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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. Larua
A. Seigle in Dept. 17]

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

*[Filed concurrently with Declaration of Eric
B. Kingsley, Declaration of Farzad Azima, and
Proposed Order]*

Date: October 1, 2025
Time: 9:00 A.M.
Dept.: 17

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

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

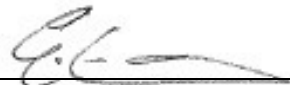
2 **PLEASE TAKE NOTICE** that on October 1, 2025, at 9:00 A.M. in Department 17 of the
3 above-entitled court, Plaintiff FARZAD AZIMA will move the Court for an Order of Preliminary
4 Approval of the Class Action and PAGA Settlement Agreement (“Agreement”), a copy of which
5 is filed concurrently herewith.

6 The Motion will be made on the grounds that the proposed Agreement 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 Eric B. Kingsley, the Agreement 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: August 25, 2025

KINGSLEY SZAMET EMPLOYMENT
LAWYERS

14
15 By: 

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff FARZAD AZIMA (“Plaintiff” or “Class Representative”) submit this
4 Memorandum of Points and Authorities in support of Plaintiff’s Motion for Preliminary Approval
5 of the Class Action and PAGA Settlement Agreement reached between Plaintiff and Defendant
6 FREENJOY, INC. (“Defendant”) (Plaintiff and Defendant together, the “Parties”).

7 By this Motion, Plaintiff requests that the Court:

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

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

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

17 **II. FACTUAL BACKGROUND**

18 A. Litigation Overview and Procedural History

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

25 On November 16, 2020, Plaintiff filed a class action complaint against Defendants Big Hit
26 Entertainment Co., Ltd. and Freenjoy alleging a variety of wage and hour claims, and on June 14,
27 2021, Plaintiff filed a First Amended Complaint adding an additional cause of action for penalties
28 pursuant to Labor Code § 2699, *et seq.*, the Private Attorneys General Act (“PAGA”) based on the

underlying Labor Code violations already pled. (Kingsley Decl. ¶5.) The operative complaint is the Second Amended Complaint (“SAC”) filed on December 7, 2021 against Defendants for 1) Failure to Provide Meal Breaks; 2) Failure to Provide Rest Breaks; 3) Failure to Pay Overtime Wages; 4) Waiting Time Penalties; 5) Failure to Provide Itemized Wage Statements; 6) Violation of the Private Attorneys General Act of 2014 (“PAGA”); and 7) Unlawful and Unfair Business Practices. On November 24, 2020, Plaintiff sent a notice letter to the Labor Workforce Development Agency (“LWDA”) regarding his intent to seek civil penalties for the same Labor Code violations above, under Labor Code section 2699, *et seq.* (*Id.*) Plaintiff dismissed Defendant Big Hit Entertainment Co., Ltd. on October 5, 2022. (*Id.*)

B. The Discovery Process and Mediation

The Parties engaged in extensive formal discovery in this Action before attending mediation. (Kingsley Decl. ¶6.) Starting on June 26, 2021, Plaintiff served multiple rounds of discovery, specifically Requests for Production of Documents and Special Interrogatories, to Defendant. (*Id.*) Defendant also produced pay records for mediation purposes. (*Id.*)

On November 9, 2023, the Parties attended private mediation with Hon. Carl J. West (Ret.), but the Parties ultimately could not come to an agreement to settle the Action. (Kingsley Decl. ¶7.) On October 11, 2023, Defendant produced its tax returns, which Plaintiff’s Counsel thoroughly analyzed. (*Id.*)

After continuous meet and confer efforts, the Parties decided to attend a second private mediation with Hon. Carl J. West (Ret.) on March 12, 2025, which led to the Agreement to settle the Action. (Kingsley Decl. ¶8.)

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

Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in the Action, disputes the damages and penalties claimed by Plaintiff, and further contends that, for any purpose other than settlement, Plaintiff’s claims are not appropriate for class or representative action treatment. (Kingsley Decl. ¶9.) Defendant contends, among other things,

1 that, at all times, it has complied with the California Labor Code, and the Industrial Wage
2 Commission Orders. (*Id.*)

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

12 **III. THE PROPOSED SETTLEMENT CLASS SHOULD BE CERTIFIED FOR** 13 **SETTLEMENT PURPOSES**

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

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

and to the litigants.” (*Collins v. Rocha* (1972) 7 Cal.3d 232, 238.)

The California Supreme Court has identified three certification requirements: (1) “the existence of an ascertainable and sufficiently numerous class”; (2) “a well-defined community of interest”; and, (3) “substantial benefits from certification that render proceeding as a class superior to the alternatives.” (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.)

The “community of interest” requirement includes three additional requirements: (1) common questions of law or fact predominant over individual questions; (2) the class representatives have claims or defenses typical of the class; and (3) the class representatives can adequately represent the class. (*Ibid, citing Fireside Bank, supra*, 40 Cal.4th at 1089.)

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

A. The Proposed Classes Are Ascertainable and Sufficiently Numerous

1. Ascertainability

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

Here, Plaintiff maintains that the proposed Settlement Class is ascertainable for several reasons. First, Defendant has agreed in the Agreement to provide a class list to the Administrator containing the name, last known mailing address, social security number, and number of Class Period Workweeks and PAGA Pay Periods for all putative class members after issuance of the preliminary approval order. (Kingsley Decl. ¶11; Ex. 1 at ¶1.8.) Second, settlement Class Member consist of Defendant’s employees, and Defendant is required to keep records of its employees’ names, home addresses, and social security numbers. (*See Wage Order 12-2001*, subsection 7(c); Kingsley Decl. ¶12.) Third and finally, Defendant formally and informally produced Plaintiff’s personnel file and pay statements time and pay data, and wage statements for settlement Class

Members containing class member contact information, which confirms that all settlement Class Member may be readily identified based on Defendant's records. (Kingsley Decl. ¶13.)

2. Numerosity

There is no set number that is required as a matter of law to maintain a class action. (*See, e.g., Rose v. City of Hayward, supra*, 126 Cal.App.3d at p. 934.) Here, the proposed Settlement Class contains, based upon information and belief, approximately 80 non-exempt employees in the State of California. (Ex. 1 at ¶4.1.) Therefore, Plaintiff is confident he will be able to establish that the proposed settlement Class is ascertainable and sufficiently numerous. (Kingsley Decl. ¶14.)

B. There Is a Well-Defined Community of Interest

1. There Are Predominant Questions of Law and Fact

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

Here, Plaintiff argues that there are questions of law and fact common to the proposed settlement Class that predominate over any questions affecting only individual Class Members. (Kingsley Decl. ¶15.) These common questions include:

- 1) Whether Defendant failed to pay all wages and/or overtime compensation;
- 2) Whether Defendant failed to provide lawfully required meal periods and/or failed to compensate employees one (1) hour's wages in lieu thereof;
- 3) Whether Defendant failed to provide lawfully required rest periods and/or failed to compensate employees one (1) hour's wages in lieu thereof;

- 4) Whether Defendant failed to provide accurate itemized wage statements;
- 5) Whether Defendant failed to pay compensation due and owing upon termination of employment;
- 6) Whether Defendant engaged in unfair competition; and,
- 7) Whether Defendant violated § 2699, et seq. of the Labor Code by engaging in the acts previously alleged.

(*Id.*)

Plaintiff's challenge to Defendant's uniform policies and practices involves common factual and legal issues that are amenable to class treatment. (Kingsley Decl. ¶16.) As the California Supreme Court has emphasized, "[c]laims alleging that a uniform policy consistently applied to a group of employees is in violation of the wage and hour laws are of the sort routinely, and properly, found suitable for class treatment." (*Brinker, supra*, 53 Cal.4th at 1033; *see also Bradley v. Networkers International, LLC* (2012) 211 Cal.App.4th 1129, 1141-1146.) Moreover, a class of similarly situated employees may be certified based on common questions of fact or law, even if each employee has to establish the amount of his or her damages. (*See Bell v. Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 741; *Sav-On Drug Stores, Inc. v. Superior Court, supra*, 34 Cal.4th at 340.)

Here, Plaintiff maintains that the proposed Settlement Class Members suffered the same injuries, in the same manner: (1) settlement Class Members did not receive all wages and or overtime wages as required; (2) settlement Class Members did not receive their meal and rest periods as required; (3) settlement Class Members were not provided accurate itemized wage statements; and (4) settlement Class Members were not paid all wages owed upon termination/resignation. (Kingsley Decl. ¶17.) Plaintiff alleges that settlement Class Members worked in the same capacity for the same employer and were subject to the same employment policies and practices, the questions of fact and claims regarding the status of these employees are the same for each member of the settlement Class. Accordingly, for purposes of settlement, certification for settlement purposes is appropriate. (*Id.*)

///

1 2. The Class Representative 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.)

14 Plaintiff worked as an Extra on a Music Video for Defendant, which is a nonexempt
15 employee. (Kingsley Decl. ¶18.) Plaintiff alleges that he: (1) worked without being paid all wages
16 and/or overtime; (2) worked without being provided meal/rest periods as required by law; (3)
17 worked without being provided accurate itemized wage; and (4) worked without being paid all
18 wages due upon separation. He also alleges that he experienced derivative claims for unfair
19 business competition (B&P Code §17200) and Labor Code §2699, et seq. (*Id.*) Plaintiff also
20 contends that his claims are typical of those of the settlement Class. (*Id.*)

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

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

27 Plaintiff believes that he is capable of fairly representing and adequately protecting the
28 interests of the proposed settlement Class Members. (Kingsley Decl. ¶19.) Plaintiff's interests in

1 this litigation are coextensive with the interests of the proposed settlement Class Members. The
2 members of the proposed Settlement Class all worked for Defendant during the relevant time
3 period and incurred the same type of alleged damages with regard to Defendant’s alleged violations
4 of the law. (*Id.*) Moreover, Plaintiff has agreed to serve as Class Representative and has retained
5 qualified Counsel who is experienced in prosecuting wage and hour class actions. (*Id.*) This
6 demonstrates his commitment to bringing about the best possible results for the benefit of the
7 proposed settlement Class. (*Id.*) Plaintiff has provided his Counsel with all necessary and pertinent
8 information. (*Id.*) Plaintiff has been a very active participant in the litigation including having
9 frequent contact with settlement Class Members, responding to formal discovery, and working
10 closely with Class Counsel to develop the theories of liability. (*Id.*) Plaintiff also was informed of
11 and involved in all of the Settlement negotiations. Therefore, Plaintiff believes that he has and
12 will continue to adequately represent the proposed settlement Class Members. (*Id.*)

13 C. The Class Action Vehicle Is Superior to the Alternatives

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

28 Plaintiff maintains that class treatment would be the superior method of managing this case.

1 A class action is superior to individual litigation “when numerous parties suffer injury of
2 insufficient size to warrant individual action and when denial of class relief would result in unjust
3 advantage to the wrongdoer.” (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.) In
4 cases such as this, where individual damages may be small, the class action device is the most
5 feasible method of recovery. (*See, e.g. Lockheed Martin, supra*, 29 Cal.4th at 1131.) In this regard,
6 the superiority of class treatment is evident here because individual pursuit of class members’
7 claims may not be economically viable. (Kingsley Decl. ¶20.) The only alternative to certification
8 would be to force 80 employees to join this action, file individual, uniform actions, or abandon
9 their legal rights altogether. (*Id.*) Plaintiff maintains that this economic reality would result in a
10 windfall for Defendant if this case were not certified. (*Id.*)

11 **IV. THE PROPOSED SETTLEMENT**

12 **A. The Settlement Class**

13 Originally, Plaintiff’s class definition encompassed a much larger class of approximately
14 8,000 individuals. (Kingsley Decl. ¶21.) However, during settlement negotiations, Defendant
15 contended that a settlement at that size would bankrupt the company. (*Id.*) The Parties redefined
16 the class definition to comprise of the most likely claims that would succeed amongst a subset of
17 the larger class. (*Id.*) As such, the Parties reached a settlement based on a much narrower proposed
18 class. (*Id.*)

19 For purposes of Agreement, the settlement class is defined as: “all current and former non-
20 exempt employees of Freenjoy, Inc. in California who worked on the “On” by BTS music video
21 production and were compensated by Freenjoy. Inc. based on a guaranteed amount for 10 or 12
22 hours of work per day from February 3, 2020 to February 6, 2020.” (“Class”). (Kingsley Decl.
23 ¶22; Ex. 1 at ¶1.5.)

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

28 ///

1 B. Aggrieved Employees

2 For purposes of the Agreement, the Aggrieved Employees are defined as: “all current and
3 former non-exempt employees of Freenjoy, Inc. in California who worked on the “On” by BTS
4 music video production and were compensated by Freenjoy. Inc. based on a guaranteed amount
5 for 10 or 12 hours of work per day from February 3, 2020 to February 6, 2020.” (“Aggrieved
6 Employees”) (Kingsley Decl. ¶25; Settlement, Ex. 1 at ¶1.4.) The PAGA Period is February 3,
7 2020 to February 6, 2020. (Kingsley Decl. ¶26; Ex. 1 at ¶1.31.) Based on documents and other
8 information produced by Defendant, there are approximately 80 Aggrieved Employees who
9 collectively worked a total of 80 PAGA Pay Periods. (Kingsley Decl. ¶27; Ex. 1 at ¶4.1.)

10 C. Gross Settlement Amount

11 As detailed fully in the Agreement, the Settlement provides for Defendant to pay a Gross
12 Settlement Amount of \$550,000.00, which includes the sum of the Individual Class Payments, the
13 Class Representative service award, the Class Counsel Award, PAGA Payment, and the Settlement
14 Administration Costs. (Kingsley Decl. ¶28; Ex. 1 at ¶3.1.)

15 The Net Settlement Amount is the Gross Settlement Amount, less Class Counsel Award,
16 Class Representative Enhancement, PAGA Payment, and Settlement Administration Costs.
17 (Kingsley Decl. ¶29; Ex. 1 at ¶3.2.)

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

19	Gross Settlement Amount:	\$	550,000.00
20	Less Class Representative Enhancement:	\$	5,000.00
21	Less Class Counsel’s Fees:	\$	192,500.00
22	Less Class Counsel’s Costs:	\$	35,000.00
23	Less PAGA Payment:	\$	15,000.00
24			<i>(\$11,250.00 to the LWDA and</i>
25			<i>\$3,750.00 to remain in the Net</i>
26			<i>Settlement Amount)</i>
27	<u>Less Administrator Costs:</u>	<u>\$</u>	<u>4,500.00</u>
28	Anticipated Net Settlement Amount	\$	298,800.00

(Ex. 1 at ¶3.)

26 D. Individual Settlement Payments

27 The amount of each Class member’s Individual Class Payment is an individualized amount
28 that is based on the number of compensable Workweeks worked by the Class member during the

1 Class Period. (Ex. 1 at ¶3.2.4; *see also* Ex. A to the Agreement at pp. 6 [Class Notice].) This
2 individual amount shall be determined according to the settlement payment formula set forth in
3 the Agreement. (*See* Ex. 1 at ¶3.2.4; *Id.* at Ex. A to the Agreement [Class Notice].) The Agreement
4 provides for a specific and detailed Work Week dispute process. (*See* Ex. 1 at ¶7.6.)

5 The Individual PAGA Payment is an individualized amount based on the number of PAGA
6 Period Pay Periods worked by the Aggrieved Employee during the PAGA Period. (Ex. 1 at
7 ¶3.2.5.1; *see also* Ex. A to the Agreement at pp. 3 [Class Notice].) It shall be calculated as follows:
8 twenty-five percent (25%) of the PAGA Payment (or \$3,750.00) divided by the total number of
9 PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and
10 multiplying the result by each aggrieved employee's PAGA Period Pay Periods. (*See* Ex. 1 at
11 ¶3.2.5.1; *Id.* at Ex. A to the Agreement [Class Notice].)

12 E. Process for Administering Settlement after Preliminary Approval

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

18 F. Process for Class Members to Respond to Class Notice

19 As detailed in the Agreement, Class Members will have an opportunity to request exclusion
20 from the Agreement (i.e. opt out) and to object to the Agreement at the Final Approval Hearing.
21 (*See* Ex. 1 at ¶¶7.5; 7.7; *see also* Ex. A to the Agreement at pp. 2-3, 5-6, and 8-9 [Class Notice].)
22 The Agreement and Class Notice contain details about the process to request exclusion or object.
23 (*Id.* at Ex. 1; *see also* Ex. A to the Agreement at pp. 2-3, 5-6, and 8-9 [Class Notice].)

24 G. The Release

25 The Released Claims are defined in the Agreement as: "(i) all claims that were alleged, or
26 reasonably could have been alleged, based on the Class Period facts stated in the Operative
27 Complaint and ascertained in the course of the Action, including, 1) Failure to Provide Meal
28 Breaks; 2) Failure to Provide Rest Breaks; 3) Failure to Pay Overtime Wages; 4) Waiting Time

1 Penalties; 5) Failure to Provide Itemized Wage Statements. Except as set forth in Section 5.3 of
2 this Agreement, Participating Class Members do not release any other claims, including claims for
3 vested benefits, wrongful termination, violation of the Fair Employment and Housing Act,
4 unemployment insurance, disability, social security, workers' compensation, or claims based on
5 facts occurring outside the Class Period." (Ex. 1 at ¶5.2.)

6 The Release by Non-Participating Class Members Who Are Aggrieved Employees is
7 defined as: "all claims for PAGA penalties that were alleged, or reasonably could have been
8 alleged, based on the PAGA Period facts stated in the Operative Complaint, Plaintiff's November
9 24, 2020 PAGA Letter, and ascertained in the course of the Action, including, 1) Failure to Provide
10 Meal Breaks; 2) Failure to Provide Rest Breaks; 3) Failure to Pay Overtime Wages; 4) Waiting
11 Time Penalties; 5) Failure to Provide Itemized Wage Statements." (Ex. 1 at ¶5.3.)

12 **V. ARGUMENT**

13 **A. Plaintiff Requests Approval of This Class Action Settlement**

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

21 The proposed settlement satisfies each of these factors. (Kingsley Decl. ¶30.) Class
22 Counsel conducted extensive informal discovery before entering into meaningful settlement
23 negotiations in this matter. (*Id* at Kingsley Decl. ¶¶6-10.) This discovery permitted Class Counsel
24 to fairly evaluate the strength of the case and the risks associated with ongoing litigation. (Kingsley
25 Decl. ¶31.) Class Counsel is experienced in handling wage and hour class actions and, after
26 weighing all of the following factors, supports this Agreement. (Kingsley Decl. ¶32.)

27 ///

28 ///

1 1. The Strength of Plaintiff's Case

2 a) The Risks Associated with the Unpaid Wages Claim

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

7 There are three issues under this claim. First, Plaintiff maintains that Defendant subjected
8 Plaintiff and the Proposed Class to an unlawful Belo contract. (Kingsley Decl. ¶33.) Second,
9 Plaintiff contends that the base hourly rate of pay for Plaintiff and the Proposed Class was
10 incorrectly calculated because Defendant paid a fixed daily salary. (*Id.*) Third, Plaintiff alleges that
11 Defendant failed to blend nondiscretionary bonuses into the regular rate of pay. (*Id.*)

12 ***Unlawful Belo Contract.*** “Payment of a fixed salary to a nonexempt employee shall
13 be deemed to provide compensation only for the employee’s regular, nonovertime hours,
14 *notwithstanding any private agreement to the contrary.*” (Lab. Code, § 515(d)(2) [emphasis
15 added].) In addition to the statutory text and legislative history, courts look to interpretations of
16 the Division of Labor Standards Enforcement (“DLSE”), the agency tasked with enforcing
17 California’s labor laws and regulations, for guidance and accord IWC interpretations “considerable
18 judicial deference.” (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 262 [quotation
19 marks and citation omitted].) The California Supreme Court have reaffirmed the principle that
20 Labor Code protections are interpreted broadly, while exemptions are construed narrowly. (*Ferra*
21 *v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 865 [“[W]e adopt the construction that
22 best gives effect to the purpose of the Legislature and the IWC Time and again, we have
23 characterized that purpose as the protection of employees.”]; *Donohue v. AMN Services, LLC*
24 (2021) 11 Cal.5th 58, 67 [“we liberally construe the Labor Code and wage orders to favor the
25 protection of employees.”].)

26 Plaintiff contends that the statutory text and legislative history and intent are clear that
27 Defendant’s salary payment of \$225 per day must only cover non-overtime hours. Plaintiff
28 maintains that Defendant’s inclusion of overtime hours violates Labor Code section 515(d)(2) and

essentially renders the compensation agreement an unlawful Belo contract. (DLSE Enforcement Policies and Interpretations Manual, § 48.1.6 [Belo Contracts are illegal because in California because they “do not meet the overtime requirements” of the Wage Orders or Labor Code section 515(d).].)

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

1 In 2012, Labor Code section 515(d) was amended to prohibit agreements to pay nonexempt
2 employees a fixed salary that includes regular *and overtime* hours. (AB 2103 analysis, Ben Ebbink,
3 Assembly Committee on Labor And Employment, April 18, 2012; See Lab. Code, § 515(d)(2).)
4 The California Legislature passed Assembly Bill 2103 to overturn *Arechiga v. Dolores Press*
5 (2011) 192 Cal.App. 4th 567, which had upheld an “explicit mutual wage agreement” guaranteeing
6 “a fixed salary that purported to compensate the employee for all regular *and overtime* hours
7 worked” relying on *Walling, supra*, 316 U.S. 624. (*Id.*; AB 2103 analysis, Kimberly Rodriguez,
8 Assembly Committee On Appropriations, May 2, 2012 [declaring legislative intent to overturn
9 *Arechiga*]; see *Arechiga v. Dolores Press, Inc.* (2011) 192 Cal.App.4th 567 [court referring to it
10 as providing a “guaranteed salary”].) The Legislature viewed *Arechiga’s* ruling as “dangerous,”
11 affirming that calculating overtime hours separately “promotes better record-keeping and a clear
12 understanding of both parties what constitutes a regular workweek and what is additional
13 overtime.” (AB 2103 analysis, Ben Ebbink, Assembly Committee on Labor And Employment,
14 April 18, 2012.) The legislative analyses also cite to the DLSE Manual’s prohibition of wage
15 agreements that provide a salary that compensates for hours over 40, relying on Labor Code section
16 515(d). (*Ibid.*; AB 2103 analysis, Kimberly Rodriguez, Assembly Committee On Appropriations,
17 May 2, 2012; AB 2103 analysis, Senate Rules Committee, Senate Floor Analysis, June 26, 2012.)
18 The reasoning behind the prohibition of Belo contracts is applicable to all fixed salary agreements
19 that purport to include overtime compensation:

20 “Adopting a contract which provides for paying an individual on a regular basis to
21 work overtime simply encourages the working of overtime. The system provides
22 no penalty to the employer for employing the employee over eight hours in a day
23 or forty hours in a week; **in fact, the system encourages the employer to so
24 employ the worker because the overtime has, according to the plan, already
25 been paid for.**”

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

The above legislative history shows a disdain for any type of compensation structure to
nonexempt employees that purports to compensate for overtime hours. The law is clear that an

1 employer must not pay a salary that encompasses overtime hours. Here, Plaintiff maintains that
2 Defendant violated the law by paying a \$225 daily salary that includes hours 8-10 at Plaintiff's
3 shoot and applied the same unlawful practice to the Class members.

4 Plaintiff specifically contends that Defendant's compensation structure of \$225 for up to
5 10 hours of work, including overtime, is an unlawful agreement. (Kingsley Decl. ¶34.) This
6 structure of having a fixed salary for a stated amount of hours that incorporates a regular rate and
7 overtime rate for a set amount of hours, and then applies an overtime rate thereafter, is like the one
8 in *Walling, supra*, 316 U.S. 624. Defendant also admitted to paying Plaintiff a rate of \$225 per day
9 for up to 10 hours of work. (Kingsley Decl. ¶35.) Defendant also guaranteed a minimum of \$225
10 per day. (*Id.*) Plaintiff contends that Defendant's compensation structure of \$225 includes payment
11 for 8 regular nonovertime hours *and* 2 overtime hours. (*Id.*)

12 However, Defendant argued that the \$225 is broken down into 8 hours at \$20.4545 per
13 hour, and 2 hours of overtime at \$30.6818 per hour. (Kingsley Decl. ¶36.) While Plaintiff contends
14 that this is Defendant's attempt to end-run around overtime laws and "back in the regular rate"
15 (given the odd hourly rates to four decimal places), Plaintiff must acknowledge the risk that this
16 calculation does result in an overtime rate that equals 1.5 times the base rate and as such, would
17 adequately compensate Plaintiff and the Proposed Class for exactly 10 hours of work. (*Id.*)

18 ***Incorrect Base Rate.*** Plaintiff alleges that Labor Code section 515(d)(2) applies to
19 Plaintiff and the Proposed Class because Defendant structured its pay on a fixed daily salary of
20 \$225, as explained herein. "A salary is generally understood to be a fixed rate of pay as
21 distinguished from an hourly wage." (*Negri v. Koning & Associates* (2013) 216 Cal.App.4th 392,
22 397 [analyzing salary for exemption test].) A salary "can be based upon hours worked" but it "must
23 still be a *predetermined amount* that is *not subject to reduction* based upon the quantity or quality
24 of work." (*Id.* at p. 399 [analyzing for exemption test].) Contrary to Defendant's argument, the fact
25 that the \$225 was a *daily* salary does not preclude Labor Code section 515(d)(2)'s application to
26 Plaintiff. The wage order states "[w]ages' includes all amounts for labor performed . . . whether
27 the amount is fixed or ascertained by the standard of time . . . or other method of calculation.
28 (Wage Order No. 12-2001, § 2(P); Lab. Code, § 200.) This definition includes a daily salary; the

DLSE states that “an amount of compensation may be paid to an employee for labor or services and *may be measured* by hour, day, week, month, year, or any other subdivision of time (e.g., a yearly “salary”).” (DLSE Enforcement Policies and Interpretations Manual, § 2.4.3 [emphasis added]; § 48.1.5.4 [for nonexempt employees, “contracted hours may be less than the legal maximum regular hours in one workweek”].) “Neither the Legislature nor the IWC has set forth any criteria for determining the interpretations of the word ‘salary’ for purposes of the IWC Orders.” (DLSE Enforcement Policies and Interpretations Manual, § 51.6.1.)

Plaintiff maintains that Defendant paid Plaintiff based on a fixed salary of \$225 per day for work performed on February 3 and 6, 2020 on the Music Video. (Kingsley Decl. ¶37.) Plaintiff contends that it makes no difference under the Labor Code and Wage Orders that the salary was earned daily, paid out at the end of a pay period consisting of two worked days, which was the duration of Plaintiff’s employment. (*Ibid.*) Plaintiff maintains that the amount of \$225 was fixed; Defendant paid overtime when Plaintiff worked over ten hours. (*Ibid.*) Plaintiff asserts this is in line with a fixed salary, except additional compensation beyond the fixed salary must be paid for all overtime hours after *eight* hours of work. (Lab. Code, § 515(d)(2).) (*Ibid.*) Plaintiff earned a fixed salary each day he worked, i.e. a daily salary, for the duration of his employment. (*Ibid.*) Importantly, the Court denied Defendant’s MSJ, holding that Plaintiff was paid a daily salary. (*Ibid.*) This is applicable to all putative class members paid a daily rate, i.e. a daily salary, such that this issue is appropriate for class certification. (*Ibid.*) Accordingly, Plaintiff contends that Labor Code section 515(d)(2) applies to Plaintiff and the Class members, further contends that the base hourly rate of pay should have been \$28.125, not \$20.45, and any additional hours of work beyond 8 hours must be paid according to the overtime requirements of Wage Order 12-2001. (*Ibid.*)

Plaintiff contends that his hourly rate of pay is determined by taking the salary, \$225, divided by the number of non-overtime hours, 8. (Kingsley Decl. ¶38.) This equals an hourly rate of \$28.125. (*Ibid.*) Any additional hours of work beyond 8 hours must be paid according to the overtime requirements of Wage Order 12-2001. (*Ibid.*) That is, the overtime rate (1.5x) for the 9th and 10th hour of work is \$42.1875, and the double time rate (2x) for the 11th hour and on is \$56.25.

(*Ibid.*) Plaintiff maintains that Defendant failed to pay Plaintiff at the appropriate rates of pay when it paid Plaintiff at an hourly rate of \$20.4545. (*Ibid.*) Pursuant to Labor Code section 515(d)(2), Plaintiff contends that Defendant has failed to compensate Plaintiff a) at the appropriate rates of pay; and b) for overtime hours worked (since \$225 only covers nonovertime hours). (*Ibid.*)

However, Defendant argued that it did not pay a salary since Plaintiff and the Proposed Class did not “regularly receive” this salary, given that they were only employed for a four-day music video shoot. (Kingsley Decl. ¶39.) As explained above, Defendant vigorously argued that it correctly paid overtime under its own calculations of \$20.4545 per hour for 8 regular hours, and 2 hours of overtime at \$30.6818 per hour. (Kingsley Decl. ¶40.) Furthermore, Defendant was adamant that at trial, the factfinder would disagree that Plaintiff and the Proposed Class were paid on a regular, “salary basis” given that the relevant time period where is a single workweek. (*Ibid.*) While Plaintiff disagrees that Defendant’s argument is legally correct or persuasive, Plaintiff must also acknowledge that for settlement purposes, the damages resulting from this claim is limited to a relatively short time period. (*Ibid.*)

Failure to Blend Nondiscretionary Bonuses. Plaintiff maintains that Defendant consistently failed to blend the non-discretionary flat sum bonuses into the regular rate of pay for purposes of overtime. (Kingsley Decl. ¶41.) IWC Wage Order 12 applies to employees in the Motion Picture Industry, including Extras. (Wage Order No. 12- 2001, § 1.) Plaintiff is an “Extra Player” under the Wage Order. (Wage Order No. 12-2001, § 2(G) [defined as “any person employed by an employer in the production of motion pictures to perform any work, including but not limited to that of a general extra, . . . dress extra; or as extras employed in dancing[.]”].) Under the Wage Order, Extras who work over eight hours in a workday “shall be paid daily overtime compensation as follows: (1) One and one-half (1^{1/2}) times the extra player’s rate of pay for the ninth (9th) and tenth (10th) work hours of employment and not less than double the extra player’s rate of pay for all hours worked thereafter, computed in units of one-tenth (1/10) hours.” (Wage Order 12-2001, § 3(D).)

“Under state and federal law, overtime compensation is based on an employee’s ‘regular rate’” of pay. (*Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal.App.4th 893, 902.)

1 When a nonexempt employee is paid a salary, the rate of pay is calculated by dividing the salary
2 by not more than the legal maximum regular hours (in most cases 40 hours, but *this may be less*
3 *than 40 hours* where daily overtime is being computed) to determine the regular hourly rate of
4 pay. (See Labor Code § 515(d)) The contracted hours *may be less than the legal maximum regular*
5 *hours in one workweek*, in which case the contracted hours must then be used as the divisor and
6 the salary as the dividend to establish the regular hourly rate of pay. All hours over the legal
7 maximum regular hours in . . . *any one workday* must be compensated at overtime rates. (DLSE
8 Enforcement Policies and Interpretations Manual, § 48.1.5.4 [emphasis added]; *see* § 49.1.5.) “It
9 was the Commission’s intent that in establishing the regular rate of pay for salaried employees the
10 weekly remuneration is divided by the agreed or usual hours of work exclusive of daily hours over
11 eight.” (DLSE Enforcement Policies and Interpretations Manual, § fn. * to 48.1.4.)

12 When a nonexempt employee earns other includable compensation in addition to hourly
13 wages or salary, such as a flat sum bonus, his regular rate must account for this compensation.
14 (See DLSE Enforcement Policies and Interpretations Manual, § 49.1.2.3 [sums to be included in
15 calculations must include, but are not limited to, payment for hours worked, payment for
16 performing a duty, attendance bonus].) The California Supreme Court confirmed the method for
17 blending flat sum bonuses into an employee’s regular rate of pay in *Alvarado v. Dart Container*
18 *Corp. of California* (2018) 4 Cal.5th 542, as modified (Apr. 25, 2018). There, at issue was the
19 method of calculation of the regular rate of pay when the employee was paid a flat sum attendance
20 bonus that was incentive pay for completing an unpopular shift. (*Id.* at pp. 549, 554.) The court
21 held that “the bonus is properly treated as if it were fully earned by only the *nonovertime* hours in
22 the pay period, and therefore only *nonovertime* hours should be considered when calculating the
23 bonus’s per-hour value.” (*Id.* at p. 562.) The court made clear that the “divisor should be the number
24 of nonovertime hours actually worked” to avoid “dramatically reducing the overtime pay rates of
25 part-time employees in California.” (*Id.* at pp. 565-66.)

26 Plaintiff maintains that he and Class members earned three flat sum bonuses – two smoke
27 bumps at \$20 each and 1 stunt bump at \$75 – for performing with certain conditions on set
28 (standing on rocks and smoky conditions). (Kingsley Decl. ¶42.) Plaintiff and Class members

1 volunteered to perform under these conditions in response to Defendant’s request for volunteers
2 and promise of pay. (*Id.*) Plaintiff asserts that these flat sums incentivized work under certain
3 conditions are flat sum bonuses required to be blended into Plaintiff and Class members’ regular
4 rate of pay. (*Id.*) Plaintiff contends that Defendant failed to blend bonuses into their regular rate of
5 pay for purposes of overtime and the meal period premiums.

6 In response, Defendant maintained that it was not required to include these bumps because
7 they are considered “talent fees,” and were properly excluded from the regular rate calculation.
8 (Kingsley Decl. ¶43.) “Talent fees,” Defendant argued, is an “extra payment made to performers
9 ...as an extra payment for services ... or for special services” and a “special service” is a service
10 “beyond the scope of the performer’s regular or ordinary duties as a staff performer under the
11 agreement applicable to the employment.” (29 C.F.R. §§ 550.1(a), 550.2(c).) Thus, Defendant
12 argued that under the FLSA, talent fees are excluded from the regular rate calculation to
13 performers. (*Id.*) Furthermore, Defendant asserts that the extra payments described as bumps are
14 a standardized amount required to be paid to union talent if their work includes contact with smoke
15 or a stunt—i.e., a “special service.” Thus, Defendant argues that bumps were only required to be
16 paid to union talent, and since this music video shoot was non-union, the bumps were not required.

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

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

21 Providing lawful breaks is an affirmative duty for the employer: “the Wage Order . . .
22 imposes an affirmative obligation on every employer to authorize and provide legally-required
23 meal and rest breaks.” (*Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th 701,
24 728.) Under IWC Wage Order 12, employers are required to provide a meal period of at least 30
25 minutes to employees who work more than six hours, to begin before the sixth hour, and to provide
26 a second meal period within the next six hours. (Wage Order 12-2001, § 11(A).) It is well settled
27 that if an employer fails to maintain a uniform policy that authorizes and permits the meal periods
28 called for under the law (as specified in the applicable Wage Order), “it has violated the wage

order and is liable.” (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004,1033.) When an employer has not authorized legally required meal breaks, “the employer has violated the law and the fact that an employee may have actually taken a break or was able to eat food during the workday does not show that individual issues will predominate in the litigation.” (*Bradley v. Networkers International, LLC* (2012) 211 Cal.App.4th 1129, 1151; *see also* *Lubin v. The Wackenhut Corporation* (2016) 5 Cal.App.5th 926, 942.) Furthermore, “[e]mployers must afford employees uninterrupted half-hour periods in which they are relieved of any duty or employer control and are free to come and go as they please.” (*Id.* at p. 1037.) “Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked.” (Wage Order 12-2001, § 11(B).) An ‘on duty’ meal period is only allowed “when the nature of the work prevents” the relief of all duty and when the parties have agreed to the on duty paid meal period in writing. (*Ibid.*)

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 pay¹ for each missed or improper (e.g., less than the required time, interrupted, late) meal and

¹ Pursuant to *Ferra v. Loews Hollywood Hotel, LLC*, the California Supreme Court set forth the

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. ¶44.) 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 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. ¶46.) 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. ¶47.) While one version of his payroll record states that he ended at 12:00 p.m.,

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.)

1 another states that he worked ten hours with a proper meal period. (*Id.*) Furthermore, Plaintiff
2 maintains that, while Defendant paid Plaintiff for a meal period premium on Day 4 and the data
3 shows some premiums paid to Class members, they failed to pay them at their regular rate of pay
4 and thus owe the difference. (See *Ferra*, 11 Cal.5th at p. 878.)

5 There are a couple risks on the meal and rest period claims that Plaintiff needed to factor
6 when evaluating this settlement. (Kingsley Decl. ¶48.) The main risk is that Defendant did pay
7 meal premiums on Day 4 to Plaintiff and other employees, which Defendant would argue that it
8 did properly pay any and all meal premiums to the Proposed Class. (Kingsley Decl. ¶49.) Although
9 Plaintiff does not agree with this, even if such practices or policies were credited, there remains a
10 risk because, under *Ferra*, any missed or improperly provided meal periods require payment of an
11 additional hour at the employee's regular rate, including the value of nondiscretionary earnings
12 such as flat sum bonuses. (*Id.*) However, the ultimate liability could vary depending on how the
13 Court would evaluate the implementation of meal breaks and calculates premium pay. (*Id.*) This
14 presented a risk on the meal period claim that Plaintiff considered when evaluating this settlement.
15 (Kingsley Decl. ¶50.)

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

20 c) The Risks Associated with the Wage Statement Claim

21 California Labor Code §226(a) requires Defendant to provide its employees with an
22 accurate, itemized written wage statement that shows, in relevant part, total hours worked by the
23 employee, their name and address of the legal entity that is the employer, and all applicable hourly
24 rates and the corresponding number of hours worked. Specifically, Labor Code §226(a) requires
25 employers to furnish accurate itemized wage statements in writing that show total hours worked
26 by the employee and all applicable hourly rates in effect during the pay period and the
27 corresponding number of hours worked at each hourly rate by the employee. (Labor Code §§
28 226(a)(2) and (9) respectively.)

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

11 Plaintiff maintains that Defendant failed to issue accurate, itemized wage statements to
12 Plaintiff by failing to accurately list hours worked, applicable rates of pay, premium pay earned
13 for unlawful meal and rest breaks, and thereby affecting the accuracy of gross and net wages
14 earned. (Kingsley Decl. ¶52.) These inaccuracies stem from Defendant’s violations recounted
15 above. Plaintiff also contends that Defendant listed 10 hours for Plaintiff on February 3, 2020,
16 which Defendant claims Plaintiff did not work. (*Id.*) Defendant should have listed the \$225 salary
17 separately instead of depicting purportedly inaccurate hours. (*Id.*)

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

26 Plaintiff maintains that an employee could not look at the statements here and do “simple
27 math” to determine the correct pay because Defendant failed to accurately list the salary payment,
28 applicable hourly rates, including the failure to blend the bonus into overtime and doubletime rates.

1 Plaintiff maintains that the information provided by Defendant on the wage statement was
2 completely wrong and Plaintiff and Class members were thereby injured.

3 As this is a derivative claim, the same risks present for the above claims were present for
4 this claim. (Kingsley Decl. ¶53.)

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

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

12 Here, Plaintiff and numerous Class members are no longer employed by Defendant.
13 Plaintiff contends that Defendant failed to pay all wages owed and due upon their termination
14 and/or resignation. (Kingsley Decl. ¶54.) Defendant's actions were willful, as they have
15 intentionally failed or refused to perform an act which was required to be done. (See *Amaral v.*
16 *Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201.) "The failure to pay is willful if the
17 employer 'knows what [it] is doing [and] intends to do what [it] is doing', and does not also require
18 proof that the employer acted with "a deliberate evil purpose to defraud work[ers] of wages which
19 the employer knows to be due.'" (*Diaz v. Grill Concepts Services, Inc.* (2018) 23 Cal.App.5th 859,
20 868.)

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

28 Further, for purposes of Labor Code section 203, wages also include premium payments

1 for missed meal and rest periods. (*Naranjo v. Spectrum Security Services, Inc.* (2022) 13 Cal.5th
2 93, 117.) Here, the waiting time penalties are derivative of Defendant’s failure to properly pay
3 Plaintiff and Class members for all hours worked at the applicable rates of pay and failure to pay
4 meal and rest period premiums. (Kingsley Decl. ¶55.) Plaintiff contends that Defendant
5 intentionally violated the law when it included compensation for overtime hours in its fixed salary,
6 failed to blend bonuses into the regular rate of pay, and failed to pay owed meal and rest break
7 premiums.

8 Plaintiffs factored in the risk of establishing that any violation was “willful” and the fact
9 that this claim is derivative. (Kingsley Decl. ¶56.)

10 e) The Risks Associated with the PAGA Claim

11 California’s Private Attorneys General Act (“PAGA”), Labor Code § 2698, *et seq.*, permits
12 private litigants to recover civil penalties for violations of the Labor Code. PAGA provides that
13 plaintiffs may recover previously established civil penalties (section 2699(a)) or, if none were
14 established, plaintiffs may recover default penalties provided in section 2699(f) in the amount of
15 \$100 per employee per pay period for the initial violation and \$200 for subsequent violations.²

16 Plaintiff discounted the PAGA claim for multiple reasons. First, the Aggrieved
17 Employees’ PAGA claims are arguably derivative of all the foregoing class claims. (Kingsley
18 Decl. ¶57.) If Plaintiff cannot establish liability on the underlying claim (taking into account the
19 risks discussed above), then the derivative PAGA claim will also necessarily fail. (*Id.*) Second, a
20 court has discretion to award less than the maximum penalty. (Kingsley Decl. ¶58.) (Labor Code
21 § 2699(e)(2) (“a court may award a lesser amount than the maximum civil penalty amount

22 ² The comprehensive reform of California’s Private Attorneys General Act is now the law (AB 2288 and SB 92).
23 The PAGA reform took effect immediately and applies to cases filed after June 19, 2024. Though it does not
24 apply here as this was prior-filed, it is instructive to courts and practitioners on many issues including when
“Subsequent” Penalties” may apply.

Where a penalty was not provided for under the PAGA, the default penalty was \$100 for an initial violation and \$200
for a subsequent violation. Plaintiffs argued that “subsequent” meant any violation after the first violation.
Defendants generally argued, often citing *Gunther v. Alaska Airlines, Inc.*, 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 Labor
Commissioner.

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

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). Third, the likelihood of the Court reducing the PAGA damages awarded to Plaintiff and the Aggrieved Employees – assuming liability is proven as to each of Plaintiff’s claims – is also higher in this case where these same individuals will also be receiving money for the same unlawful conduct under the class claims. (Kingsley Decl. ¶59.) (*see Avila v. Cold Spring Granite Co.* (E.D. Cal. Jan. 12, 2018) Case No. 1:16-cv-001533-AWI-SKO, 2018 U.S. Dist. LEXIS 6142 *17 (“Because the PAGA penalties sought are at least partially duplicative of penalties granted by the underlying Labor Code violations, see, e.g., Cal. Lab. Code §§ 203, 226, 558(a), 1194.2, and because a Court has discretion in whether and in what amount to award PAGA penalties, see Cal. Lab. Code § 2699(e)(2), Plaintiff recognizes that the potential PAGA penalties are highly uncertain.”); and see *Nordstrom Commissions Cases*, 186 Cal.App.4th 576, 589 (2010) (affirming settlement allocating \$0 of \$6.4 million settlement to PAGA penalties).

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 Agreement now. (Kingsley Decl. ¶60.) If the Court did eventually certify a meal or wage statement class, trial of a case involving approximately 80 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. (Kingsley Decl. ¶61.) 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. (Kingsley Decl. ¶62.) 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. (Kingsley Decl. ¶63.) While Plaintiff believes there is strong evidence to support certification of several possible subclasses,

1 certification is always hard fought and subject to judicial discretion. Moreover, in class actions,
2 decertification is always a possibility. (*Id.*) In attempting to certify a class, the parties would need
3 to conduct multiple depositions, including of the Class Representative and of several person(s)
4 most knowledgeable regarding Defendant's meal and rest policies. (*Id.*) There is a risk for both
5 sides as to what these depositions will reveal and whether they will support class certification to
6 the extent expected. (*Id.*)

7 4. The Amount Offered in Settlement

8 It was very difficult for the Parties to reach this Settlement of \$550,000.00. (Kingsley
9 Decl. ¶64.) This Settlement is the result of adversarial, non-collusive, and arms-length
10 negotiations. (Kingsley Decl. ¶65.) The Parties arrived at it after extensive investigation and
11 discovery, careful evaluation of the law, risks, and all information substantiating the amount of
12 penalties reasonably likely to be awarded to the class were the trier of fact to find Defendant liable,
13 and the assistance of an experienced mediator, Hon. Carl J. West. (*Id.*)

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

15 Plaintiff assessed the full value of the unpaid wages claim, without any discount, at
16 approximately \$27,000.00 due to underpayment from Defendant's alleged failure to blend and
17 failure to pay at the correct overtime rate. (Kingsley Decl. ¶66.) This was calculated using an
18 overtime rate of \$42.1875 and assuming that each putative class member has two hours of unpaid
19 overtime for each shoot day. (*Id.*)

20 Plaintiff assessed the full value of the meal and rest period claims, without any discount,
21 at approximately \$18,000.00. (Kingsley Decl. ¶67.) However, this amount is overstated because
22 it assumes that each putative class member worked each of the four days in the workweek and
23 were denied a meal and rest break each day. (Kingsley Decl. ¶68.)

24 The waiting time penalties claim drove this settlement. (Kingsley Decl. ¶69.) Plaintiff
25 valued the waiting time claim, tied to the wages/overtime claim, at \$742,500.00. (*Id.*) The reason
26 for this figure is because a day's worth of wages for each putative class member is \$309.375, which
27 is a higher-than-average daily rate (\$309.375 daily rate × 30 days × 80 putative class members =
28 \$742,500.) (*Id.*) Even using Defendant's daily rate of \$225, the value of this claim is at least

1 \$540,000.00. (*Id.*)

2 As to the exposure for PAGA penalties under Labor Code §2699, et seq., Plaintiff valued
3 this claim at approximately \$8,000.00. (Kingsley Decl. ¶70.) This was based upon 80 PAGA pay
4 period at issue during the PAGA relevant time period (80 aggrieved employees were during
5 February 3 to February 6, 2020, which is only one PAGA pay period per employee), multiplied by
6 \$100 per pay period (80 pay periods in the data x \$100 = \$8,000.00. (Kingsley Decl. ¶71.)

7 Thus, per Plaintiff's assessment, the maximum potential value of all of Plaintiff's and the
8 Class members' claims was approximately \$1,115,500. (Kingsley Decl. ¶72.) However, in looking
9 at just the core damages related to the claims for alleged unpaid wages and meal and rest period
10 violations the maximum exposure was \$45,000. (Kingsley Decl. ¶73.) The amount attributable to
11 statutory and civil penalties far outweighs the exposure on the underlying claims. (Kingsley Decl.
12 ¶74.) Plaintiff and Class Counsel believe that examining the core exposure together with the
13 significant foregoing risks on the merits, supports a finding that the Gross Settlement Amount of
14 \$550,000.00 is exceptional and will be well-received by the Proposed Class. (Kingsley Decl. ¶75.)

15 5. The Experience and Views of Counsel

16 Finally, counsel's experience and success in similar class actions also weigh in favor of
17 preliminary approval. *See Wershba, supra*, 91 Cal.App.4th at 245. Kingsley Szamet Employment
18 Lawyers is a well-established firm and very experienced in prosecuting complex employment
19 litigation, and the firm has focused its practice since the year 2000 on complex wage, hour, and
20 working condition violations. (Kingsley Decl. ¶¶76-78.) The firm is well versed in class action
21 litigation and has diligently and aggressively pursued this action. (*Id.*) Kingsley Szamet
22 Employment Lawyers currently serves as Class Counsel for dozens of pending class action
23 lawsuits in Northern, Central, and Southern California. (*Id.*) A list of representative cases that
24 Kingsley Szamet Employment Lawyers has handled is included in the accompanying declaration
25 of Eric B. Kingsley. (*Id.*) After factoring in the risks explained above, Class Counsel believes that
26 the proposed settlement is fair and reasonable. (Kingsley Decl. ¶79.)

27 ///

28 ///

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

2 Plans of allocation are subject to the same standard of review as class action settlements;
3 they must be “fair, adequate and reasonable.” (*See, e.g., Officers for Justice v. Civil Service*
4 *Comm’n* (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the proposed plan of allocation
5 compensates Class members pro rata based on the number of compensable Workweeks worked by
6 the Class member during the Class Period. The lump sum payment to each Class member not
7 excluding him/ herself will be determined on an individualized basis based upon the compensable
8 Workweeks worked by that individual. (Ex. 1 at ¶3.2.4.) This allocation distributes Agreement
9 funds proportionally to each class member’s potential damages and should therefore be approved
10 as fair, adequate, and reasonable. (Kingsley Decl. ¶80.)

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

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

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

28 Here, the Notice clearly explains the proposed Agreement and the options to opt out of the

Settlement or object to it at the Final Approval Hearing. (Ex. 1 at ¶7.5; *see also* Ex. A to the Agreement at pp. 2-3, 5-6, and 8-9 [Class Notice].) 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

The Class Representative is entitled to an enhancement for their valiant efforts and time expended in this matter. (Kingsley Decl. ¶81.) The time spent by Farzad Azima is significant and includes the following: (1) researching and retaining competent counsel; (2) providing information to Class Counsel regarding the nature of the work at Defendant; (3) compiling relevant documents; (4) working closely with Class Counsel to develop the theories of liability and martial relevant evidence; (5) regularly discussing the status of the case with Class Counsel; (6) discussing the case via telephone with many Class members; (7) making himself available for a full-day of mediation; and (8) responding promptly to Class Counsel’s communications regarding settlement. (*Id.*) Thus, in addition to the sums paid to Class members, Plaintiff requests a proposed litigation enhancement in the amount of \$5,000.00, to be paid from the Gross Settlement Amount. (Ex. 1 at ¶3.2.1.) As set forth in the Agreement, Plaintiff will also be entering into a general release of liability pursuant to Civil Code Section 1542. (Kingsley Decl. ¶82; Ex. 1 at ¶5.1.1.)

Class Counsel considers this to be a fair and reasonable enhancement. (Kingsley Decl. ¶83.) The enhancement takes into consideration the time, effort, and expense incurred by Plaintiffs in coming forward to litigate this matter on behalf of all members of the Class. (*Id.*) Plaintiffs will each provide a detailed declaration with the Final Approval Motion detailing their participation and further justification for the enhancement. (*Id.*)

VII. SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY

As indicated on the Proof of Service, Plaintiff’s Motion for Approval of Class Action Settlement (“Motion”) will be concurrently uploaded to the Labor and Workforce Development Agency’s (“LWDA”) website on the date this Motion is filed as required by statute. Proof of submission of Plaintiff’s Motion, all related documents, and copy of the email from the LWDA confirming receipt is attached to the Declaration of Eric B. Kingsley as Exhibit “2.” (Kingsley

Decl. ¶84.)

VIII. CONCLUSION

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

DATED: August 25, 2025

KINGSLEY SZAMET EMPLOYMENT
LAWYERS

By: 

Eric B. Kingsley
Jessica Bulaon
Attorneys for Plaintiff 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 August 25, 2025, I served all interested parties in this action the following documents described as **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

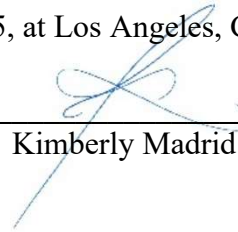
TURNER DHILLON LLP William M. Turner William.Turner@TurnerDhillon.com Asha Dhillon Asha.Dhillon@TurnerDhillon.com Liza M. Brereton Liza.Brereton@TurnerDhillon.com Catherine Dellecker Catherine.Dellecker@TurnerDhillon.com Samer Aref Samer.Aref@TurnerDhillon.com 707 Wilshire Boulevard, Suite 3250 Los Angeles, 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 MAIL THROUGH CASE ANYWHERE): On interested parties set forth on the attached service list.

[XX] (BY ELECTRONIC SERVICE): I caused a true and correct copy thereof to be electronically filed using the Labor and Workforce Development Agency Electronic Filing("EF") System (<https://dir.tfaforms.net/432>) and service was completed by electronic means by transmittal of the documents referenced herein on the EF System.

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

Executed on August 25, 2025, at Los Angeles, California.



Kimberly Madrid