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

KARIM BENZAKOUR, individually, on
behalf of all others similarly situated,

Plaintiff,

v.

F45 TRAINING INCORPORATED, a
domestic corporation; and DOES 1 through
50, inclusive,

Defendant.

CASE NO. 20STCV49535

[*The Honorable Laura A. Seigle, Dept. 17*]

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

[*Concurrently filed with Declarations of Frank
H. Kim, Helen U. Kim, Karim Benzakour;
Proposed Order*]

Date: September 25, 2024

Time: 9:00 a.m.

Dept.: SS-17

Complaint Filed: December 29, 2020

Trial Date: None Set

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

2 **PLEASE TAKE NOTICE** that on September 25, 2024 at 9:00 a.m. in Department 17 of
3 the above-entitled court, Plaintiff Karim Benzakour will move the Court for an Order of
4 Preliminary Approval of the Class Action and PAGA Settlement Agreement and Class Notice
5 (“Settlement Agreement” or “Settlement”), a copy of which is filed concurrently herewith.

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

8 The Motion will be based on this Notice of Motion, the attached Memorandum of Points
9 and Authorities, the Declarations of Frank H. Kim, Helen U. Kim, Karim Benzakour, the
10 Settlement Agreement, all other papers and records on file in this action, and on such oral and
11 documentary evidence as may be presented at the hearing on this Motion.

12
13 DATED: July 24, 2024

KIM LEGAL, APC

14 By: /s/ FRANK H. KIM

15 Frank H. Kim
16 Attorneys for Plaintiff Karim Benzakour and the
17 Proposed Class
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Karim Benzakour (“Plaintiff”) submits this Memorandum of Points and
4 Authorities in support of Plaintiff’s Motion for Preliminary Approval of the Class Action and
5 PAGA Settlement Agreement and Class Notice reached between Plaintiff and Defendant F45
6 Training Incorporated (“Defendant”) (collectively, 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 and Class Notice (“Settlement” or “Settlement Agreement”). A true and
10 correct copy of the Settlement Agreement is attached to the concurrently filed Declaration of Frank
11 H. Kim as Exhibit “1”;

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

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

18 **II. FACTUAL BACKGROUND**

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

20 Plaintiff provided services for Defendant F45 Training Incorporated (“Defendant”) as a
21 model for two separate photoshoots on June 6, 2019 and August 7, 2020. (Declaration of Frank H.
22 Kim [“Kim Decl.”] ¶ 4.) In this action, Plaintiff alleges that Defendant misclassified him and all
23 other similarly situated models as independent contractors instead of their true status as employees.
24 (Kim Decl. ¶ 5.)

25 On December 29, 2020, former plaintiff Kerttu Karon (“Ms. Karon”) filed a class action
26 complaint with the following claims: (1) Failure to Provide Meal Breaks; (2) Failure to Provide
27 Rest Breaks; (3) Waiting Time Penalties; (4) Failure to Provide Accurate Wage Statements; and
28 (5) Unlawful and Unfair Business Practices. On April 12, 2021, Ms. Karon filed a substantially

1 identical First Amended Complaint (“FAC”), except it added a cause of action for penalties
2 pursuant to California’s Private Attorneys General Act of 2004 (“PAGA”) (Kim Decl. ¶ 6.)

3 On August 10, 2021, Ms. Karon filed a Second Amended Complaint to add Plaintiff Karim
4 Benzakour as an additional class plaintiff. On September 24, 2021, the Court granted Ms. Karon’s
5 request to dismiss her class and PAGA claims without prejudice. On October 20, 2021, Plaintiff
6 Benzakour filed a Third Amended Complaint (“TAC”) to add a claim under PAGA and to remove
7 Ms. Karon as a plaintiff. (Kim Decl. ¶ 7.) On November 19, 2021, Defendant filed an Answer to
8 the TAC. (Kim Decl. ¶ 8.)

9 **B. Motion for Summary Judgment**

10 After the matter was at issue, the Court on its own motion set a hearing for a Motion for
11 Summary Judgment on the limited issue of whether Plaintiff was properly classified as an
12 independent contractor, and provided for limited discovery on this issue. (Kim Decl. ¶ 9.)

13 From about September 2, 2021, the Parties engaged in formal discovery. Discovery was
14 protracted and contentious. (Kim Decl. ¶ 10.) Plaintiff participated in at least two informal
15 discovery conferences, filed a motion for compel further responses, and an *ex parte* application to
16 continue the motion deadline in order to obtain further discovery. (Kim Decl. ¶ 11.) Plaintiff served
17 multiple sets of written discovery and took the depositions of three witnesses and Defendant’s
18 corporate representative. (Kim Decl. ¶ 12.)

19 On December 21, 2022, the Court denied Defendant’s Motion for Summary Judgment.
20 (Kim Decl. ¶ 13.) Shortly thereafter, Plaintiff conducted class discovery on all independent
21 contractor models who provided services to Defendant during the limitations period. (Kim Decl.
22 ¶ 14.) In or around December 2023, the parties engaged in settlement discussions based on the
23 class discovery. (Kim Decl. ¶ 15.) On or about December 13, 2023, the parties reached a
24 settlement, as provided herein, to settle Plaintiff’s claims on a class-wide and representative basis.
25 (Kim Decl. ¶ 16.)

26 Defendant denies any liability or wrongdoing of any kind associated with the claims
27 alleged in the lawsuit, disputes the damages and penalties claimed by Plaintiff, and further
28 contends that, for any purpose other than settlement, Plaintiff’s claims are not appropriate for class

1 or representative action treatment. (Kim Decl. ¶ 17) Defendant contends, among other things, that,
2 at all times, it has complied with the California Labor Code, and the Industrial Wage Commission
3 Orders. (*Id.*)

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

13 **III. THE PROPOSED SETTLEMENT CLASS SHOULD BE CERTIFIED FOR** 14 **SETTLEMENT PURPOSES**

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

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

substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants.” *Collins v. Rocha* (1972) 7 Cal.3d 232, 238.)

The California Supreme Court has identified three certification requirements: (1) “the existence of an ascertainable and sufficiently numerous class”; (2) “a well-defined community of interest”; and, (3) “substantial benefits from certification that render proceeding as a class superior to the alternatives.” *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.) The “community of interest” requirement includes three additional requirements: (1) common questions of law or fact predominant over individual questions; (2) the class representatives have claims or defenses typical of the class; and (3) the class representatives can adequately represent 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, the proposed Settlement Class is ascertainable because Defendant has produced the class list in formal discovery and agreed in the Settlement Agreement to provide a class list to the Settlement Administrator containing Settlement Class Member’s full name and last known mailing address. (Kim Decl. ¶ 19; Ex. 1 at ¶ 4.1.)

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 approximately 369 hourly non-exempt putative employees in the State of

1 California. (Ex. 1 at ¶ 9.) Therefore, Plaintiff is confident he will be able to establish that the
2 proposed Settlement Class is ascertainable and sufficiently numerous. (Kim Decl. ¶ 20.)

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

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

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

14 Here, Plaintiff argues that there are questions of law and fact common to the proposed
15 Settlement Class that predominate over any questions affecting only individual Class Members.
16 (Kim Decl. ¶ 21.) These common questions include:

- 17 1) Whether Defendant misclassified the models as independent contractors;
- 18 2) Whether Defendant failed to provide lawfully required meal periods and/or failed
19 to compensate the models one (1) hour’s wages in lieu thereof;
- 20 3) Whether Defendant failed to provide lawfully required rest periods and/or failed to
21 compensate the models one (1) hour’s wages in lieu thereof;
- 22 4) Whether Defendant failed to provide accurate itemized wage statements;
- 23 5) Whether Defendant failed to pay compensation time and whether it failed to pay all
24 wages owed upon termination of employment; and
- 25 6) Whether Defendant engaged in unfair competition.

26 (Kim Decl. ¶ 21.)

27 Plaintiff’s challenge to Defendant’s uniform policies and practices involves common
28 factual and legal issues that are amenable to class treatment. (Kim Decl. ¶ 22.) As the California

Supreme Court has emphasized, “[c]aims 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 performed the same job functions; (2) Settlement Class Members were misclassified as independent contractors; (3) Settlement Class Members did not receive their meal periods as required; (4) Settlement Class Members did not receive their rest periods as required; (5) Settlement Class Members were not provided accurate itemized wage statements; and (6) Settlement Class Members were not paid all wages owed on a timely basis or upon termination/resignation. (Kim Decl. ¶ 23.) Plaintiff alleges that Settlement Class Members worked in the same capacity for the same putative employer and were subject to the same employment policies and practices, the questions of fact and claims regarding the status of these putative employees are the same for each member of the Settlement Class. (Kim Decl. ¶ 24.) Accordingly, for purposes of settlement, the evidence reviewed by Class Counsel demonstrates that common meal policies and wage policies applied to the proposed Settlement Class Members and certification for settlement purposes is appropriate. (Kim Decl. ¶ 25.)

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

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

1 behalf of all class members. (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502.) Thus,
2 it is sufficient that the representative is similarly situated so that he or she will have the motive to
3 litigate on behalf of all class members. (*See, e.g., Classen v. Weller* (1983) 145 Cal.App.3d 27,
4 45.) It is not necessary that the class representative have personally incurred all of the damages
5 suffered by each of the other class members. (*Wershba v. Apple Computer, Inc.* (2001) 91
6 Cal.App.4th 224, 238.)

7 Plaintiff provided services as a model and independent contractor for two separate photo
8 shoots. On June 6, 2019 and August 7, 2020, Plaintiff provided modeling services to Defendant.
9 (Kim Decl. ¶ 26.) At both shoots, Plaintiff alleges that Defendant controlled the manner and means
10 by which he performed his duties. On both days, Plaintiff alleges that Defendant paid him a fixed
11 daily amount with no wage statement and also failed to compensate Plaintiff for missed meal and
12 rest break premiums. (*Id.*) Plaintiff alleges that as a result of F45's misclassification of Plaintiff
13 as an independent contractor, he: (1) worked without being provided meal periods as required by
14 law; (2) worked without being provided rest periods as required by law; (3) worked without being
15 provided accurate itemized wage statements; and (4) worked without being paid all wages due on
16 a timely basis and upon separation. He also alleges derivative claims for unfair business
17 competition B&P Code §17200. (Kim Decl. ¶ 27.) Plaintiff also contends that his claims are
18 typical of those of the Settlement Class. (Kim Decl. ¶ 28.)

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

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

25 Plaintiff believes that he is capable of fairly representing and adequately protecting the
26 interests of the proposed Settlement Class Members. (Kim Decl. ¶ 29.) Plaintiff's interests in this
27 litigation are coextensive with the interests of the proposed Class Members. The members of the
28 proposed Settlement Class all worked for Defendant during the relevant time period and incurred

1 the same type of alleged damages with regard to Defendant’s alleged violations of the law. (Kim
2 Decl. ¶ 30.) Moreover, Plaintiff has agreed to serve as Named Plaintiff and has retained qualified
3 Counsel who is experienced in prosecuting wage and hour class actions. (Kim Decl. ¶ 31.) This
4 demonstrates his commitment to bringing about the best possible results for the benefit of the
5 proposed Settlement Class. (*Id.*) Plaintiff has provided his Counsel with all necessary and
6 pertinent information. (Kim Decl. ¶ 32.) He has been a very active participant in the litigation
7 including sitting for two separate days of deposition. (*Id.*) He also was informed of and involved
8 in all of the settlement negotiations. (Kim Decl. ¶ 33.) Therefore, Plaintiff believes that he has and
9 will continue to adequately represent the proposed Settlement Class Members. (*Id.*)

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

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

25 Plaintiff maintains that class treatment would be the superior method of managing this case.
26 A class action is superior to individual litigation “when numerous parties suffer injury of
27 insufficient size to warrant individual action and when denial of class relief would result in unjust
28 advantage to the wrongdoer.” (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.) In

1 cases such as this, where individual damages may be small, the class action device is the most
2 feasible method of recovery. (*See, e.g. Lockheed Martin, supra*, 29 Cal.4th at 1131.) In this regard,
3 the superiority of class treatment is evident here because individual pursuit of class members’
4 claims may not be economically viable. (Kim Decl. ¶ 34.) The only alternative to certification
5 would be to force over 369 putative employees to join this action, file individual, uniform actions,
6 or abandon their legal rights altogether. (Kim Decl. ¶ 35.) Plaintiff maintains that this economic
7 reality would result in a windfall for Defendant if this case were not certified. (Kim Decl. ¶ 36.)

8 **IV. THE PROPOSED SETTLEMENT**

9 **A. The Settlement Class**

10 For purposes of the Settlement Agreement, the settlement class is defined as: “all Models
11 who were engaged for at least one Shoot during the Class Period” of December 29, 2016 through
12 the date the Settlement is preliminarily approved by the Court (“Settlement Class Members” or
13 “Class Members”). (Kim Decl. ¶ 37; Settlement Agreement, Ex. 1 at ¶¶ 1.5, 1.12.)

14 For purposes of the Settlement Agreement, the definition of the PAGA settlement group is
15 defined as: “any Model who was engaged for at least one Shoot during the PAGA Period” from
16 December 15, 2019 through the date the Settlement is preliminarily approved by the Court
17 (“Aggrieved Employee”) (Kim Decl. ¶ 38; Settlement Agreement, Ex. 1 at ¶¶ 1.4, 1.30.) Based
18 on documents and other information produced by Defendant, there are approximately 153
19 Aggrieved Employees. (Kim Decl. ¶ 39; Ex. 1 at ¶ 9.)

20 **B. Gross Settlement Fund**

21 As detailed fully in the Settlement Agreement, the Settlement provides for Defendant to
22 pay a Gross Settlement Amount of \$375,000.00, which includes the sum of the Individual Class
23 Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class
24 Counsel Litigation Expenses Payment, Class Representative Service Payment and the
25 Administrator’s Expenses. (Kim Decl. ¶ 40; Ex. 1 at ¶ 1.21.)

26 The Net Settlement Amount is the Gross Settlement Amount, less the Individual PAGA
27 Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel
28

Fees Payment,¹ Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. (Kim Decl. ¶ 41; Ex. 1 ¶ 1.28.)

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

Gross Settlement Amount:	\$	375,000.00
Class Representative Service Payment:	\$	10,000.00
Fees Award:	\$	123,750.00
Costs Award:	\$	35,000.00
PAGA Payment:	\$	25,000.00
		<i>(\$18,750 to the LWDA and \$6,250 to remain in the Net Settlement Fund for PAGA Settlement Group)</i>
<u>Settlement Administration Costs:</u>	<u>\$</u>	<u>9,000.00</u>
Net Settlement Fund	\$	172,250.00

(Ex. 1 at ¶¶ 3.1-3.2.)

C. Individual Settlement Payments

The Individual Class Payment amount of each Participating Class Member will be calculated by dividing the Net Settlement Amount by the Shoot Services Total, and multiplying the result by the number of Shoots at which the individual Participating Class Member provided services during the Class Period. (Ex. 1 ¶ 3.2.4; *see also* Ex. A to the Settlement Agreement [Class Notice], Ex. B [List of Shoots].)

The Individual PAGA Payment will also be paid on a pro-rata basis. The Individual PAGA Payment will be calculated by dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$6,250.00) by the PAGA Shoot Services Total, and multiplying the result by the number of Shoots at which the individual Aggrieved Employee provided services during the PAGA Period. (*See* Ex. 1 at ¶ 3.2.5.)

The Individual Class Payment will be deemed payment for settlement of claims for penalties and interest not subject to withholdings. (*See* Ex. 1 at ¶ 3.2.4.) All Individual Settlement Payments to PAGA Settlement Group Members shall be allocated as 100% non-wage payment for civil penalties. (Ex. 1 at ¶ 3.2.5.1.)

¹ The Class Counsel Fee Payment will be divided among Class Counsel (Kim Legal, APC and Helen Kim Law, APC) pursuant to a written agreement signed by Plaintiff as per Prof. Rules of Conduct, Rule 1.5.1. (Kim Decl ¶ 41.)

1 **D. Process for Administering Settlement after Preliminary Approval**

2 The detailed Notice Procedure established by the Settlement Agreement will efficiently
3 and accurately ensure that the Class Notice is provided to the Settlement Class Members. (Ex. 1
4 at ¶ 8.) The Parties have agreed to use a reputable third-party claims administrator, Phoenix
5 Settlement Administrators, to administer the Settlement Agreement. (Ex. 1 ¶ 8.1.) Other than a
6 professional relationship arising out of prior experiences administering settlements, neither
7 counsel for Plaintiff nor Defendant has an interest or relationship, financial or otherwise, with
8 Phoenix Settlement Administrators (Kim Decl ¶ 81; Declaration of Helen U. Kim [“HKim Decl.”]
9 ¶ 7.)

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

11 The Class Notice will be in English only because the Shoots were produced and conducted
12 entirely in English and all the casting correspondence (offer, acceptance, and logistics) was in
13 English. Therefore, the Class Members are presumed to read English.

14 Class Members will have an opportunity to request exclusion from the Settlement (i.e. opt
15 out) and to object to the Settlement at the Final Approval Hearing. (Ex. 1 at ¶¶ 8.5, 8.6.)

16 Class Members who do not opt out of the Settlement may object to the Settlement
17 Agreement in person at the final approval hearing or by mailing written objections to the
18 Settlement Administrator no later than sixty (60) calendar days after the mailing of the Notice
19 Packet. (Ex. 1 at ¶ 8.6.2.) The Settlement Administrator will provide any written objections to
20 Class Counsel and Defendant’s Counsel, who will file them with the Court in advance of the final
21 approval motion. (Ex. 1 at ¶ 8.7.4.)

22 Class Members may also opt out of the settlement by submitting a Request for Exclusion
23 no later than forty-five (45) calendar days after the mailing of the Class Notice expressing that the
24 Settlement Class Member elects to be excluded from the Settlement. (Ex. 1 at ¶ 8.5.1.)

25 **F. The Release**

26 The Released Class Claims, for the Class Period, are defined as: “any manner of cause of
27 action, claim, demand, right, suit, obligation, debt contract, agreement, promise, liability, or
28 remedy of any nature whatsoever (including without limitation any damages, charges, penalties,

1 losses, costs, expenses, and attorneys' fees), known or unknown, whether in law or in equity, under
2 contract, tort, or any other subject area, or under any statute, rule, regulation, order, or law, whether
3 federal, state, or local, on any grounds whatsoever, including without limitation any and all alleged
4 violations of the California Labor Code, the California Code of Regulations, the California
5 Business & Professions Code, or the California Industrial Welfare Commission Wage Orders, that
6 were pled or that could have been pled, based on or arising out of the factual allegations in the
7 Operative Complaint, PAGA Notice, or ascertained in the course of the Action.” (Ex. 1 at ¶ 6.2.)

8 The Released PAGA Claims, for the PAGA Period, are defined as: “all claims for PAGA
9 civil penalties, known or unknown, that were alleged or reasonably could have been alleged, based
10 on the PAGA Period facts stated in the Operative Complaint, the PAGA Notice, and ascertained
11 in the course of the Action, including without limitation any and all claims for civil penalties based
12 on alleged violations of the California Labor Code, the California Code of Regulations, the
13 California Business & Professions Code, or the California Industrial Welfare Commission Wage
14 Orders, and any other derivative claims under California law including claims for statutory or civil
15 penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation and other
16 costs, expenses, restitution, and equitable and declaratory relief.” (Ex. 1 at ¶ 6.3.)

17 **V. ARGUMENT**

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

19 The case of *Kullar v. Foot Locker Retail, Inc* (2008) 168 Cal.App.4th 116, 128, set forth
20 several factors that the Court should analyze in determining whether to approve a class action
21 settlement. These factors include: (1) the strength of plaintiff's case; (2) the risk, expense,
22 complexity and likely duration of further litigation; (3) the risk of maintaining class action status
23 through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and stage
24 of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental
25 participant; and (8) the reaction of the class members to the proposed settlement. In *Munoz v. BCI*
26 *Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal. App. 4th 399, 409, the court clarified that
27 a *Kullar* showing does not require the parties to submit the outer reaches of maximum possible
28 recovery without taking into account the actual risks of certification, decertification, dispositive

1 motions, and trial, so long as there is a record which allows “an understanding of the amount that
2 is in controversy and the realistic range of outcomes of the litigation.”

3 The proposed settlement satisfies each of these factors. Class Counsel conducted extensive
4 informal discovery before entering into meaningful settlement negotiations in this matter. Kim
5 Decl. ¶ 42.) This discovery permitted Class Counsel to fairly evaluate the strength of the case and
6 the risks associated with ongoing litigation. (*Id.*) Class Counsel is experienced in handling wage
7 and hour class actions and, after weighing all of the following factors, supports this Settlement
8 Agreement. (Kim Decl. ¶ 43; Declaration of Helen U. Kim (“HKim Decl.”) ¶ 2.)

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

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

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

16 Since Plaintiff’s allegations arise from work that occurred in June 2019 and August 2020,
17 the ABC test would apply for Plaintiff’s claims for violations of the Wage Order, which includes
18 his claim for unpaid overtime, meal and rest breaks, and itemized wage statements. (*Gonzalez v.*
19 *San Gabriel Transit, Inc.* (2019) 40 Cal.App.5th 1131, 1157; Wage Order No. 12-2001, subd. 7
20 (requiring employers provide “itemized statement[s]” to workers), subd. 11 and 12 (regulating
21 meal breaks and rest breaks for covered workers). Meanwhile, Plaintiff’s claim for waiting time
22 penalties, which does not arise from the Wage Order, is governed by the *Borello* common law
23 employment test. The *Borello* test would also apply to Plaintiff’s PAGA and UCL claims to the
24 extent they are derivative of the waiting time penalties claim.

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

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

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

11 The Court could also determine that Defendant willfully misclassified Plaintiff and the
12 class but did not engage in a pattern or practice of doing so. Plaintiff contends Defendant engaged
13 in a willful pattern and practice of misclassifying the Class Members. However, Plaintiff
14 recognizes the significant risks outlined above. Accounting for such risks required a significant
15 reduction in Plaintiff's initial demand. (Kim Decl. ¶ 44.)

16 **b) The Risks Associated with Unpaid Wages/Overtime Claim**

17 Even assuming *arguendo* the Court were to find that Plaintiff and the Class Members were
18 misclassified and legally employed by Defendant, there is a further risk that Plaintiff's recovery
19 for unpaid wages or overtime would be limited at best. In order to prevail, Plaintiff must establish
20 that his payment of \$250 and \$350 for his first and second day of work, respectively, each qualified
21 as a "fixed salary" under Labor Code § 515(d)(2), and therefore only accounts for payment for his
22 non-overtime hours, and that he should be paid separately for overtime hours. (Cal. Lab. Code §
23 515(d)(2).) In opposition, Defendant would argue that Section 515(d)(2) applies only to "weekly"
24 salaries, not a daily salary, that the term "salary" is not defined in the Labor Code or the Wage
25 Orders, and that Plaintiff was not paid a salary under the recent Supreme Court case of *Helix*
26 *Energy Solutions Group, Inc. v. Hewitt* (2023) 598 U.S. 39 (holding that a "daily rate" worker did
27 not meet the "salary basis test" under the FSLA). If Defendant prevails on one of these arguments,
28

1 Plaintiff's entire claim for unpaid wages would fail. Accounting for such risks required a
2 significant reduction in Plaintiff's initial demand. (Kim Decl. ¶ 45.)

3 **c) The Risks Associated with the Meal and Rest Break Claims**

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

9 Plaintiff claims that Defendant improperly failed to pay him and the Settlement Class
10 premium wages as a result of misclassifying them as independent contractors. (Kim Decl. ¶ 46.)
11 Accordingly, success on these claims is contingent on the Court finding that Defendant
12 misclassified Plaintiff and the Settlement Class and failed to authorize and permit meal and rest
13 breaks.

14 Moreover, Defendant will contends that, to establish a violation for missed meal periods,
15 a plaintiff must do more than show that a meal break was not taken. (*Brinker*, 53 Cal.4th at 1004.)
16 So long as an employer provides employees with a "reasonable opportunity" to take a duty-free
17 meal period, it has no further duty to "police meal breaks and ensure no work thereafter is
18 performed." (*Id.* at 1040-41.) Instead, a plaintiff must show the employer impeded, discouraged,
19 or prohibited the employee from taking a proper break, or otherwise failed to release the employee
20 of all control. *Id.* "Thus, the crucial issue with regard to the meal break claim is the reason that a
21 particular employee may have failed to take a meal break." (*Washington v. Joe's Crab Shack* (N.D.
22 Cal. 2010) 271 F.R.D. 629, 641.)

23 There are also risks to Plaintiff's rest period claim. Employers are not required to record
24 rest periods and such rest periods are paid. Thus, unlike meal periods, where there are often records
25 showing whether an employee clocked out or not, there is no such evidence to prove a missed rest
26 period or that the employer refused to authorize and permit one. Managing such claims at trial may
27 be exceedingly difficult. Plaintiff will depend on sample witness testimony and surveys to prove
28 the claims. While a victory with such evidence is certainly possible, relevant caselaw makes such

claims risky from a trial management and due process perspective. (*See Duran v. U.S. Bank National Assn.*, 59 Cal.4th 1, 31 (2014) (explaining “[I]f sufficient common questions exist to support class certification, it may be possible to manage individual issues through the use of surveys and statistical sampling”).)

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

d) The Risks Associated with the Wage Statement Claim

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

Plaintiff acknowledged risk posed by Defendant’s argument that he was not misclassified as an independent contractor under the ABC test, which would completely bar any recovery under this claim. While Plaintiff believed his wage statement claim was relatively strong given that he did not receive any statement associated with his payment, there was still risk that a Court would find no liability as to this issue.² (Kim Decl. ¶ 47.)

e) The Risks Associated with the Waiting Time Penalty Claim

Under Labor Code § 203, if an employer fails to provide wages at the time of an employee’s termination or within 72 hours of resignation, then the employee’s wages shall continue as a

² Although neither party contemplated this risk at the time of settlement, there is additional risk posed by *Naranjo v. Spectrum Security Services, Inc.* (Cal., May 6, 2024) 2024 Daily Journal D.A.R. 3799, where the California Supreme Court recently upheld a “good faith” defense to a wage statement claim under Labor Code § 226.

penalty for up to 30 days. Section 203 reflects a public policy that favors the full and prompt payment of earned wages. (*See Barnhill v. Robert Saunders & Co.* (1981) 125 Cal.App.3d 1, 7; *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.) Similarly, under Labor Code §§ 204 and 210, an employee may seek a penalty for not being paid timely after the close of a payroll period.

Here, Plaintiff provided services as a model for two days on June 6, 2019 and August 7, 2020 and argues that he is owed waiting time penalties due to Defendant's failure to pay appropriate overtime wages and meal period premiums. (*See Diaz v. Grill Concepts Services, Inc.* (2018) 23 Cal.App.5th 859.) (Kim Decl. ¶ 48.)

In evaluating settlement, Plaintiff considered Defendant's argument that a good-faith belief exception applies because they had a good faith belief (1) that Plaintiff was properly classified as an independent contractor, (2) that Defendant was not an employer, and (3) that Defendant's payment calculations did not result in underpayment. (Kim Decl. ¶ 49.) (*See, e.g., Hill v. Walmart Inc.*, 32 F.4th 811 (9th Cir. 2022) (finding that a good faith dispute about whether a model was properly classified as an independent contractor precluded waiting time penalties.) Significantly, Plaintiff recognized that Defendant need not prevail on any of these defenses; rather, in order to establish a good faith defense, Defendant only need to establish an objectively reasonable basis for a defense based on the facts and law as it existed in November 2019. (*Id.*) Thus, even if Plaintiff were to establish that he had an employment relationship with Defendant, and even if he were to establish the underlying wage violations as alleged in the TAC, Defendant could still avoid paying waiting time penalties. (*Naranjo v. Spectrum Security Services, Inc.* (Cal., May 6, 2024) 2024 Daily Journal D.A.R. 3799.) Since the waiting time penalties amount to over 70% of class damages, Plaintiff believed that a significant discount on this claim was reasonable given the attendant risks (Kim Decl. ¶ 50.).

f) The Risks Associated with the PAGA Claim

Plaintiff is cognizant of risks associated with their PAGA claim and have therefore agreed to discount this claim for multiple reasons. First, the aggrieved employees' PAGA claims arise from the same violations as the foregoing class claims and bear the same risks on the merits. Second, the Court has discretion to award less than the maximum penalty, which Defendant argued

would be appropriate considering the low amount of direct wage damages, even if Plaintiff prevails. (*See* Labor Code § 2699(e)(2) [“a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory”]; *Carrington v. Starbucks Corporation* (2018) 30 Cal.App.5th 504, 529 [affirming award of 10% of maximum PAGA penalty].) Finally, the Settlement Class is compensated for these violations in the proposed Settlement Agreement, and thus any PAGA recovery for these same violations would be duplicative. Thus, PAGA did not make up a significant percentage of the overall potential liability compared to other claims. (Kim Decl. ¶ 51.) As such, the Settlement Agreement’s contemplated PAGA payment of \$200,000 is appropriate. (*Id.*)

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

There is significant expense associated with the class certification process, which the Parties can avoid by entering into the contemplated Settlement Agreement now. (Kim Decl. ¶ 52.) If the Court did eventually certify a class, trial of a case involving approximately 369 Settlement Class Members would require the retention of expensive expert witnesses, the accrual of extensive litigation costs, and a significant time overlay by the Parties. (Kim Decl. ¶ 53.) Moreover, given the complexity and unsettled nature of the issues in this case it is likely that any outcome at trial would have resulted in a lengthy and costly appeal. (Kim Decl. ¶ 54.) An appeal would result in further delay for the Settlement Class Members who are waiting for a resolution in this matter. (*Id.*)

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

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

1 **4. The Risk of Maintaining Class Action Status through Trial**

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

9 **5. The Amount Offered in Settlement**

10 It was very difficult for the Parties to reach this Settlement of \$375,000.00. (Kim Decl. ¶
11 56.) This Settlement is the result of adversarial, non-collusive, and arms-length negotiations. (Kim
12 Decl. ¶ 57.) The Parties arrived at it after extensive investigation and discovery, careful evaluation
13 of the law, risks, and all information substantiating the amount of penalties reasonably likely to be
14 awarded to the class were the trier of fact to find Defendant liable. (*Id.*)

15 **a) Plaintiff’s Assessment of Defendant’s Maximum Exposure**

16 Plaintiff assessed full value of the Meal Period claim and Rest Period claim, without any
17 discount, each at approximately \$13,837.50. (Kim Decl. ¶ 58.) Plaintiff used an hourly average
18 rate of \$37.50 and assumed that the 369 Class Members worked at least a 5-hour shift. (Kim Decl.
19 ¶ 59.)

20 Plaintiff valued the Wage Statement Claim, without discount, at approximately
21 \$18,450.00. (Kim Decl. ¶ 60.) This is based on the fact that almost all the Class Members worked
22 one Workweek during the limitations period. (*Id.*)

23 Plaintiff valued the Waiting Time Claim, tied to the claims for unpaid wages, at
24 \$3,321,000.00. (Kim Decl. ¶ 61.) This was based on the full amount of waiting time penalties due
25 to Defendants’ failure to pay premium wages. (*Id.*) Considering the derivate nature of Labor Code
26 section 203 and the disputes over willfulness, Plaintiff determined that accepting a steep discount
27 on this claim was appropriate. (Kim Decl. ¶ 62.)

28 Finally, Plaintiff calculated the value of the PAGA claim at \$61,200 for approximately 153

Aggrieved Employees, the majority of whom worked at one Shoot. (Kim Decl. ¶ 63.) With Labor Code § 226.8, which provides for penalties from \$5,000 to \$15,000, the value of the PAGA claim could increase from \$765,000.00 to \$2,295,000.00. However, Plaintiff will need to first establish that Defendant’s misclassification of the Aggrieved Employees was “willful,” which is far from certain. Regarding the PAGA claim as a whole, there is the additional risk that the penalty award is discretionary in nature. (Kim Decl. ¶ 64.) The court could award the statutory maximum of one hundred (\$100) dollars for the initial violation and two hundred (\$200) dollars thereafter or – in theory – one cent per wage statement. (Kim Decl. ¶ 65.) While there is a dearth of available authority, in Plaintiff’s view, were they to succeed on any of the underlying Labor Code violations (especially waiting time penalties), it is not likely that the Court would also award a large amount of PAGA penalties on top of damages. (Kim Decl. ¶ 66.)

Per Plaintiff’s assessment, the maximum potential value of all of Plaintiff’s and the Settlement Class Members’ claims was approximately \$4,179,487.50 to \$5,709,487.50. (Kim Decl. ¶ 67.) However, if Defendant can establish that its failure to pay was not “willful” under the law and that it had a good faith belief that the Settlement Class Members were not misclassified as independent contractors, then there would be no recovery for waiting time penalties and penalties under Labor Code § 226.8, and the maximum potential value of all of Plaintiff’s and the Settlement Class members’ claims would be approximately \$93,487.50. As a result of the forgoing risks on the merits, Class Counsel believes the Gross Settlement Fund of \$375,000.00 is fair and reasonable. (Kim Decl. ¶ 68.)

6. The Experience and Views of Counsel

Finally, counsel’s experience and success in similar class actions also weigh in favor of preliminary approval. (*See Wershba, supra*, 91 Cal.App.4th at 245.) Class Counsel is very experienced in prosecuting complex employment litigation and have focused their practice on complex wage, hour, and working condition violations. (Kim Decl. ¶¶ 75-76; 79-80; HKim Decl. ¶¶ 2-4.) Class Counsel is well versed in class action litigation and has diligently and aggressively pursued this action. (Kim Decl. ¶ 76.) Class Counsel currently serves as Class Counsel for dozens of pending class action lawsuits throughout California. (Kim Decl. ¶ 80; HKim Decl. ¶¶ 2-4.)

1 After factoring in the risks explained above, Class Counsel believes that the proposed settlement
2 is fair and reasonable. (Kim Decl. ¶ 76; HKim Decl. ¶ 2.)

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

4 The “trial court should evaluate a PAGA settlement to determine whether it is fair,
5 reasonable, and adequate in view of PAGA’s purposes to remediate present labor law violations,
6 deter future ones, and to maximize enforcement of state labor laws.” (*Moniz v. Adecco USA, Inc.*
7 (2021) 72 Cal.App.5th 56, 76.) A PAGA allocation, even if a small portion of the gross settlement,
8 could be reasonable if the settlement of the underlying wage and hour claims is robust and serves
9 the deterrent purpose of the PAGA statute. (*O’Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016)
10 201 F.Supp.3d 1110, 1135.)

11 Here, \$25,000 is allocated to PAGA Penalties. (Kim Decl. ¶ 69.) Given that Defendant will
12 pay a total of \$375,000 as a result of the alleged violations, the class and PAGA settlement is a
13 large disincentive for Defendant to engage in similar Labor Code violations in the future. (Kim
14 Decl. ¶ 70.) And, because all Class Members will receive a Class Notice with contact information
15 for Class Counsel, those employees will know to contact Class Counsel in the future if Defendant
16 attempts to engage in similar practices. (Kim Decl ¶ 71.) These factors – the payment of a large
17 sum and employee notice of violations and potential violations – serve to maximize enforcement
18 of state labor laws. (Kim Decl ¶ 72.) Also, unlike in *Moniz*, here there is no unsubstantiated and
19 disproportionate allocation of civil penalties between different groups of employees. (Kim Decl ¶
20 73.) Each Aggrieved Employee will receive the same amount of civil penalty because each worked
21 one Shoot during the PAGA Period. (Kim Decl ¶ 74.) Based on the foregoing, the PAGA allocation
22 and the individual PAGA payment satisfies policies underlying California’s wage and hour laws.

23 **8. The Class Payment Allocation Is Fair and Reasonable**

24 Plans of allocation are subject to the same standard of review as class action settlements;
25 they must be “fair, adequate and reasonable.” (*See, e.g., Officers for Justice v. Civil Service*
26 *Comm’n* (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the proposed plan of allocation
27 compensates Settlement Class Members pro rata based on the Net Settlement Amount. The
28 payment to each member of the Settlement Class not excluding him/ herself will be determined by

dividing the Net Settlement Amount by Shoot Services Total, and multiplying the result by the number of Shoots at which the individual Participating Class Members provided services during the Class Period. This allocation distributes Settlement funds proportionally to each class member's damages, and should therefore be approved as fair, adequate, and reasonable. (Ex. 1 at ¶ 3.2.4.)

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

Plaintiff requests that the Court approve the proposed plan and form of Class Notice. The standard for determining the adequacy of notice is whether the notice has “a reasonable chance of reaching a substantial percentage of the class members.” (*Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974.) Pursuant to the Settlement Agreement, the Notice will be sent to the last known address of all Class Members, or to an updated address if one is located in the National Change of Address Database. (Ex. 1 at ¶ 8.4.2.) If any Notices are returned as undeliverable, the Settlement Administrator will undertake another reasonable address verification measure to locate a valid mailing address and will promptly send the Notice to the new address. (Ex. 1 at ¶ 8.4.3.) As such, the Notice is likely to reach most, if not all, Class Members.

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

Here, the Notice clearly explains the proposed Settlement Agreement and the options to opt out of the Settlement or object to it at the Final Approval Hearing. (Ex. 1 at ¶¶ 8.5, 8.6; *see also* Ex. A to the Settlement Agreement at pp. 2-3, 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

1 participate.

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

3 The Named Plaintiff is entitled to an enhancement for his valiant effort and time expended
4 in this matter. (Kim Decl. ¶ 82.) The time spent by Karim Benzakour is significant and includes
5 researching and retaining competent counsel; providing information to Class Counsel regarding
6 the nature of the work; compiling relevant documents; working closely with Class Counsel to
7 develop the theories of liability and martial relevant evidence; regularly discussing the status of
8 the case with Class Counsel; participating in his deposition; and responding promptly to Class
9 Counsel’s communications regarding settlement. (Kim Decl. ¶ 83.) Thus, in addition to the sums
10 paid to Class Members, Plaintiff requests a proposed litigation enhancement in the amount of
11 \$10,000.00, to be paid from the Gross Settlement Fund. (Ex. 1 at ¶ 3.2.1.) As set forth in the
12 Settlement Agreement, Plaintiff will also be entering into a general release of liability pursuant to
13 Civil Code Section 1542. (Kim Decl. ¶ 84; Ex. 1 ¶ 6.1.)

14 Class Counsel considers this to be a fair and reasonable enhancement. (Kim Decl. ¶ 85.)
15 The enhancement takes into consideration the time, effort, and expense incurred by Plaintiff in
16 coming forward to litigate this matter on behalf of all Class Members. (*Id.*) Plaintiff will provide
17 a detailed declaration with the Final Approval Motion detailing his participation and further
18 justification for the enhancement. (*Id.*)

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

20 As indicated on the Proof of Service, Plaintiff’s Motion for Approval of Class Action
21 Settlement will be concurrently uploaded to the Labor and Workforce Development Agency’s
22 (“LWDA”) website on the date this Motion is filed as required by statute. Proof of submission of
23 Plaintiff’s Motion, all related documents, and copy of the email from the LWDA confirming
24 receipt is attached to the Declaration Frank H. Kim as Exhibit 2. (Kim Decl. ¶ 86.)

25 **VIII. CONCLUSION**

26 Plaintiff respectfully submits that the proposed Settlement Agreement is fair, adequate,
27 reasonable, and in the best interest of the Settlement Class Members. Therefore, the Parties
28 respectfully request that the Court (1) grant preliminary approval of the Joint Stipulation of Class

1 Action Settlement and Release of Claims, and all of its terms; (2) approve the proposed form of
2 notice, and direct that the Notice be sent to Settlement Class Members in the manner set forth in
3 the Joint Stipulation of Class Action Settlement and Release of Claims; and (3) schedule a hearing
4 on final approval of the Settlement Agreement and Class Counsel's application for an award of
5 attorney's fees and litigation costs.

6
7 DATED: July 24, 2024

KIM LEGAL, APC

8 By: /s/ Frank H. Kim

9 Frank H. Kim

10 Attorneys for Plaintiff Karim Benzakour and the
11 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 3435 Wilshire Blvd., Suite 2700, Los Angeles, CA 90010.

On July 24, 2024, 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:

Erica Row
KING & SPALDING, LLP
633 West Fifth Street, Suite 1600
Los Angeles, CA 90071
Email: EROW@KSLAW.COM
Attorneys for DEFENDANT
F45 TRAINING INCORPORATED

Helen U. Kim, Esq.
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Email: helen@helenkimlaw.com
Attorneys for PLAINTIFF KARIM
BENZAKOUR

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

[XX] BY ELECTRONIC SERVICE: I caused a copy of the document(s) to be uploaded via Case Anywhere per the Court’s Order Authorizing Electronic Service.

[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 July 24, 2024, at Los Angeles, California.

/s/ Frank H. Kim

Frank H. Kim