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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN MATEO

DAMONT RICHARDSON, an individual,
and RAOOF ABDUL SAYAD, an individual,
on behalf of themselves and others similarly
situated,

PLAINTIFFS,

v.

PEGASUS AVIATION SERVICES, LLC;
and DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO. 21-CIV-00292

[Case Assigned for All Purposes to Hon.
Danny Y. Chou in Dept. 22]

**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 Kelsey
M. Szamet and Proposed Order]*

Date: May 12, 2022

Time: 9:00 a.m.

Dept.: 22

Complaint Filed: January 21, 2021

FAC Filed: March 29, 2021

Trial Date: None Set

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

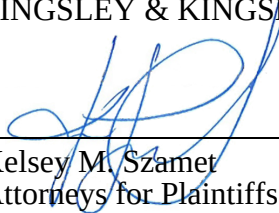
2 **PLEASE TAKE NOTICE** that on May 12, 2022 at 9:00 a.m. in Department 22 of the
3 above-entitled court, Plaintiffs DAMONT RICHARDSON and RAOOF ABDUL SAYAD will
4 move the Court for an Order of Preliminary Approval of the Stipulation of Settlement and Release
5 of Class and Representative Action (“Settlement Agreement”), a copy of which is filed
6 concurrently herewith.

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

9 The Motion will be based on this Notice of Motion, the attached Memorandum of Points
10 and Authorities, the Declaration of Kelsey M. Szamet, the Settlement Agreement and Release, all
11 other papers and records on file in this action, and on such oral and documentary evidence as may
12 be presented at the hearing on this Motion.

13
14 DATED: April 20, 2022

KINGSLEY & KINGSLEY, APC

15
16 By: 

Kelsey M. Szamet
Attorneys for Plaintiffs and the Proposed Class

17
18 DATED: April 20, 2022

MAYALL HURLEY P.C.

19
20 By: /s/ John P. Briscoe

John P. Briscoe
Attorneys for Plaintiffs and the Proposed Class

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs DAMONT RICHARDSON and RAOOF ABDUL SAYAD (“Plaintiffs”) submit
4 this Memorandum of Points and Authorities in support of Plaintiffs’ Motion for Preliminary
5 Approval of the Stipulation of Settlement and Release of Class and Representative Action reached
6 between Plaintiffs and Defendant Pegasus Aviation Services, LLC (“Defendant”) (Plaintiffs and
7 Defendant together, the “Parties”).

8 By this Motion, Plaintiffs request that the Court:

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

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

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

19 **II. FACTUAL BACKGROUND**

20 A. Litigation Overview and Procedural History

21 Defendant is a company focused on providing aviation services both domestically and
22 internationally. (Declaration of Kelsey M. Szamet (“Szamet Decl.”) ¶4.) Plaintiff Richardson
23 worked as an aircraft maintenance technician for Defendant from approximately January 2017 to
24 May 2020, where he was earning about \$32.00 per hour. (Szamet Decl. ¶5.) Employees are paid
25 on an hourly basis and also earn bonus pay. (*Ibid.*)

26 On January 21, 2021, Plaintiff Richardson filed a Class Action Complaint alleging the
27 following causes of action: 1) Failure to Pay Wages and/or Overtime Under Labor Code §§ 510,
28 1194, 1199; 2) Failure to Provide Meal Breaks Pursuant to §§ 226.7 and 512; 3) Penalties Pursuant

1 to Labor Code § 203; and 4) Violation of Business and Professions Code § 17200. (Szamet Decl.
2 ¶6.) Defendant filed its answer to Plaintiff Richardson’s complaint on March 5, 2021. (Szamet
3 Decl. ¶7.)

4 Also on January 21, 2021, Plaintiff Richardson electronically filed a Private Attorneys
5 General Act (“PAGA”) Claim Notice, pursuant to Labor Code § 2699, *et seq.*, to the Labor and
6 Workforce Development Agency (“LWDA”) regarding his intent to seek civil penalties for the
7 aforementioned Labor Code violations. (Szamet Decl. ¶8.) On March 29, 2021, Plaintiff
8 Richardson filed his First Amended Class and Representative Action Complaint (“FAC”), adding
9 a fifth claim for penalties pursuant to Labor Code § 2699, *et seq.* as a result of Defendant’s alleged
10 violations indicated immediately above. Defendant filed its answer to Plaintiff Richardson’s FAC
11 on April 27, 2021. (Szamet Decl. ¶9.)

12 On May 18, 2021, Plaintiff Sayad also electronically filed a PAGA Claim Notice, pursuant
13 to Labor Code § 2699, *et seq.*, to the LWDA regarding his intent to seek civil penalties.
14 (Declaration of John P. Briscoe [“Briscoe Decl.”], Exhibit 1.) On July 26, 2021, Sayad filed a
15 lawsuit against Defendant in San Joaquin County. (*Id.*, ¶ 4.) Defendant removed the action to the
16 Eastern District of California on September 2, 2021 on diversity grounds. (*Id.*, ¶ 5.) Sayad alleged
17 claims for: 1) Failure to Pay Sick Leave at the Correct Rate Pursuant to Labor Code §§ 218, 233,
18 246; 2) Failure to Provide Rest Periods or Pay Premiums at the Correct Rate Pursuant to Labor
19 Code § 226.7; 3) Failure to Provide Accurate Itemized Wage Statements Pursuant to Labor Code
20 § 226(a); and 4) Violation of Business and Professions Code § 17200. (*Id.*, ¶ 4.) He also asserted
21 a claim for penalties pursuant to Labor Code § 2699, *et seq.* as a result of Defendant’s alleged
22 violations indicated immediately above. (*Ibid.*)

23 On November 15, 2021, Richardson and Defendant engaged in a full-day mediation before
24 mediator David Rotman. (Szamet Decl. ¶10.) Counsel for Richardson conferred with counsel for
25 Sayad during that mediation. (*Ibid.*) As a result of that mediation, Richardson and Defendant
26 agreed to settle the claims alleged in or arising out of Plaintiff Richardson’s FAC for the gross
27 total of \$325,000.00. (Szamet Decl. ¶11.) At that time, counsel for Richardson and Defendant
28 discussed the possibility of adding Sayad’s claims to the settlement. (*Ibid.*)

1 Subsequently, and following informal data disclosure by Defendant and analysis of the
2 same by Sayad, Sayad and Defendant agreed to settle Sayad’s class and PAGA claims for an
3 additional gross amount of \$55,000.00. (Briscoe Decl., ¶¶ 6, 7.) Thereafter, Defendant stipulated
4 to and Richardson and Sayad together filed a Second Amended Complaint, adding Sayad as a
5 named plaintiff and incorporating the class claims alleged in the Sayad action on April 20, 2022.
6 (Szamet Decl. ¶12.) Plaintiffs’ Second Amended Complaint (“SAC”) alleges the following claims:
7 1) Failure to Pay Wages and/or Overtime Under Labor Code §§ 510, 1194, 1199; 2) Failure to
8 Provide Meal Breaks Pursuant to §§ 226.7 and 512; 3) Failure to Pay Sick Leave at the Correct
9 Rate Pursuant to Labor Code §§ 218, 233, 246; 4) Failure to Provide Rest Periods or Pay Premiums
10 at the Correct Rate Pursuant to Labor Code § 226.7; 5) Failure to Provide Accurate Itemized Wage
11 Statements Pursuant to Labor Code § 226(a); 6) Penalties Pursuant to Labor Code § 203; 7)
12 Violation of Business and Professions Code § 17200 and 8) Penalties Pursuant to Labor Code §
13 2699, *et seq.* (Szamet Decl. ¶13.)

14 B. The Discovery Process

15 Plaintiffs and Defendant (hereinafter “the Parties”) have engaged in extensive negotiations
16 and exchanged data, documents, and information. (Szamet Decl. ¶14; Briscoe Decl., ¶ 6.) Counsel
17 for the Class, as defined herein, have conducted extensive investigation into the facts of the class
18 action and the class members’ claims, including informal disclosures between the Parties and other
19 investigations undertaken by counsel for Plaintiffs. (Szamet Decl. ¶15; Briscoe Decl., ¶ 6.) Based
20 on Class Counsels’ investigation and evaluation of this case, they have concluded that settlement
21 with Defendant for the consideration and on the terms set forth in this Settlement Agreement is
22 fair, reasonable, and adequate, and is in the best interest of the Class in light of all known facts and
23 circumstances, including the risk of significant delay, defenses asserted by Defendant, and
24 numerous potential appellate issues. (Szamet Decl. ¶16; Briscoe Decl., ¶¶ 8-10.)

25 Defendant denies any liability or wrongdoing of any kind associated with the claims
26 alleged in the Action, disputes the damages and penalties claimed by Plaintiffs, and further
27 contends that, for any purpose other than settlement, Plaintiffs’ claims are not appropriate for class
28 or representative action treatment. (Szamet Decl. ¶17.) 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 Settlement Agreement with Defendant is fair, reasonable and adequate, and in the
5 best interest of the settlement classes in light of all known facts and circumstances, including the
6 risk of significant delay, defenses asserted by Defendant, uncertainties regarding a class and
7 representative action trial on the merits, and numerous potential appellate issues. (Szamet Decl.
8 ¶18; Briscoe Decl., ¶ 9.) Although Defendant denies any liability, Defendant is agreeing to this
9 Settlement Agreement solely to avoid the cost of litigation. (*Id.*) Accordingly, the Parties and
10 their counsel desire to fully, finally, and forever settle, compromise and discharge all disputes and
11 claims arising from or relating to 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
17 court” (Code Civ. Proc. § 382; *see, e.g., Fireside Bank v. Sup. Court* (2007) 40 Cal.4th 1069,
18 1078.) 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

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

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

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

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

13 A. The Proposed Classes Are Ascertainable and Sufficiently Numerous

14 1. Ascertainability

15 Putative class members are deemed “ascertainable” when they may be “readily identified
16 without unreasonable expense or time by reference to official records.” (*Rose v. City of Hayward*
17 (1981) 126 Cal.App.3d 926, 932.) In determining whether a class is ascertainable, a court
18 scrutinizes the class definition, the size of the class and the means of identifying class members.
19 (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.) Here, Plaintiffs maintain that the proposed
20 Settlement Class is ascertainable for several reasons. First, the Settlement Class Members are
21 Defendant’s employees and Defendant is required to keep such employment records as a matter of
22 law. (Szamet Decl. ¶19.) Second, Defendant has agreed in the Settlement Agreement to provide
23 a class list to the Claims Administrator containing the names, last-known mailing addresses, social
24 security numbers, and the number of pay checks issued to each Settlement Class Member during
25 the Class Period for all putative class members after issuance of the preliminary approval order.
26 (Szamet Decl. ¶20; Ex. A at § 2.13, ¶A.)

27 ///

28 ///

1 2. Numerosity

2 There is no set number that is required as a matter of law to maintain a class action. (See,
3 *e.g.*, *Rose v. City of Hayward*, *supra*, 126 Cal.App.3d at p. 934.) Here, the proposed Settlement
4 Class contains, based upon information and belief, approximately 112 hourly non-exempt
5 employees in the State of California. (Ex. A at § 2, ¶2.6.) Therefore, Plaintiffs are confident they
6 will be able to establish that the proposed Settlement Class is ascertainable and sufficiently
7 numerous. (Szamet Decl. ¶21.)

8 B. There Is a Well-Defined Community of Interest

9 1. There Are Predominant Questions of Law and Fact

10 In deciding whether questions of common or general interest predominate, a court must
11 determine whether “the issues which may be jointly tried, when compared with those requiring
12 separate adjudication, are so numerous or substantial that the maintenance of a class action would
13 be advantageous to the judicial process and to the litigants.” (*Collins v. Rocha* (1972) 7 Cal.3d
14 232, 238; *accord*, *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.) As a
15 general matter, if the defendant’s liability can be determined by facts common to all members of
16 the class, a class will be certified even if the members must individually prove their damages.”
17 (*Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 916, 107; *accord*, *Knapp v.*
18 *AT & T Wireless Services, Inc.* (2011) 195 Cal.App.4th 932, 941.)

19 Here, Plaintiffs argue that there are questions of law and fact common to the proposed
20 Settlement Class that predominate over any questions affecting only individual Class Members.
21 (Szamet Decl. ¶22.) These common questions include:

- 22 1) Whether Defendant failed to pay all wages and/or overtime compensation;
23 2) Whether Defendant failed to provide lawfully required meal periods and/or failed
24 to compensate employees one (1) hour’s wages at the correct rate in lieu thereof;
25 3) Whether Defendant failed to provide lawfully required rest periods and/or failed to
26 compensate employees one (1) hour’s wages at the correct rate in lieu thereof;
27 4) Whether Defendant failed to pay sick leave at the correct rate;
28 5) Whether Defendant failed to provide accurate itemized wage statements;

6) Whether Defendant failed to pay compensation due and owing upon termination of employment;

7) Whether Defendant engaged in unfair competition; and,

8) Whether Defendant violated § 2699, et seq. of the Labor Code by engaging in the acts previously alleged.

(Szamet Decl. ¶23.) For purposes of settlement, Plaintiffs contend that the evidence reviewed by Class Counsel demonstrates that common policies applied to the proposed Settlement Class Members and certification for settlement purposes is appropriate. (Szamet Decl. ¶24.)

2. The Named Plaintiffs Have 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 behalf of all class members. (*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 behalf of all class members. (*See, e.g., Classen v. Weller* (1983) 145 Cal.App.3d 27, 45.) It is not necessary that the class representative have personally incurred all of the damages suffered by each of the other class members. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 238.) Here, Plaintiffs worked for Defendant as non-exempt hourly employees and contend that they worked without being paid all wages and/or overtime, worked without being provided meal/rest periods as required by law, worked without being paid sick leave at the correct rate, worked without being provided accurate itemized wage statements, and worked without being paid all wages due upon separation. They also allege that they experienced derivative claims for unfair business competition (B&P Code § 17200) and Labor Code § 2699, et seq. (*Id.*) Thus, Plaintiffs believe their claims are typical of those of the Settlement Class. (Szamet Decl. ¶25; Briscoe Decl., ¶ 10.)

///

3. Plaintiffs Contend That As The Named Plaintiffs They Have and Will Fairly
Represent the Interests of the Settlement Class Members

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

Plaintiffs believe that they are capable of fairly representing and adequately protecting the interests of the proposed Settlement Class Members. (Szamet Decl. ¶26; Briscoe Decl., ¶¶ 13-18.) Plaintiffs’ interests in this litigation are coextensive with the interests of the proposed Settlement Class Members. The members of the proposed Settlement Class all worked for Defendant during the relevant time period and incurred the same type of alleged damages with regard to Defendant’s alleged violations of the law. (Szamet Decl. ¶27.) Moreover, Plaintiffs have agreed to serve as Named Plaintiffs and have retained qualified Counsel who is experienced in prosecuting wage and hour class actions. (Szamet Decl. ¶28; Briscoe Decl., ¶¶ 13-18.) This demonstrates their commitment to bringing about the best possible results for the benefit of the proposed Settlement Class. (Szamet Decl. ¶29.) Plaintiffs have provided their Counsel with all necessary and pertinent information. (Szamet Decl. ¶30; Briscoe Decl., ¶ 6.) They have actively participated in this and worked closely with Class Counsel to develop the theories of liability. (Szamet Decl. ¶31; Briscoe Decl., ¶ 12.) Plaintiffs were informed of and involved in all of the settlement negotiations. (Szamet Decl. ¶32; Briscoe Decl., ¶ 12.) Therefore, Plaintiffs believe that they will continue to adequately represent the proposed Settlement Class Members. (Szamet Decl. ¶33; Briscoe Decl., ¶ 12.)

C. The Class Action Vehicle Is Superior to the Alternatives

“The ultimate question in every case of this type is 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.” (*Lockheed Martin, supra*, 29 Cal.App.4th at 1104–1105.) The California Supreme Court has directed the courts to utilize the class action device to fashion “an effective and inclusive group remedy.” (*Richmond v. Dart Indus., Inc.* (1981) 29 Cal.3d 462, 469.)

1 Normally, in making its class certification decision, the Court must determine that a class action
2 would be superior to alternate means for a fair and efficient adjudication. If the causes of action
3 may be adjudicated in a single proceeding, thereby saving time, reducing waste, and limiting
4 duplication of effort, class certification is superior to individual litigation. (*See, e.g., Vasquez v.*
5 *Superior Court* (1971) 4 Cal.3d 800, 816.) Since the Parties agreed to a settlement in principal
6 and now seek Court approval of that Settlement, Plaintiffs submit that there is not as much need
7 as there would be in an ordinary motion for class certification for the Court to determine that the
8 case can be manageably tried.

9 All the same, Plaintiffs maintain that class treatment would be the superior method of
10 managing this case. A class action is superior to individual litigation “when numerous parties
11 suffer injury of insufficient size to warrant individual action and when denial of class relief would
12 result in unjust advantage to the wrongdoer.” (*Blue Chip Stamps v. Superior Court* (1976) 18
13 Cal.3d 381, 385.) In cases such as this, where individual damages may be small, the class action
14 device is the most feasible method of recovery. (*See, e.g. Lockheed Martin, supra*, 29 Cal.4th at
15 1131.) In this regard, the superiority of class treatment is evident here because individual pursuit
16 of class members’ claims may not be economically viable. (Szamet Decl. ¶34.) The only
17 alternative to certification would be to require over 112 employees to join this action, file
18 individual, uniform actions, or abandon their legal rights altogether. (Szamet Decl. ¶35.) Plaintiffs
19 maintain that this economic reality would result in a windfall for Defendant if this case were not
20 certified. (Szamet Decl. ¶36.)

21 **IV. THE PROPOSED SETTLEMENT**

22 **A. The Settlement Class**

23 For purposes of Settlement Agreement, the class is defined as: “all hourly, non-exempt
24 employees of Defendant Pegasus Aviation Services, LLC who performed work for Defendant in
25 California at any time during the Class Period.” (“Class” or “Class Members”) (Szamet Decl. ¶37;
26 Settlement Agreement, Ex. A at § 2.1, ¶D.)

27 The Class Period is the time period beginning on January 21, 2017 and ending on January
28 31, 2022. (Szamet Decl. ¶38; Ex. A at § 2.1, ¶F.)

As of December 7, 2021 and based on documents and other information produced by Defendant, it is estimated that there are approximately 112 Settlement Class Members. (Szamet Decl. ¶39; Ex. A at § 2, ¶2.6.) There are approximately 4,143 pay periods at issue. (Szamet Decl. ¶40; *Ibid.*)

B. Gross Settlement Amount

As detailed fully in the Settlement Agreement, the Settlement provides for Defendant to pay a Settlement Amount of \$380,000.00, which includes the sum of the Settlement Payments, the Named Plaintiffs' Incentive Award, the Class Counsel Award, PAGA Payment, and the Administrative Costs. (Szamet Decl. ¶41; Ex. A at §2.5, ¶A.)

The Net Settlement Amount is the gross Settlement Amount, less Class Counsel Award, Named Plaintiffs' Incentive Award, PAGA Payment, and Administrative Costs. (Szamet Decl. ¶42; Ex. A at §2.1, ¶S.)

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

Settlement Amount:	\$	380,000.00
Named Plaintiffs' Incentive Award:	\$	8,000.00
		<i>(\$5,000 to Plaintiff Richardson and \$3,000 to Plaintiff Sayad)</i>
Class Counsel's Fees:	\$	126,666.66
Class Counsel's Costs:	\$	27,000.00
PAGA Payment:	\$	20,000.00
		<i>(\$15,000.00 to the LWDA and \$5,000.00 to remain in the Net Settlement Amount)</i>
<u>Administrative Costs:</u>	<u>\$</u>	<u>8,000.00</u>
Net Settlement Amount	\$	195,333.34

(Ex. A at § 2, ¶2.5.)

The amount of each Class Member's Settlement Payment is an individualized amount that is based on the number of compensable workweeks worked by the Class Member during the Class Period. (Ex. A at § 2, ¶2.6; *see also* Ex. 2 to the Settlement Agreement [Class Notice].) This individual amount shall be determined according to the settlement payment formula set forth in the Settlement Agreement. (*Ibid.*)

The estimated average gross Settlement Payment is \$1,744.04 per Class Member. ($\$195,333.34/112 = \$1,744.04$.) (Szamet Decl. ¶43.)

1 C. Process for Administering Settlement after Preliminary Approval

2 The detailed Notice Procedure established by the Settlement Agreement will efficiently
3 and accurately ensure that Notice is provided to the Settlement Class Members. (Ex. A at §2,
4 ¶2.13.) The Parties have agreed to use reputable third-party claims administrator, ILYM Group,
5 Inc. (“ILYM” or “Claims Administrator”), to administer the Settlement. (Ex. A at § 2.1, ¶C.)

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

7 As detailed in the Settlement Agreement, Settlement Class Members will have an
8 opportunity to request exclusion from the Settlement Agreement (*i.e.* opt out) and to object to the
9 Settlement Agreement at the Final Approval Hearing. (See Ex. A at § 2, ¶¶2.11-2.12; *see also* Ex.
10 2 to the Settlement Agreement [Class Notice].) The Settlement Agreement and Class Notice
11 contain details about the process to request exclusion or object. (*Id* at Ex. A; *see also* Ex. 2 to the
12 Settlement Agreement [Class Notice].)

13 E. The Release

14 The Released Claims are defined as: “any and all claims, debts, liabilities, demands,
15 obligations, guarantees, penalties, costs, expenses, attorneys’ fees, damages, actions or causes of
16 action whatever kind or nature, contingent or accrued, during the Class Period and arising out of
17 the dispute which is the subject of the Lawsuit or which could have been asserted in the Lawsuit
18 based on the facts alleged therein, including any papers submitted with the Complaint, whether in
19 contract, violation of any state or federal statute, rule or regulation, arising out of, concerning, or
20 in connection with any act or omission by or on the part of Released Parties, including those
21 relating to the payment of wages, overtime, and minimum wage; penalties, uncompensated off-
22 the-clock work, wage statements, final pay penalties, meal and/or rest period violations, and related
23 record keeping requirements, claims for PAGA penalties predicated on the facts alleged in the
24 Complaint, claims under Business & Professions Code section 17200 *et seq.* predicated on the
25 facts alleged in the Complaint, and claims for violation of California Labor Code sections 201,
26 202, 203, 218.5, 226, 226.3, 226.7, 233, 246, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1198, 1199,
27 2698, 2699; Code of Civil Procedure section 1021.5, and any and all California Industrial Welfare
28 Commission Orders” (Ex. A at § 2.9, ¶A.)

1 **V. ARGUMENT**

2 A. Plaintiffs Request Approval of This Class Action Settlement

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

10 The proposed settlement satisfies each of these factors. Class Counsel conducted extensive
11 formal and informal discovery before entering into meaningful settlement negotiations in this
12 matter. (*Id* at Szamet Decl. ¶¶14-15; Briscoe Decl., ¶ 6.) This discovery permitted Class Counsel
13 to fairly evaluate the strength of the case and the risks associated with ongoing litigation. (Szamet
14 Decl. ¶44; Briscoe Decl., ¶¶ 6-9.) Class Counsel is experienced in handling wage and hour class
15 actions and, after weighing all of the following factors, supports this Settlement Agreement.
16 (Szamet Decl. ¶45; generally Briscoe Decl.)

17 1. The Strength of Plaintiffs’ Case

18 a) The Risks Associated with Minimum Wage/Overtime Claim

19 “Under state and federal law, overtime compensation is based on an employee’s ‘regular
20 rate’” of pay. (*Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal.App.4th 893, 902.)
21 “California Labor Code section 510, subdivision (a) provides, as relevant here, [that] an employee
22 is entitled to overtime pay at one and one-half times the ‘regular rate’ for work in excess of eight
23 hours in one day and twice the ‘regular rate’ for work in excess of 12 hours in one day.” (*Ibid.*)
24 For hourly employees, the regular rate is generally the employee’s straight-time hourly rate.
25 (*Huntington, supra*, 131 Cal.App.4th at p. 905.) However, in any pay period where an hourly
26 employee earns other includable compensation in addition to hourly wages—such as a non-
27 discretionary bonus, commission, or shift differential—her or his regular rate is computed by
28 dividing the employee’s total compensation in the period in which the other compensation is

1 earned by the total hours worked in that period. (*Marin v. Costco Wholesale Corp.* (2008) 169
2 Cal.App.4th 804, 807.)

3 Here, Plaintiffs contend that they and all Class Members earned non-discretionary bonus
4 pay, such as “Spot Award(s)” and other non-discretionary spiffs. (Szamet Decl. ¶46.) Specifically,
5 Plaintiffs contend that Defendant failed to include this bonus pay in the regular rate calculation for
6 the purpose of determining the correct overtime rate. (Szamet Decl. ¶47.) Thus, Plaintiffs contend
7 that Defendant underpaid Plaintiffs and the Class Members whenever they worked overtime and
8 earned bonuses in the same pay period. (Szamet Decl. ¶48.) As a result, Plaintiffs argued that
9 Defendant did not blend bonus pay into the regular rate of pay when calculating overtime,
10 Defendant owes unpaid overtime wages to Plaintiffs and the Class Members. (Szamet Decl. ¶49.)

11 Defendant denied these allegations. (Szamet Decl. ¶50.) Defendant contends that “Spot
12 Award(s)” or “Spot Bonus(es)” are not any type of bonus or non-discretionary pay that must be
13 blended as they are discretionary bonuses and/or are for non-working time, and therefore, they are
14 properly excluded from the regular rate calculation under 29 U.S.C. § 207(e)(2). (Szamet Decl.
15 ¶51.) Were Defendant to succeed on this argument, this claim would have little to no value so
16 Plaintiffs perceived great risk associated with this claim. (Szamet Decl. ¶52.)

17 Plaintiffs concede that expert review of the time records shows a limited number of
18 paychecks with any type of bonus during the Class Period. (Szamet Decl. ¶53.) Analysis reveals
19 that only 93 paychecks showed any type of bonus award and only a portion of those had overtime
20 paid during the same pay period. (Szamet Decl. ¶54.) Because there was uncertainty associated
21 with this claim, Plaintiffs ultimately believed that a discount was appropriate. (Szamet Decl. ¶55.)

22 b) The Risks Associated with the Meal Break Claim

23 California law requires employers to provide employees a duty-free, uninterrupted thirty
24 (30) minute meal period when an employee works more than five (5) hours in a workday, and it
25 must be provided within the first five (5) hours the employee works. Lab. Code 512; IWC Wage
26 Order 9-2001, §11(A) and (C); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th
27 1004. Employers must also provide employees with a second duty-free, uninterrupted thirty (30)
28 minute meal period when an employee works more than (10) hours in a workday, and it must be

provided before the end of the 10th hour of work. (*Ibid.*) Meal periods can be waived, but only under the following circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more than six (6) hours, the required meal period may be waived by mutual consent of the employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived.

(*Ibid.*)

Employers covered by Industrial Welfare Commission ("IWC") Wage Order 9-2001 have an obligation to both (1) relieve their employees for at least one meal period for shifts over five hours (see above), and (2) to record having done so. If the employer fails to properly record a valid meal period, it is presumed that no meal period was provided. IWC Wage Order 9-2001, §7(A)(3) ("Meal periods . . . shall also be recorded"); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053, citing §7(A)(3) ("If an employer's records show no meal period for a given shift over five hours, a rebuttable presumption arises that the employee was not relieved of duty and no meal period was provided").

Employers must pay employees an additional hour of wages at the employees' regular rate of pay for each missed or improper (e.g., less than 30 minutes, interrupted meal period, first meal period provided after 5 hours, second meal period provided after 10 hours) meal period. Lab. Code §226.7; IWC Wage Order 9-2001, §11(B) ("If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided"); *Brinker, supra*, 53 Cal.4th 1004.

Plaintiffs contend that Defendant violated California's meal break laws by not allowing Plaintiffs and other similarly situated Class Members, to take daily meal breaks, including second meal periods. Indeed, due to the hectic nature of the job, Plaintiffs alleged that they were frequently unable to take a meal break at all and, when they were able, meal breaks were generally less than 30 minutes. (Szamet Decl. ¶56.) Plaintiffs contend, however, that Defendant auto-deducted 30 minutes for a daily meal period regardless of whether Class Members were actually

1 able to take a compliant meal period at all. (Szamet Decl. ¶57.) Further, Plaintiffs allege that
2 Defendant violated California’s meal period laws by not paying Plaintiffs and other similarly
3 situated Class Members one (1) hour of pay at the employees’ regular rate of compensation for
4 each workday that the first meal period was not provided within the first (5) hours of the shift.
5 (Szamet Decl. ¶58.) Because premium payments must include the hourly value of any
6 nondiscretionary earnings (such as a nondiscretionary bonuses) and cannot simply be paid at an
7 employee’s base hourly rate, Plaintiffs alleged that if meal period premiums were provided,
8 Defendant had a consistent policy of paying meal period premiums at the base rate and not the
9 blended rate in violation of Labor Code §§ 226.7 and 512.¹ (Szamet Decl. ¶59.)

10 Defendant vehemently denied this claim. (Szamet Decl. ¶60.) Defendant argued that
11 Plaintiffs and all Class Members frequently had downtime throughout each working day and Class
12 Members were able to take all required meal periods. (Szamet Decl. ¶61.) Further, Defendant
13 argued that Class Members had the means to report missed, late, or short meal periods, and those
14 records indicate few (if any) reported problems during the Class Period. (Szamet Decl. ¶62.)

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

25
26 ¹ On July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, the
27 California Supreme Court set forth the formula for calculating the one extra hour of premium pay
28 that employees are owed if an employer fails to provide a compliant meal period or rest break.
Specifically, the Court held that “regular rate of compensation”, as applicable to rest/meal
premiums, is synonymous with “regular rate of pay” for purposes of overtime. In other words, rest
and meal premiums must account for all compensation, including nondiscretionary bonuses.

1 Plaintiffs anticipated that Defendant would argue, that while *Donahue* does create a
2 presumption, it is significant that “[a]pplying the presumption does not mean that time records
3 showing missed, short, or delayed meal periods result in ‘automatic liability’ for employers.” (*Id.*
4 at 77; Szamet Decl. ¶63.) To the contrary, Pegasus would argue that it “can rebut the presumption
5 by presenting evidence that employees were compensated for noncompliant meal periods or that
6 they had in fact been provided compliant meal periods during which they chose to work.” (*Id.*)
7 Defendant would argue that since its maintained a valid written policy to “provide” a meal period
8 per *Brinker*, that to determine liability on this claim would necessitate asking each and every Class
9 Member “whether they were provided a compliant meal period but chose to work”. (*Id.* at 78;
10 Szamet Decl. ¶64.) In addition to its policy and practice of making meal periods available and the
11 abundant downtime that Defendant maintains Plaintiffs and the Class Members had to actually
12 take meal periods, Defendant also argued that if for some reason the workflow did not permit for
13 a timely meal period, then the records do show many meal period premiums were paid. (Szamet
14 Decl. ¶65.)

15 Plaintiff believes this is not enough for Defendant to overcome the strong presumption set
16 forth in *Donohue*. Indeed, *Donohue* provided specific guidance: It explains that employers must
17 “give employees a mechanism for recording their meal periods” and “ensure that employees use
18 the mechanism properly.” (*Id.* at 78.) One such way is to incorporate a “dropdown menu” in the
19 timekeeping system that comes up if an employee misses a meal break, or takes a late or a short
20 break, and requires the employee to explain the reason for the noncompliant break (i.e., whether a
21 proper break was not provided or whether it was the employee’s choice). Because this solution
22 was explicitly endorsed by the Court and not the type of system Defendant used, Plaintiffs believe
23 Pegasus will not be able to overcome that presumption set forth in *Donohue* and that Plaintiffs will
24 be able to use Defendant’s records to prove liability for each and every non-compliant meal period.
25 (Szamet Decl. ¶66.) Nonetheless, Plaintiffs acknowledge that shifts showing a meal period
26 premium was paid should be excluded for damages purposes. (Szamet Decl. ¶67.)

27 Plaintiffs were aware that this would be a hotly contested issue and had to acknowledge
28 that there was certainly some risk associated with this claim. (Szamet Decl. ¶68.)

1 c) The Risks Associated with the Rest Break Claim

2 Labor Code section 226.7 requires employers to provide employees rest breaks as
3 mandated by Order of the Industrial Welfare Commission. It states:

4 d) No employer shall require any employee to work during any meal or
rest period mandated by an applicable order of the Industrial Welfare
Commission.

5 e) If an employer fails to provide an employee a meal period or rest
6 period in accordance with an applicable order of the Industrial Welfare
Commission, the employer shall pay the employee one additional hour of
7 pay at the employee's regular rate of compensation for each work day that
the meal or rest period is not provided.

8 Section 11 of the applicable IWC Wage Order provides:

9 “(A) Every employer shall authorize and permit all employees to take rest periods,
10 which insofar as practicable shall be in the middle of each work period. Nothing in
this provision shall prevent an employer from staggering rest periods to avoid
11 interruption in the flow of work and to maintain continuous operations, or from
scheduling rest periods to coincide with breaks in the flow of work that occur in the
12 course of the workday. The authorized rest period time shall be based on the total
hours worked daily at the rate of ten (10) minutes net rest time for every four (4)
13 hours worked, or major fraction thereof. Rest periods shall take place at employer
designated areas, which may include or be limited to the employees' immediate
14 work area.

15 (B) Rest periods need not be authorized in limited circumstances when the
16 disruption of continuous operations would jeopardize the product or process of the
work. However, the employer shall make up the missed rest period within the same
17 workday or compensate the employee for the missed ten (10) minutes of rest time
at his/her regular rate of pay within the same pay period.

18 (C) A rest period need not be authorized for employees whose total daily work time
19 is less than three and one-half (3 ½) hours. Authorized rest period time shall be
counted as hours worked for which there shall be no deduction from wages.

20 (D) If an employer fails to provide an employee a rest period in accordance with
21 the applicable provisions of this order, the employer shall pay the employee one (1)
22 hour of pay at the employee's regular rate of compensation for each workday that
the rest period is not provided.”

23 During the relevant time period, Plaintiffs contend that they and all other Class Members
24 were not provided with rest breaks as required by law and did not receive an additional hour of
25 premium pay at their regular rate of compensation for each missed rest break. (Szamet Decl. ¶69.)

26 Here, Plaintiffs contend that Defendant routinely failed to provide Plaintiffs and the Class
27 with rest breaks of not less than ten (10) minutes as required by the Labor Code during the relevant
28

1 time period. (Szamet Decl. ¶70.) Plaintiffs contend they were routinely unable to take a compliant
2 first rest periods and not able to take a second (or third) rest period. (Szamet Decl. ¶71.) As such,
3 Plaintiffs contend there is at least one rest period violation per person, per day during the covered
4 period. (Szamet Decl. ¶72.)

5 As with meal periods, Defendant argued that it maintained a facially compliant policy that
6 “provided” all required rest periods, it never interfered with Plaintiffs’ or any Class Members’
7 ability to take all compliant rest periods, and there was regularly downtime available to take all
8 necessary rest breaks. (Szamet Decl. ¶73; Briscoe Decl., ¶¶ 6-9.) Plaintiffs acknowledge that rest
9 period claims can be difficult to prove on a classwide basis due to the lack of records. (Szamet
10 Decl. ¶74.) This is especially true when an employer maintains a facially compliant rest period
11 policy. (Szamet Decl. ¶75.) Defendant disclosed that, during the entire class period, there were
12 fewer than a dozen reported instances of missed or short rest periods and that employees had ample
13 downtime due to the nature of their work. (Briscoe Decl., ¶ 6.) Defendant argued that this would
14 devolve into a series of mini-trials where the trier of fact would be entitled to hear from each class
15 member as to whether they were in fact provided the opportunity to take all required rest periods
16 each day. (Szamet Decl. ¶76.) Of course, Defendant argued this would defeat class certification
17 and make it nearly impossible to prove this claim on a classwide basis. (Szamet Decl. ¶77.) Based
18 on this risk, Plaintiffs believed it was appropriate to significantly discount this claim. (Szamet
19 Decl. ¶78; Briscoe Decl., ¶¶ 6,7.)

20 f) The Risks Associated with the Paid Sick Leave Claim

21 Labor Code section 246(l) requires that employers pay sick time pay to non-exempt
22 employees at that employee’s “regular rate of pay.”

23 The “regular rate of pay” includes all remuneration for employment paid to the employee
24 and includes, but is not limited to, hourly earnings, salary, piece work earnings, commissions, non-
25 discretionary bonuses, and the value of meals and lodging. See 29 U.S.C. § 207(e); DLSE
26 Enforcement Policies and Interpretations Manual Section 49.

27 During the relevant time period, Plaintiffs alleged that Defendant failed to include
28 commissions, non-discretionary bonuses and/or other items of compensation when determining

1 the “regular rate of pay” for Plaintiffs and their other non-exempt employees for purposes of sick
2 time pay. (Szamet Decl. ¶79.)

3 According to the California Supreme Court, sick pay is a form of wages. *Murphy v.*
4 *Kenneth Cole Productions* (2007) 40 Cal.4th 1094, 1103. Labor Code section 233 provides that
5 “any employer who provides sick leave for employees shall permit an employee to use in any
6 calendar year the employee's accrued and available sick leave entitlement, in an amount not less
7 than the sick leave that would be accrued during six months at the employee's then current rate of
8 entitlement, for the reasons specified in subdivision (a) of Section 246.5.”

9 Any employer who violates Labor Code section 233 is liable to employees for the greater
10 of one days’ pay or actual damages, reasonable equitable relief, and reasonable attorneys’ fees and
11 costs. Labor Code §233(d), (e). Further, Labor Code section 218 authorizes a private right of
12 action to recover unpaid wages.

13 During the relevant time period, Plaintiffs alleged that Defendant intentionally and
14 willfully failed to pay Plaintiffs and the other members of the Class their sick pay at the rate of pay
15 required by law. (Szamet Decl. ¶80.) Accordingly, Plaintiffs contend that they did not receive the
16 full amount of paid sick time that they were entitled to receive by law and were therefore denied
17 the right to use sick leave within the meaning of Labor Code sections 233(a) and (c). (Szamet
18 Decl. ¶81.)

19 Defendant argued that “Spot Bonus(es)” were compensation for non-working time and
20 therefore properly excluded from the regular rate, and as such, pay for sick time was appropriately
21 paid out. (Szamet Decl. ¶82.) Furthermore, Defendant disclosed that, during the class period, no
22 California employee received a Spot Bonus and took paid sick leave in the same pay period; thus,
23 Defendant asserted, the claim had no value at all. (Briscoe Decl., ¶ 6.)

24 As such, Plaintiffs believed it was appropriate to significantly discount this claim. (Szamet
25 Decl. ¶83; Briscoe Decl., ¶¶ 6, 7.)

26 g) The Risks Associated with the Inaccurate Wage Statement Claim

27 In relevant part, Labor Code § 226(a) requires that employers furnish to his or her
28 employee, an accurate itemized statement in writing showing... all applicable hourly rates in effect

1 during the pay period and the corresponding number of hours worked at each hourly rate by the
2 employee. (Labor Code §§ 226(a)(9)). This is a derivative section 226(a) claim.

3 Here, Plaintiffs alleged that Defendant failed to issue Plaintiffs and the Class Members
4 accurate itemized wage statements showing all applicable hourly rates in effect during the pay
5 period and the corresponding number of hours worked at each hourly rate by the employee based
6 on Defendant’s alleged failure to properly blend all non-discretionary compensation. (Szamet
7 Decl. ¶84.)

8 Defendant contends that this is a derivative argument, and Plaintiffs did not plead a direct
9 violation of section 226(a). (Szamet Decl. ¶85.) Thus, if Defendant were to succeed on the wage
10 claim based on the arguments set forth above, that Plaintiff’s section 226(a) claim would also fail.
11 (Szamet Decl. ¶86.) Defendant also argued that under *Maldonado v. Epsilon Plastics, Inc.*, 22
12 Cal.App.5th 1308 (2018), the Court set out a simple rule for determining what falls under those
13 certain circumstances: hours worked versus wages earned. The court held that “only the absence
14 of the hours worked will give rise to an inference of injury,” and “the absence of accurate wages
15 earned will be remedied by the violated wage and hour law itself.”] Defendant would apply
16 *Maldonado* to argue that a potential mistake on a wage statement (i.e. a potential failure to blend
17 Spot Award cannot give rise to section 226(a) liability, only completely missing information that
18 is required to be shown such as total hours worked.) (Szamet Decl. ¶87.)

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

20 Labor Code § 203(a) provides:

21 (a) If an employer willfully fails to pay, without abatement or reduction, in
22 accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of
23 an employee who is discharged or who quits, the wages of the employee shall
24 continue as a penalty from the due date thereof at the same rate until paid or until
an action therefor is commenced; but the wages shall not continue for more than 30
days.

25 Under Labor Code section 203, “willful” simply means that “the employer intentionally
26 failed or refused to perform an act which was required to be done . . . “[W]il[l]ful” . . . does not
27 necessarily imply anything blameable, or any malice or wrong toward the other party.” *Diaz v.*
28 *Grill Concepts Services, Inc.* (2018) 23 Cal.App.5th 859; see also *Barnhill v. Robert Saunders &*

Co. (1981) 125 Cal.App.3d 1, 7 (*Barnhill*) [“‘willful’ . . . means that the employer intentionally failed or refused to perform an act which was required to be done”]; *Kao v. Holiday* (2017) 12 Cal.App.5th 947, 963.) The failure to pay is willful if the employer “knows what [it] is doing [and] intends to do what [it] is doing.” (*In re Trombley* (1948) 31 Cal.2d 801, 807 (*Trombley*)) and the Plaintiff does not need to prove that the employer acted with “a deliberate evil purpose to defraud work[ers] of wages which the employer knows to be due” (*Barnhill*, at p. 7; *Davis v. Morris* (1940) 37 Cal.App.2d 269, 274.)

Here, Plaintiffs and numerous Class Members are no longer employed by Defendant. (Szamet Decl. ¶88.) Due to Defendant’s alleged failure to properly blend all compensation into the regular rate of pay, Plaintiffs argue that Defendant failed to pay all wages owed and due upon their termination and/or resignation. (Szamet Decl. ¶89.)

The viability of this claim is tied to the wage claim. (Szamet Decl. ¶90.) If Plaintiffs prevailed on the wage claim discussed above, Plaintiffs would argue that Defendant’s actions were willful, as they have intentionally failed or refused to perform an act which was required to be done. (See *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201.) “The failure to pay is willful if the employer ‘knows what [it] is doing [and] intends to do what [it] is doing’, and does not also require proof that the employer acted with “a deliberate evil purpose to defraud work[ers] of wages which the employer knows to be due.’” (*Diaz v. Grill Concepts Services, Inc.* (2018) 23 Cal.App.5th 859, 868.) If, however, Plaintiff’s wage claim failed, this claim would also likely fail.

i) The Risks Associated with the PAGA Claim

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

Plaintiffs discounted the PAGA claim for multiple reasons. First, the aggrieved employees’ PAGA claims are arguably derivative of all the foregoing class claims. (Szamet Decl. ¶91.) Second, and most importantly, a court has discretion to award less than the maximum

penalty. (Szamet Decl. ¶92; Labor Code § 2699(e)(2) (“a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory”). See e.g., *Carrington v. Starbucks Corporation* (2018) 30 Cal.App.5th 504, 241 Cal.Rptr.3d 647, 669 (affirming award of 10% of maximum PAGA penalty). See *Nordstrom Commissions Cases*, 186 Cal.App.4th 576, 589 (2010) (affirming settlement allocating \$0 of \$6.4 million settlement to PAGA penalties).² Third and finally, the Settlement Class is compensated for these violations in the proposed Joint Stipulation of Settlement, and thus any PAGA recovery for these same violations could arguably be construed as duplicative. (Szamet Decl. ¶93.) As such, Plaintiff contends that the Settlement’s contemplated PAGA payment of \$20,000 is appropriate. (Szamet Decl. ¶94.)

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. (Szamet Decl. ¶95.) If the Court did eventually certify a class, trial of a case involving approximately 112 Settlement Class Members would require the retention of expensive expert witnesses, the accrual of extensive litigation costs, and a significant time overlay by the parties. (Szamet Decl. ¶96; Briscoe Decl., ¶¶ 8-10.) Moreover, given the complexity and unsettled nature of the issues in this case it is likely that any outcome at trial would have resulted in a lengthy and costly appeal. (Szamet Decl. ¶97; Briscoe Decl., ¶¶ 8-10.) An appeal would result in further delay for the Settlement Class Members who are waiting for a resolution in this matter. (*Id.*)

3. The Risk of Maintaining Class Action Status through Trial

This case has not been certified to be tried as a class action. (Szamet Decl. ¶98.) While Plaintiffs believe there is strong evidence to support certification of several possible subclasses, certification is always hard fought and subject to judicial discretion. Moreover, in class actions, decertification is always a possibility. (*Ibid.*) In attempting to certify a class, the parties would

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

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

5 4. The Amount Offered in Settlement

6 It was very difficult for the Parties to reach this Settlement of \$380,000.00. (Szamet Decl.
7 ¶99.) This Settlement is the result of adversarial, non-collusive, and arms-length negotiations.
8 (Szamet Decl. ¶100; Briscoe Decl., ¶¶ 6-11.) The Parties arrived at it after extensive investigation
9 and discovery, careful evaluation of the law, risks, and all information substantiating the amount
10 of penalties reasonably likely to be awarded to the class were the trier of fact to find Defendant
11 liable, and the assistance of an experienced mediator, David Rotman. (*Id.*)

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

13 Plaintiffs worked with an expert to review Defendant's sample of time and pay records and put
14 together a comprehensive damage model. (Szamet Decl. ¶101.)

15 Plaintiffs assessed the full value of the Minimum Wage/Overtime claim, without any
16 discount, at approximately \$26,500. (Szamet Decl. ¶102.) This calculation was based on an
17 average rate of pay of \$32.00/hour and was determined based on bonus codes that appeared in
18 Defendant's records. (Szamet Decl. ¶103.) Plaintiffs assumed for purposes of the damage model
19 all such bonuses appearing in the records were non-discretionary bonuses that must be blended.
20 (Szamet Decl. ¶104.) As mentioned above, were Defendant to successfully establish that some or
21 all of these bonuses are discretionary bonuses that do not need to be blended, the value of this
22 claim could be zero. (Szamet Decl. ¶105.)

23 Plaintiffs assessed the full value of the Meal Period claim, without any discount, at
24 approximately \$335,000.00. (Szamet Decl. ¶106.) This is based on the assumption that each Class
25 Member suffered one meal period violation per day, per week (5 premiums in total per week).
26 (Szamet Decl. ¶107.) There were approximately 10,468 shifts worked in the pay data. (Szamet
27 Decl. ¶108.) If a meal premium is due for every shift worked at the average rate of pay of
28 \$32.00/hr, the total amount due is \$335,000. (Szamet Decl. ¶109.) Notably, this assumes a meal

1 period violation occurs each working shift. (Szamet Decl. ¶110.) If Plaintiff could not establish
2 this or, perhaps, could only prove 2 meal period violations per week, this number is reduced
3 dramatically to \$134,000. (Szamet Decl. ¶111.)

4 Plaintiffs assessed the full value of the Rest Period claim, without any discount, at
5 approximately \$335,000.00. (Szamet Decl. ¶112.) The analysis is the same as set forth above with
6 the meal period claim. (Szamet Decl. ¶113.) It assumes that each Class Member suffered one
7 rest period violation per day, per week (5 premiums in total per week). (Szamet Decl. ¶114.) As
8 there were approximately 10,468 shifts worked in the pay data, if a rest premium is due for every
9 shift worked at the average rate of pay of \$32.00/hr, the total amount due is \$335,000. (Szamet
10 Decl. ¶115.) Again, this assumes a rest period violation occurs each working shift. (Szamet Decl.
11 ¶116.) If Plaintiff could only prove 2 rest period violations per week, this number is reduced
12 dramatically to \$134,000. (Szamet Decl. ¶117.)

13 Based on the information disclosed by Defendant, counsel for Sayad attributed negligible
14 value to the paid sick leave claim. Defendant disclosed that there were no instances of paid sick
15 leave being paid and nondiscretionary bonuses being earned in the same pay period throughout the
16 entirety of the class period. (Briscoe Decl., ¶ 6.)

17 Plaintiffs valued the Wage Statement Claim, without discount, at \$130,000. (Szamet Decl.
18 ¶118.) There were 1,356 pay periods in the one-year statutory period. (Szamet Decl. ¶119.) Labor
19 Code §226(e)(1) uses \$50 for the initial pay period and \$100 thereafter and puts a \$4,000 cap on
20 wage statement penalties per employee. (Szamet Decl. ¶120.) Using the \$50 for the initial and
21 \$100 for each subsequent wage statement issued (pay period), the estimated exposure is \$130,000
22 for the 112 class members. (Szamet Decl. ¶121.) Due to the risk discussed above that 226(a)
23 liability wouldn't attach under *Naranjo* and *Maldonado*, Plaintiffs determined that a discount of
24 this claim was fair for settlement purposes. (Szamet Decl. ¶122.)

25 Plaintiffs valued the Waiting Time Claim, tied to the Wage/Overtime claim, at \$606,720.
26 (Szamet Decl. ¶123.) Considering the derivate nature of Labor Code § 203 here and the dispute
27 over whether class members were owed any wages as discussed above, Plaintiffs determined that
28 accepting a significant discount on this claim was appropriate. (Szamet Decl. ¶124.)

1 Finally, Plaintiffs calculated the value of the PAGA claim at \$135,600 for Settlement Class
2 Members (using \$100 per pay period x 1,356 pay periods during the one statutory period). (Szamet
3 Decl. ¶125.) The main risk taken into account with PAGA is the discretionary nature of the penalty
4 award. (Szamet Decl. ¶126.) A judge can award the statutory maximum of \$100 for the initial
5 violation and \$200 thereafter or – in theory – one cent per wage statement. (Szamet Decl. ¶127.)
6 While there is a dearth of available authority, in Plaintiffs’ view, were they to succeed on any of
7 the underlying Labor Code violations, it is not likely that a Judge would also award a large amount
8 of penalties of top of any damages recovered. (Szamet Decl. ¶128.)

9 Per Plaintiffs’ assessment, the maximum potential value of all of Plaintiffs’ and the
10 Settlement Class Members’ claims was approximately \$1,568,820. (Szamet Decl. ¶129.)
11 However, as a result of the forgoing risks on the merits, Class Counsel believes the Gross
12 Settlement Amount of \$380,000.00 is fair and reasonable. (Szamet Decl. ¶130; Briscoe Decl., ¶¶
13 7-10.)

14 5. The Experience and Views of Counsel

15 Finally, counsel’s experience and success in similar class actions also weigh in favor of
16 preliminary approval. *See Wershba, supra*, 91 Cal.App.4th at 245. Kingsley & Kingsley, APC is
17 very experienced in prosecuting complex employment litigation, and the firm has focused its
18 practice since the year 2000 on complex wage, hour, and working condition violations. (Szamet
19 Decl. ¶¶131-133.) The firm is well versed in class action litigation and has diligently and
20 aggressively pursued this action. (*Id.*) Kingsley & Kingsley, APC currently serves as Class
21 Counsel for dozens of pending class action lawsuits in Northern, Central, and Southern California.
22 (*Id.*) A list of representative cases that Kingsley & Kingsley, APC has handled is included in the
23 accompanying declaration of Kelsey M. Szamet. (*Id.*) Similarly, Mayall Hurley P.C., counsel for
24 Sayad, has have substantial experience litigating wage and hour class actions and have been
25 approved as class counsel on numerous occasions. (Briscoe Decl., ¶¶ 13-18.) After factoring in
26 the risks explained above, Class Counsel believes that the proposed settlement is fair and
27 reasonable. (Szamet Decl. ¶134; Briscoe Decl., ¶ 7-10.)

28 ///

1 6. The Presence of a Governmental Participant

2 There is no governmental participant in this action except, arguably, the LWDA as there is a
3 PAGA claim at issue. (Szamet Decl. ¶135.)

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

5 Since the proposed settlement is only at the preliminary approval stage, Notice has not yet been
6 disseminated to the Class. (Szamet Decl. ¶136.) Nonetheless, Plaintiffs have every reason to believe
7 the proposed Settlement will be well received by the Class. (Szamet Decl. ¶137.) At the final approval
8 state, Plaintiffs will provide detailed information regarding the reaction of the Class to the proposed
9 Settlement. (Szamet Decl. ¶138.)

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

11 Plans of allocation are subject to the same standard of review as class action settlements;
12 they must be “fair, adequate and reasonable.” (*See, e.g., Officers for Justice v. Civil Service*
13 *Comm’n* (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the proposed plan of allocation
14 compensates Settlement Class Members pro rata based on the number of compensable work weeks
15 worked by the Settlement Class Member during the Class Period. The payment to each Settlement
16 Class Member not excluding him/ herself will be determined on an individualized basis based upon
17 the compensable pay periods worked by the Settlement Class Member. (Ex. A at § 2, ¶2.6.) This
18 allocation distributes Settlement Agreement funds proportionally to each class member’s potential
19 damages and should therefore be approved as fair, adequate, and reasonable. (Szamet Decl. ¶139.)

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

23 Plaintiffs request that the Court approve the proposed plan and form of Class Notice. The
24 standard for determining the adequacy of notice is whether the notice has “a reasonable chance of
25 reaching a substantial percentage of the class members.” (*Cartt v. Superior Court* (1975) 50
26 Cal.App.3d 960, 974.) Pursuant to the Settlement Agreement, the Notice will be sent to the last
27 known address of all Settlement Class Members, or to an updated address if one is located in the
28 National Change of Address Database. (Ex. A at §2.13, ¶C). If any Notices are returned as

undeliverable, the Claims Administrator will undertake another reasonable address verification measure to locate a valid mailing address and will promptly send the Notice to the new address. (*Id.*) As such, the Notice is likely to reach most, if not all, Settlement Class Members.

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

Here, the Notice clearly explains the proposed Settlement Agreement and the options to opt out of the Settlement or object to it at the Final Approval Hearing. (Ex. A at §2, ¶2.11-2.12; *see also* Ex. 2 to the Settlement Agreement [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 PLAINTIFFS

The Named Plaintiffs are entitled to an enhancement for their valiant effort and time expended in this matter. (Szamet Decl. ¶140; Briscoe Decl., ¶¶ 12.) The time spent by the Named Plaintiffs is significant and includes providing information to Class Counsel regarding the nature of the work at Defendant PEGASUS AVIATION SERVICES, LLC; compiling documents; working closely with their attorneys to discuss the status of the, the theories of liability, and responding promptly to Class Counsel’s communications regarding settlement. (*Ibid.*) Thus, in addition to the sums paid to Settlement Class Members, Plaintiffs request a proposed litigation enhancement in the amount of \$8,000.00 (*\$5,000 to Plaintiff Richardson and \$3,000 to Plaintiff Sayad*), to be paid from the Gross Settlement Amount. (Ex. A at §2.5, ¶C.) As set forth in the Settlement Agreement, Plaintiffs will also be entering into a general release of liability pursuant to Civil Code Section 1542. (Szamet Decl. ¶141; Ex. A at §2, ¶2.10.)

Class Counsel considers this to be a fair and reasonable enhancement. (Szamet Decl. ¶142; Briscoe Decl., ¶ 12.) The enhancement takes into consideration the time, effort, and expense

1 incurred by Plaintiffs in coming forward to litigate this matter on behalf of all Settlement Class
2 Members. (*Ibid.*) Plaintiffs will provide detailed declarations with the Final Approval Motion
3 detailing their participation and further justification for the enhancement. (*Ibid.*)

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

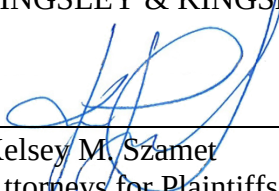
5 As indicated on the Proof of Service, Plaintiffs' Motion for Approval of Class Action
6 Settlement ("Motion") will be concurrently uploaded to the LWDA website on the date this Motion
7 is filed as required by statute. Proof of submission of Plaintiffs' Motion, all related documents,
8 and copy of the email from the LWDA confirming receipt is attached to the Declaration of Kelsey
9 M. Szamet as Exhibit "B." (Szamet Decl. ¶143.)

10 **VIII. CONCLUSION**

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

19
20 DATED: April 20, 2022

KINGSLEY & KINGSLEY, APC

21
22 By: 

Kelsey M. Szamet
Attorneys for Plaintiffs and the Proposed Class

23
24
25 DATED: April 20, 2022

MAYALL HURLEY P.C.

26
27 By: /s/ John P. Briscoe

John P. Briscoe
Attorneys for Plaintiffs and the Proposed Class

(PROOF OF SERVICE)
[CCP 1013(a)(3)]

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 16133 Ventura Boulevard, Suite 1200, Encino, California 91436.

On April 20, 2022, I served all interested parties in this action the following documents described as: **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

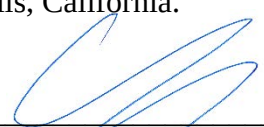
Heather Hearne hdh@kullmanlaw.com The Kullman Firm, PLC 4605 Bluebonnet Blvd., Suite A Baton Rouge, LA 70809	Emil Davtyan emil@davtyanlaw.com Davtyan Law Firm, Inc. 880 E. Broadway Glendale, CA 91205 John P. Briscoe jbriscoe@mayallaw.com Mayall Hurley P.C. 2453 Grand Canal Boulevard Stockton, California 95207-8253
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[XX] BY ELECTRONIC SERVICE: I caused a true and correct copy thereof to be electronically filed using the Labor and Workforce Development Agency Electronic Filing ("EF") System (<https://dir.tfaforms.net/315>) and service was completed by electronic means by transmittal of the documents referenced herein on the EF System.

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

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

Executed on April 20, 2022, at Woodland Hills, California.



Michelle A. Tanzer