation to report premium pay for missed breaks.”
24 (*Naranjo v. Spectrum Sec. Servs., Inc.*, (2022) 13 Cal.5th 93, 121.)

25 Plaintiff maintains that Defendant failed to issue accurate, itemized wage statements to
26 Plaintiff by failing to accurately list hours worked, applicable rates of pay, premium pay earned
27 for unlawful meal and rest breaks, and thereby affecting the accuracy of gross and net wages
28 earned. (Kingsley Decl. ¶53.) These inaccuracies stem from Defendant’s violations recounted

1 above. Plaintiff also contends that Defendant listed 10 hours for Plaintiff on February 3, 2020,
2 which Defendant claims Plaintiff did not work. (*Id.*) Defendant should have listed the \$225 salary
3 separately instead of depicting purportedly inaccurate hours. (*Id.*)

4 Labor Code section 226(e)(2)(B) provides “an employee is deemed to suffer injury . . . if
5 the employer fails to provide accurate and complete information as required” in 226(a) “and the
6 employee cannot promptly and easily determine from the wage statement alone one or more of the
7 following: (i) The amount of the gross wages or net wages paid to the employee during the pay
8 period or any of the other information required to be provided on the itemized wage statement
9 pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a).” (emphasis added). Promptly
10 and easily determine “means a reasonable person would be able to readily ascertain the information
11 without reference to other documents or information.” (Lab. Code, § 226(e)(2)(C).)

12 Plaintiff maintains that an employee could not look at the statements here and do “simple
13 math” to determine the correct pay because Defendant failed to accurately list the salary payment,
14 applicable hourly rates, including the failure to blend the bonus into overtime and doubletime rates.
15 Plaintiff maintains that the information provided by Defendant on the wage statement was
16 completely wrong and Plaintiff and Class members were thereby injured. Kingsley Decl. ¶54.)

17 As this is a derivative claim, the same risks present for the above claims were present for
18 this claim. (Kingsley Decl. ¶55.)

19 d) The Risks Associated with the Waiting Time Penalty Claim

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

26 Here, Plaintiff and numerous Class members are no longer employed by Defendant.
27 Plaintiff contends that Defendant failed to pay all wages owed and due upon their termination
28 and/or resignation. (Kingsley Decl. ¶56.) Defendant’s actions were willful, as they have

1 intentionally failed or refused to perform an act which was required to be done. (See *Amaral v.*
2 *Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201.) “The failure to pay is willful if the
3 employer ‘knows what [it] is doing [and] intends to do what [it] is doing’, and does not also require
4 proof that the employer acted with “a deliberate evil purpose to defraud work[ers] of wages which
5 the employer knows to be due.” (*Diaz v. Grill Concepts Services, Inc.* (2018) 23 Cal.App.5th 859,
6 868.)

7 The main inquiry here is whether Defendant’s actions were willful under the law,
8 specifically if it intentionally failed or refused to perform an act which was required to be done.
9 (See *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201.) “The failure to pay is
10 willful if the employer ‘knows what [it] is doing [and] intends to do what [it] is doing’, and does
11 not also require proof that the employer acted with “a deliberate evil purpose to defraud work[ers]
12 of wages which the employer knows to be due.” (*Diaz v. Grill Concepts Services, Inc.* (2018) 23
13 Cal.App.5th 859, 868.)

14 Further, for purposes of Labor Code section 203, wages also include premium payments
15 for missed meal and rest periods. (*Naranjo v. Spectrum Security Services, Inc.* (2022) 13 Cal.5th
16 93, 117.) Here, the waiting time penalties are derivative of Defendant’s failure to properly pay
17 Plaintiff and Class members for all hours worked at the applicable rates of pay and failure to pay
18 meal and rest period premiums. (Kingsley Decl. ¶57.) Plaintiff contends that Defendant
19 intentionally violated the law when it included compensation for overtime hours in its fixed salary,
20 failed to blend bonuses into the regular rate of pay, and failed to pay owed meal and rest break
21 premiums.

22 Plaintiffs factored in the risk of establishing that any violation was “willful” and the fact
23 that this claim is derivative. (Kingsley Decl. ¶58.)

24 e) The Risks Associated with the PAGA Claim

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

1 \$100 per employee per pay period for the initial violation and \$200 for subsequent violations.³

2 Plaintiff discounted the PAGA claim for multiple reasons. (Kingsley Decl. ¶59.) First, the
3 Aggrieved Employees’ PAGA claims are arguably derivative of all the foregoing class claims.
4 (Kingsley Decl. ¶60.) If Plaintiff cannot establish liability on the underlying claim (taking into
5 account the risks discussed above), then the derivative PAGA claim will also necessarily fail. (*Id.*)
6 Second, a court has discretion to award less than the maximum penalty. (Kingsley Decl. ¶61.)
7 (Labor Code § 2699(e)(2) (“a court may award a lesser amount than the maximum civil penalty
8 amount specified by this part if, based on the facts and circumstances of the particular case, to do
9 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory”). See
10 e.g., *Carrington v. Starbucks Corporation* (2018) 30 Cal.App.5th 504, 241 Cal.Rptr.3d 647, 669
11 (affirming award of 10% of maximum PAGA penalty). Third, the likelihood of the Court reducing
12 the PAGA damages awarded to Plaintiff and the Aggrieved Employees – assuming liability is
13 proven as to each of Plaintiff’s claims – is also higher in this case where these same individuals
14 will also be receiving money for the same unlawful conduct under the class claims. (Kingsley
15 Decl. ¶62.) (see *Avila v. Cold Spring Granite Co.* (E.D. Cal. Jan. 12, 2018) Case No. 1:16-cv-
16 001533-AWI-SKO, 2018 U.S. Dist. LEXIS 6142 *17 (“Because the PAGA penalties sought are
17 at least partially duplicative of penalties granted by the underlying Labor Code violations, see,
18 e.g., Cal. Lab. Code §§ 203, 226, 558(a), 1194.2, and because a Court has discretion in whether
19 and in what amount to award PAGA penalties, see Cal. Lab. Code § 2699(e)(2), Plaintiff
20 recognizes that the potential PAGA penalties are highly uncertain.”); and see *Nordstrom*

21 ³ The comprehensive reform of California’s Private Attorneys General Act is now the law (AB 2288 and SB 92). The
22 PAGA reform took effect immediately and applies to cases filed after June 19, 2024. Though it does not apply
23 here as this was prior-filed, it is instructive to courts and practitioners on many issues including when
“Subsequent’ Penalties” may apply.

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

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

1 *Commissions Cases*, 186 Cal.App.4th 576, 589 (2010) (affirming settlement allocating \$0 of \$6.4
2 million settlement to PAGA penalties).

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

4 There is significant expense associated with the class certification process, which the
5 Parties can avoid by entering into the contemplated Agreement now. (Kingsley Decl. ¶63.) If the
6 Court did eventually certify a meal or wage statement class, trial of a case involving approximately
7 80 settlement Class Members would require the retention of expensive expert witnesses, the
8 accrual of extensive litigation costs, and a significant time overlay by the parties. (Kingsley Decl.
9 ¶64.) Moreover, given the complexity and unsettled nature of the issues in this case it is likely that
10 any outcome at trial would have resulted in a lengthy and costly appeal. (Kingsley Decl. ¶65.)

11 An appeal would result in further delay for the settlement Class Members who are waiting
12 for a resolution in this matter. (*Id.*)

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

14 This case has not been certified to be tried as a class action. (Kingsley Decl. ¶66.) While
15 Plaintiff believes there is strong evidence to support certification of several possible subclasses
16 certification is always hard fought and subject to judicial discretion. Moreover, in class actions,
17 decertification is always a possibility. (*Id.*) In attempting to certify a class, the parties would need
18 to conduct multiple depositions, including of the Class Representative and of several person(s)
19 most knowledgeable regarding Defendant's meal and rest policies. (*Id.*) There is a risk for both
20 sides as to what these depositions will reveal and whether they will support class certification to
21 the extent expected. (*Id.*)

22 4. The Amount Offered in Settlement

23 It was very difficult for the Parties to reach this Settlement of \$550,000.00. (Kingsley Decl.
24 ¶67.) This Settlement is the result of adversarial, non-collusive, and arms-length negotiations.
25 (Kingsley Decl. ¶68.) The Parties arrived at it after extensive investigation and discovery, careful
26 evaluation of the law, risks, and all information substantiating the amount of penalties reasonably
27 likely to be awarded to the class were the trier of fact to find Defendant liable, and the assistance
28 of an experienced mediator, Hon. Carl J. West. (*Id.*)

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

2 Plaintiff assessed the full value of the unpaid wages claim, without any discount, at
3 approximately \$27,000.00 due to underpayment from Defendant's alleged failure to blend and
4 failure to pay at the correct overtime rate. (Kingsley Decl. ¶69.) This was calculated using an
5 overtime rate of \$42.1875 and assuming that each putative class member has two hours of unpaid
6 overtime for each shoot day. (*Id.*)

7 Plaintiff assessed the full value of the meal and rest period claims, without any discount,
8 at approximately \$18,000.00. (Kingsley Decl. ¶70.) However, this amount is overstated because
9 it assumes that each putative class member worked each of the four days in the workweek and
10 were denied a meal and rest break each day. (Kingsley Decl. ¶71.)

11 The waiting time penalties claim drove this settlement. (Kingsley Decl. ¶72.) Plaintiff
12 valued the waiting time claim, tied to the wages/overtime claim, at \$742,500.00. (*Id.*) The reason
13 for this figure is because a day's worth of wages for each putative class member is \$309.375, which
14 is a higher-than-average daily rate (\$309.375 daily rate × 30 days × 80 putative class members =
15 \$742,500.) (*Id.*) Even using Defendant's daily rate of \$225, the value of this claim is at least
16 \$540,000.00. (*Id.*)

17 As to the exposure for PAGA penalties under Labor Code §2699, et seq., Plaintiff valued
18 this claim at approximately \$8,000.00. (Kingsley Decl. ¶73.) This was based upon 80 PAGA pay
19 period at issue during the PAGA relevant time period (80 aggrieved employees were during
20 February 3 to February 6, 2020, which is only one PAGA pay period per employee), multiplied by
21 \$100 per pay period (80 pay periods in the data x \$100 = \$8,000.00. (Kingsley Decl. ¶74.)

22 Thus, per Plaintiff's assessment, the maximum potential value of all of Plaintiff's and the
23 Class members' claims was approximately \$1,115,500. (Kingsley Decl. ¶75.) However, in looking
24 at just the core damages related to the claims for alleged unpaid wages and meal and rest period
25 violations the maximum exposure was \$45,000. (Kingsley Decl. ¶76.) The amount attributable to
26 statutory and civil penalties far outweighs the exposure on the underlying claims. (Kingsley Decl.
27 ¶77.) Plaintiff and Class Counsel believe that examining the core exposure together with the
28 significant foregoing risks on the merits, supports a finding that the Gross Settlement Amount of

1 \$550,000.00 is exceptional and will be well-received by the Proposed Class. (Kingsley Decl. ¶78.)

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

3 As outlined above, Class Counsel conducted a thorough investigation into the facts of the
4 claims alleged. (Kingsley Decl. ¶79.) The agreement to settle did not occur until Class Counsel
5 exchanged and possessed sufficient information to make an informed judgement regarding the
6 likelihood of success on the merits and the results that could be obtained through further litigation.
7 (*Id.*)

8 6. The Experience and Views of Counsel

9 Finally, counsel's experience and success in similar class actions also weigh in favor of
10 preliminary approval. See *Wershba, supra*, 91 Cal.App.4th at 245. Kingsley Szamet Employment
11 Lawyers is a well-established firm and very experienced in prosecuting complex employment
12 litigation, and the firm has focused its practice since the year 2000 on complex wage, hour, and
13 working condition violations. (Kingsley Decl. ¶¶80-81.) The firm is well versed in class action
14 litigation and has diligently and aggressively pursued this action. (*Id.*) Kingsley Szamet
15 Employment Lawyers currently serves as Class Counsel for dozens of pending class action
16 lawsuits in Northern, Central, and Southern California. (*Id.*) A list of representative cases that
17 Kingsley Szamet Employment Lawyers has handled is included in the accompanying declaration
18 of Eric B. Kingsley. (*Id.*) After factoring in the risks explained above, Class Counsel believes that
19 the proposed settlement is fair and reasonable. (Kingsley Decl. ¶82.)

20 7. The Presence of a Governmental Participant

21 There is no governmental participant in this action. (Kingsley Decl. ¶83.)

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

23 Plans of allocation are subject to the same standard of review as class action settlements;
24 they must be "fair, adequate and reasonable." (*See, e.g., Officers for Justice v. Civil Service*
25 *Comm'n* (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the proposed plan of allocation
26 compensates Class members pro rata based on the number of compensable Workweeks worked by
27 the Class member during the Class Period. The lump sum payment to each Class member not
28 excluding him/ herself will be determined on an individualized basis based upon the compensable

1 Workweeks worked by that individual. (Ex. 1 at ¶3.2.4.) This allocation distributes Agreement
2 funds proportionally to each class member’s potential damages and should therefore be approved
3 as fair, adequate, and reasonable. (Kingsley Decl. ¶84.)

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

5 To date, there are zero (0) request to be excluded from the proposed Agreement and zero
6 (0) objections. (Nava Decl. ¶¶11-13.) Such indicates that the reaction of Settlement Class Members
7 on the whole is positive and weighs in favor of approval.

8 **V. ENHANCEMENT TO PLAINTIFF**

9 Plaintiff’s Counsel requests an enhancement of \$5,000.00 to the Class Representative
10 Farzad Azima for his work on behalf of the Class. (Kingsley Decl. ¶133.) “Courts routinely
11 approve incentive awards to compensate named plaintiffs for the services they provide and the
12 risks they incurred during the course of the class action litigation.” *Ingram v. The Coca-Cola*
13 *Company*, 200 F.R.D. 685, 694 (N.D. Ga 2001) (internal quotations and citations omitted); *see*
14 *also Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995). In *Coca-*
15 *Cola*, the Court approved service awards of \$300,000 to each named plaintiff in recognition of the
16 services they provided to the class by responding to discovery, participating in the mediation
17 process, and taking the risk of stepping forward on behalf of the class. *Coca-Cola*, 200 F.R.D. at
18 694; *see also, e.g. Van Vranken*, 901 F. Supp. at 299 (approving \$50,000 participation award to
19 plaintiffs); *Glass v. UBS Financial Services, Inc.*, Case No. C-06-4068 MMC, 2007 WL 227862,
20 at *17 (N.D. Cal. Jan. 26, 2007) (approving \$25,00 enhancement to each named plaintiff).

21 Mr. Azima is an adequate class representative because he has diligently, adequately and
22 fairly represented the Class and has not placed his interests above any member of the Class. (*see*
23 Declaration of Farzad Azima (“Azima Decl.”) ¶¶4-10.) (Kingsley Decl. ¶134.)

24 Here, Class Counsel requests an enhancement for Mr. Azima’s valiant effort and time
25 expended in this matter. The time spent by Farzad Azima is significant and includes the following:
26 (1) researching and retaining competent counsel; (2) providing information to Class Counsel
27 regarding the nature of the work at Defendant; (3) compiling relevant documents; (4) working
28 closely with Class Counsel to develop the theories of liability and martial relevant evidence; (5)

1 regularly discussing the status of the case with Class Counsel; (6) discussing the case via telephone
2 with many Class members; (7) making himself available for a full-day of mediation; and (8)
3 responding promptly to Class Counsel’s communications regarding settlement. (Kingsley Decl.
4 ¶135; Azima Decl. ¶¶5-7.) As set forth in the Agreement, Plaintiff will also be entering into a
5 general release of liability pursuant to Civil Code Section 1542. (Kingsley Decl. ¶136; Ex. 1 at §
6 5, ¶5.1.1.)

7 Class Counsel considers this to be a fair and reasonable enhancement. (Kingsley Decl.
8 ¶137.) The enhancement takes into consideration the time, effort, and expense incurred by Mr.
9 Azima in coming forward to litigate this matter on behalf of all Settlement Class Members.
10 (Kingsley Decl. ¶138.) Additionally, Plaintiff was at risk for paying for Defendant’s legal fees
11 and costs in the event that Defendant prevailed at trial. (Kingsley Decl. ¶139.)

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

13 As indicated on the Proof of Service, Plaintiff’s Motion for Final Approval of Class Action
14 Settlement (“Motion”) will be concurrently uploaded to the Labor and Workforce Development
15 Agency’s (“LWDA”) website on the date this Motion is filed as required by statute. Proof of
16 submission of Plaintiff’s Motion, all related documents, and copy of the email from the LWDA
17 confirming receipt is attached to the Declaration of Eric B. Kingsley as Exhibit “6.” (Kingsley
18 Decl. ¶144.)

19 **VII. CONCLUSION**

20 Plaintiff respectfully submits that the proposed Agreement is fair, adequate, reasonable,
21 and in the best interest of the Settlement Class Members. Therefore, Plaintiff respectfully requests
22 that the Court (1) grant Final Approval of the Agreement and all of its terms; (2) award attorneys’
23 fees and costs in the amount detailed in the concurrently filed Motion for Attorneys’ Fees and
24 Costs; (3) award Apex Class Action Administration claims administration fees of \$4,500.00; and
25 (4) award the Class Representative an enhancement of \$5,000.00; and (5) enter judgment.

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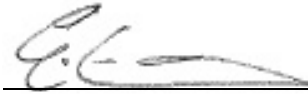
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1 DATED: March 10, 2026

KINGSLEY SZAMET EMPLOYMENT
LAWYERS

2
3 By:



4 Eric B. Kingsley
5 Attorneys for Plaintiff FARZAD AZIMA and the
6 proposed class
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(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 March 10, 2026, I served all interested parties in this action the following documents described as: **NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

TURNER DHILLON LLP William M. Turner William.Turner@TurnerDhillon.com Asha Dhillon Asha.Dhillon@TurnerDhillon.com Liza M. Brereton Liza.Brereton@TurnerDhillon.com Catherine Dellecker Catherine.Dellecker@TurnerDhillon.com Samer Aref Samer.Aref@TurnerDhillon.com 707 Wilshire Boulevard, Suite 3250 Los Angeles, CA 90017 Attorneys for Defendant	FRANK H. KIM fkim@kim-legal.com KIM LEGAL, APC 3435 Wilshire Blvd, Suite 2700 Los Angeles, CA 90010 HELEN U. KIM helen@helenkimlaw.com HELEN KIM LAW, APC 3435 Wilshire Blvd, Suite 2700 Los Angeles, CA 90010 LIANE LY LAW Liane Katzenstein Ly liane@lianelylaw.com 601 S Figueroa St., Ste 1950 Los Angeles, CA 90017-3983 Attorneys for Plaintiff
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[XX] BY ELECTRONIC SERVICE: I caused a true and correct copy thereof to be electronically filed using the Labor and Workforce Development Agency Electronic Filing ("EF") System (<https://dir.tfaforms.net/432>) and service was completed by electronic means by transmittal of the documents referenced herein on the EF System.

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

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

Executed on March 10, 2026, at Chino, California.



Leslie Sanchez

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