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

*[Filed concurrently with Motion for Approval
of Attorneys' Fees and Costs; Declarations of
Kelsey M. Szamet, John P. Briscoe; Damont
Richardson, Raoof Abdul Sayad, and Lluvia
Islas, Proposed Order, and Judgment]*

Date: September 29, 2022

Time: 9:00 a.m.

Dept.: 22

Complaint Filed: January 21, 2021

FAC Filed: March 29, 2021

Trial Date: None Set

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on September 29, 2022 at 9:00 a.m. in Department 22 of the above-entitled court, Plaintiffs Damont Richardson and Raoof Abdul Sayad (“Plaintiffs” or “Named Plaintiffs”) will, and hereby do, move the Court for an Order of Final Approval of the Class Settlement in this case. Plaintiffs move the Court for an order:

1. Granting final approval of the settlement in the case pursuant to the Stipulation of Settlement and Release of Class and Representative Action (“Settlement Agreement”), a copy of which is attached to the concurrently-filed Declaration of Kelsey M. Szamet as Exhibit “A”;

2. Affirming Kingsley & Kingsley, APC and Mayall Hurley P.C. as Class Counsel and approve attorneys’ fees and costs as detailed in the concurrently-filed Motion for Attorneys’ Fees and Costs;

3. Affirming Damont Richardson and Raoof Abdul Sayad as Named Plaintiffs and awarding a total enhancement award of \$8,000.00 (\$5,000 to Richardson and \$3,000 to Sayad);

4. Awarding ILYM GROUP, INC. settlement administration fees of \$8,000.00 for its services as Claims Administrator; and,

5. Entering judgment.

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

The Motion will be based on this Notice of Motion, the attached Memorandum of Points and Authorities, the Declarations of Kelsey M. Szamet, John P. Briscoe, Damont Richardson, Raoof Abdul Sayad, Lluvia Islas, all other papers and records on file in this action, and on such oral and documentary evidence as may be presented at the hearing on this Motion.

DATED: August 31, 2022

KINGSLEY & KINGSLEY, APC

By:

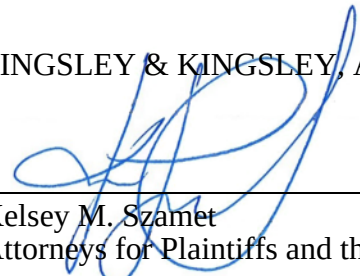

Kelsey M. Szamet
Attorneys for Plaintiffs and the proposed class

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Damont Richardson and Raoof Abdul Sayad (“Plaintiffs”) submit this Motion
4 for Final Approval of Class Settlement and request that the Court:

5 1. Grant final approval of the settlement in this case pursuant to the Stipulation of
6 Settlement and Release of Class and Representative Action (“Settlement Agreement”), a copy of
7 which is attached to the concurrently-filed Declaration of Kelsey M. Szamet as Exhibit “A”;

8 2. Affirm Kingsley & Kingsley, APC and Mayall Hurley P.C. as Class Counsel and
9 approve attorneys’ fees and costs as detailed in the concurrently-filed Motion for Attorneys’ Fees
10 and Costs;

11 3. Affirm named Plaintiffs Damont Richardson and Raoof Abdul Sayad as Named
12 Plaintiffs and approve a total enhancement of \$8,000.00 (\$5,000 to Richardson and \$3,000 to
13 Sayad);

14 4. Approve ILYM GROUP, INC. settlement administration fees of \$8,000.00 for its
15 services as Claims Administrator; and

16 5. Enter judgment.

17 **II. FACTUAL BACKGROUND**

18 A. Litigation Overview and Procedural History

19 Defendant is a company focused on providing aviation services both domestically and
20 internationally. (Declaration of Kelsey M. Szamet (“Szamet Decl.”) ¶5.) Plaintiff Richardson
21 worked as an aircraft maintenance technician for Defendant from approximately January 2017 to
22 May 2020, where he was earning about \$32.00 per hour. (Szamet Decl. ¶6.) Employees are paid
23 on an hourly basis and also earn bonus pay. (*Ibid.*)

24 On January 21, 2021, Plaintiff Richardson filed a Class Action Complaint alleging the
25 following causes of action: 1) Failure to Pay Wages and/or Overtime Under Labor Code §§ 510,
26 1194, 1199; 2) Failure to Provide Meal Breaks Pursuant to §§ 226.7 and 512; 3) Penalties Pursuant
27 to Labor Code § 203; and 4) Violation of Business and Professions Code § 17200. (Szamet Decl.
28 ¶7.) Defendant filed its answer to Plaintiff Richardson’s complaint on March 5, 2021. (Szamet

Decl. ¶8.)

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

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

On November 15, 2021, Richardson and Defendant engaged in a full-day mediation before mediator David Rotman. (Szamet Decl. ¶11.) Counsel for Richardson conferred with counsel for Sayad during that mediation. (*Ibid.*) As a result of that mediation, Richardson and Defendant agreed to settle the claims alleged in or arising out of Plaintiff Richardson’s FAC for the gross total of \$325,000.00. (Szamet Decl. ¶12.) At that time, counsel for Richardson and Defendant discussed the possibility of adding Sayad’s claims to the settlement. (*Ibid.*)

Subsequently, and following informal data disclosure by Defendant and analysis of the same by Sayad, Sayad and Defendant agreed to settle Sayad’s class and PAGA claims for an

1 additional gross amount of \$55,000.00. (Briscoe Decl., ¶¶ 4, 5.) Thereafter, Defendant stipulated
2 to and Richardson and Sayad together filed a Second Amended Complaint, adding Sayad as a
3 named plaintiff and incorporating the class claims alleged in the Sayad action on April 20, 2022.
4 (Szamet Decl. ¶13.) Plaintiffs' Second Amended Complaint ("SAC") alleges the following claims:
5 1) Failure to Pay Wages and/or Overtime Under Labor Code §§ 510, 1194, 1199; 2) Failure to
6 Provide Meal Breaks Pursuant to §§ 226.7 and 512; 3) Failure to Pay Sick Leave at the Correct
7 Rate Pursuant to Labor Code §§ 218, 233, 246; 4) Failure to Provide Rest Periods or Pay Premiums
8 at the Correct Rate Pursuant to Labor Code § 226.7; 5) Failure to Provide Accurate Itemized Wage
9 Statements Pursuant to Labor Code § 226(a); 6) Penalties Pursuant to Labor Code § 203; 7)
10 Violation of Business and Professions Code § 17200 and 8) Penalties Pursuant to Labor Code §
11 2699, *et seq.* (Szamet Decl. ¶14.)

12 B. The Discovery Process

13 Plaintiffs and Defendant (hereinafter "the Parties") have engaged in extensive negotiations
14 and exchanged data, documents, and information. (Szamet Decl. ¶15; Briscoe Decl., ¶¶4-5.)
15 Counsel for the Class, as defined herein, have conducted extensive investigation into the facts of
16 the class action and the class members' claims, including informal disclosures between the Parties
17 and other investigations undertaken by counsel for Plaintiffs. (Szamet Decl. ¶16; *Id.*) Based on
18 Class Counsels' investigation and evaluation of this case, they have concluded that settlement with
19 Defendant for the consideration and on the terms set forth in this Settlement Agreement is fair,
20 reasonable, and adequate, and is in the best interest of the Class in light of all known facts and
21 circumstances, including the risk of significant delay, defenses asserted by Defendant, and
22 numerous potential appellate issues. (Szamet Decl. ¶17; *Id.*)

23 Defendant denies any liability or wrongdoing of any kind associated with the claims
24 alleged in the Action, disputes the damages and penalties claimed by Plaintiffs, and further
25 contends that, for any purpose other than settlement, Plaintiffs' claims are not appropriate for class
26 or representative action treatment. (Szamet Decl. ¶18.) Defendant contends, among other things,
27 that, at all times, it has complied with the California Labor Code, and the Industrial Wage
28 Commission Orders. (*Id.*)

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

10 C. Preliminary Approval

11 On May 12, 2022, the Court issued an Order preliminarily approving the settlement in this
12 case, approving the proposed Class Notice, ordering that the Claims Administrator send notice to
13 the Settlement Class, and setting a date for the Final Approval and Fairness Hearing. (Szamet Decl.
14 ¶20.)

15 **III. THE PRELIMINARILY APPROVED SETTLEMENT**

16 A. The Settlement Class

17 For purposes of Settlement Agreement, the class is defined as: “all hourly, non-exempt
18 employees of Defendant Pegasus Aviation Services, LLC who performed work for Defendant in
19 California at any time during the Class Period.” (“Class” or “Class Members”) (Szamet Decl. ¶21;
20 Settlement Agreement, Ex. A at § 2.1, ¶D.)

21 The Class Period is the time period beginning on January 21, 2017 and ending on January
22 31, 2022. (Szamet Decl. ¶22; Ex. A at § 2.1, ¶F.)

23 As of December 7, 2021 and based on documents and other information produced by
24 Defendant, it was estimated that there were approximately 112 Settlement Class Members.
25 (Szamet Decl. ¶23; Ex. A at § 2, ¶2.6.) The final Settlement Class contained 118 individuals. (Islas
26 Decl. ¶13; Szamet Decl. ¶23.) There are 4,233 pay periods at issue. (Szamet Decl. ¶24.)

27 B. Settlement Payments

28 As detailed fully in the Settlement Agreement, the Settlement provides for Defendant to

1 pay a Settlement Amount of \$381,357.14, which includes the sum of the Settlement Payments, the
2 Named Plaintiffs' Incentive Award, the Class Counsel Award, PAGA Payment, and the
3 Administrative Costs. (Szamet Decl. ¶25; Ex. A at §2.5, ¶A.)¹

4 The Net Settlement Amount is the gross Settlement Amount, less Class Counsel Award,
5 Named Plaintiffs' Incentive Award, PAGA Payment, and Administrative Costs. (Szamet Decl.
6 ¶26; Ex. A at §2.1, ¶S. Plaintiffs now requests final approval of the allocation of the Gross
7 Settlement Amount to determine the Net Settlement Amount for distribution to the Settlement
8 Class as follows:

9	Gross Settlement Amount:	\$	381,357.14
10	Attorneys' Fees (1/3):	\$	127,119.05
11	Requested Case Costs:	\$	21,134.93
12	Claims Administration:	\$	8,000.00
13	PAGA Penalties:	\$	20,000.00
14			(\$15,000.00 to the LWDA; \$5,000.00 to remain in the Net Settlement Amount)
15	Named Plaintiffs Enhancement:	\$	<u>8,000.00</u>
16	Net Settlement Amount:	\$	202,103.17

16 C. Individual Settlement Payments

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

22 Based on these calculations, the average potential recovery is \$1,712.74 per Settlement
23 Class Member, with the highest gross payment being \$6,254.55. (Islas Decl. ¶14; Szamet Decl.
24 ¶27.)

25 ///

27 ¹ The Settlement Amount increased slightly from \$380,000 per the escalator provision of
28 the Settlement Agreement ¶2.7. The final Class Data contained 118 individuals a slight increase
from the 112 contemplated in the Settlement Agreement. The increase is 5.4% which exceeded
the allowable variance by .4% and resulted in the increase.

1 D. Class Notice

2 The Court approved the proposed Class Notice and directed the mailing of the Notice by
3 first-class mail to Settlement Class Members in accordance with the proposed implementation
4 schedule. (Szamet Decl. ¶28) The procedures for giving notice to the Settlement Class Members,
5 as set forth in the Settlement Agreement and Plaintiffs’ Motion for Preliminary Approval and
6 approved by the Court, have been fully and properly carried out. (Islas Decl. ¶¶4-15.)

7 To date, ILYM Group, Inc. has not received any requests to be excluded (“opt-outs”) from
8 the proposed Settlement Agreement and no objections. (Islas Decl. ¶¶10-13.)

9 E. Check Mailed Settlement – No Reversion

10 The Parties agreed to, and the Court preliminary approved, a checks-mailed settlement
11 without the possibility of reversion of settlement funds to Defendant. Under the Settlement
12 Agreement, every Settlement Class Member will receive a settlement check and Settlement Class
13 Members do not need to submit a claim in order to receive a settlement check. Any funds that
14 remain uncashed after 120 days shall be turned over by the Claims Administrator, with information
15 for each Settlement Class Member who failed to timely cash his/her settlement check, to the State
16 of California Controller’s Office Unclaimed Property Fund. (Ex. A at ¶ 2.8(D).)

17 F. The Release

18 The Released Claims are defined as: “any and all claims, debts, liabilities, demands,
19 obligations, guarantees, penalties, costs, expenses, attorneys’ fees, damages, actions or causes of
20 action whatever kind or nature, contingent or accrued, during the Class Period and arising out of
21 the dispute which is the subject of the Lawsuit or which could have been asserted in the Lawsuit
22 based on the facts alleged therein, including any papers submitted with the Complaint, whether in
23 contract, violation of any state or federal statute, rule or regulation, arising out of, concerning, or
24 in connection with any act or omission by or on the part of Released Parties, including those
25 relating to the payment of wages, overtime, and minimum wage; penalties, uncompensated off-
26 the-clock work, wage statements, final pay penalties, meal and/or rest period violations, and related
27 record keeping requirements, claims for PAGA penalties predicated on the facts alleged in the
28 Complaint, claims under Business & Professions Code section 17200 *et seq.* predicated on the

facts alleged in the Complaint, and claims for violation of California Labor Code sections 201, 202, 203, 218.5, 226, 226.3, 226.7, 233, 246, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699; Code of Civil Procedure section 1021.5, and any and all California Industrial Welfare Commission Orders” (Ex. A at § 2.9, ¶A.)

IV. THE COURT SHOULD ORDER FINAL APPROVAL OF THE SETTLEMENT

Pursuant to California Code of Civil Procedure § 1781(f), “a class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the Class in such manner as the court directs” In deciding whether to grant final approval to a proposed class action settlement under Code of Civil Procedure § 382, the court’s overriding concern is whether the proposed settlement is “fair, adequate, and reasonable.” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.)

A. The Settlement is Entitled to a Presumption of Fairness

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

As to the first *Dunk* factor, this settlement is the result of adversarial, non-collusive, and arm’s-length negotiations overseen by an experienced mediator. All settlement discussions were made by experienced and informed counsel, who believe that this settlement represents a favorable resolution for the Settlement Class Members. (Szamet Decl. ¶29.) The settlement negotiations have been, at all times, adversarial and non-collusive, with the aid of a mediator, and no self-dealing or other type of misconduct by either side has taken place. (Szamet Decl. ¶30.)

Second, the Parties engaged in formal and informal discovery that permitted Class Counsel to fairly evaluate the strength of the case and the risks associated with ongoing litigation. This included time and pay data, the class size, and relevant policies and handbooks issued to the Settlement Class Members. (Szamet Decl. ¶31.) Receipt of appropriate discovery allowed Class Counsel to fairly evaluate the exposure and risks associated with each claim alleged in the lawsuit.

1 (Szamet Decl. ¶32.)

2 Third, Class Counsel have significant experience in cases of this type, including several
3 years prosecuting wage, hour, and working condition violations. (Szamet Decl. ¶33.) Class
4 Counsel is thus qualified to evaluate the class claims and viability of the defenses. Class Counsel
5 believes that the settlement is fair, reasonable, adequate, and in the best interests of the class and
6 that the average recovery for each Settlement Class Member of over \$1,700 is substantial, given
7 the risks inherent in litigation and the defenses asserted. (Szamet Decl. ¶34.)

8 Finally, the fourth *Dunk* factor considers the percentage of objectors. Here, there were no
9 requests to be excluded and no objectors. (Islas Decl. ¶¶10-13.) As all of the *Dunk* factors are
10 satisfied, this settlement is entitled to a presumption of fairness.

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

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

20 The proposed settlement satisfies each of these factors. Class Counsel conducted extensive
21 formal and informal discovery before entering into meaningful settlement negotiations in this
22 matter. (*Id* at Szamet Decl. ¶¶15-19; Briscoe Decl., ¶¶4-5.) This discovery permitted Class
23 Counsel to fairly evaluate the strength of the case and the risks associated with ongoing litigation.
24 (Szamet Decl. ¶35.) Class Counsel is experienced in handling wage and hour class actions and,
25 after weighing all of the following factors, supports this Settlement Agreement. (Szamet Decl.
26 ¶36; Briscoe Decl. ¶¶8; 25-28)

27 1. The Strength of Plaintiffs' Case

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

1 “Under state and federal law, overtime compensation is based on an employee’s ‘regular
2 rate’” of pay. (*Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal.App.4th 893, 902.)
3 “California Labor Code section 510, subdivision (a) provides, as relevant here, [that] an employee
4 is entitled to overtime pay at one and one-half times the ‘regular rate’ for work in excess of eight
5 hours in one day and twice the ‘regular rate’ for work in excess of 12 hours in one day.” (*Ibid.*)
6 For hourly employees, the regular rate is generally the employee’s straight-time hourly rate.
7 (*Huntington, supra*, 131 Cal.App.4th at p. 905.) However, in any pay period where an hourly
8 employee earns other includable compensation in addition to hourly wages—such as a non-
9 discretionary bonus, commission, or shift differential—her or his regular rate is computed by
10 dividing the employee’s total compensation in the period in which the other compensation is
11 earned by the total hours worked in that period. (*Marin v. Costco Wholesale Corp.* (2008) 169
12 Cal.App.4th 804, 807.)

13 Here, Plaintiffs contend that they and all Class Members earned non-discretionary bonus
14 pay, such as “Spot Award(s)” and other non-discretionary spiffs. (Szamet Decl. ¶37.) Specifically,
15 Plaintiffs contend that Defendant failed to include this bonus pay in the regular rate calculation for
16 the purpose of determining the correct overtime rate. (Szamet Decl. ¶38.) Thus, Plaintiffs contend
17 that Defendant underpaid Plaintiffs and the Class Members whenever they worked overtime and
18 earned bonuses in the same pay period. (Szamet Decl. ¶39.) As a result, Plaintiffs argued that
19 Defendant did not blend bonus pay into the regular rate of pay when calculating overtime,
20 Defendant owes unpaid overtime wages to Plaintiffs and the Class Members. (Szamet Decl. ¶40.)

21 Defendant denied these allegations. (Szamet Decl. ¶41.) Defendant contends that “Spot
22 Award(s)” or “Spot Bonus(es)” are not any type of bonus or non-discretionary pay that must be
23 blended as they are discretionary bonuses and/or are for non-working time, and therefore, they are
24 properly excluded from the regular rate calculation under 29 U.S.C. § 207(e)(2). (Szamet Decl.
25 ¶42.) Were Defendant to succeed on this argument, this claim would have little to no value so
26 Plaintiffs perceived great risk associated with this claim. (Szamet Decl. ¶43.)

27 Plaintiffs concede that expert review of the time records shows a limited number of
28 paychecks with any type of bonus during the Class Period. (Szamet Decl. ¶44.) Analysis reveals

1 that only 93 paychecks showed any type of bonus award and only a portion of those had overtime
2 paid during the same pay period. (Szamet Decl. ¶45.) Because there was uncertainty associated
3 with this claim, Plaintiffs ultimately believed that a discount was appropriate. (Szamet Decl. ¶46.)

4 b) The Risks Associated with the Meal Break Claim

5 California law requires employers to provide employees a duty-free, uninterrupted thirty
6 (30) minute meal period when an employee works more than five (5) hours in a workday, and it
7 must be provided within the first five (5) hours the employee works. Lab. Code 512; IWC Wage
8 Order 9-2001, §11(A) and (C); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th
9 1004. Employers must also provide employees with a second duty-free, uninterrupted thirty (30)
10 minute meal period when an employee works more than (10) hours in a workday, and it must be
11 provided before the end of the 10th hour of work. (*Ibid.*) Meal periods can be waived, but only
12 under the following circumstances: (1) if an employee's total work period in a day is over five (5)
13 hours but no more than six (6) hours, the required meal period may be waived by mutual consent
14 of the employer and employee, and (2) if an employee's total work period in a day is over ten (10)
15 hours but no more than twelve (12) hours, the required second meal period may be waived by
16 mutual consent of the employer and employee, but only if the first meal period was not waived.
17 (*Ibid.*)

18 Employers covered by Industrial Welfare Commission ("IWC") Wage Order 9-2001 have
19 an obligation to both (1) relieve their employees for at least one meal period for shifts over five
20 hours (see above), and (2) to record having done so. If the employer fails to properly record a
21 valid meal period, it is presumed that no meal period was provided. IWC Wage Order 9-2001,
22 §7(A)(3) ("Meal periods . . . shall also be recorded"); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053,
23 citing §7(A)(3) ("If an employer's records show no meal period for a given shift over five hours,
24 a rebuttable presumption arises that the employee was not relieved of duty and no meal period was
25 provided").

26 Employers must pay employees an additional hour of wages at the employees' regular rate
27 of pay for each missed or improper (e.g., less than 30 minutes, interrupted meal period, first meal
28 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. ¶47.) Plaintiffs contend, however, that Defendant auto-deducted 30 minutes for a daily meal period regardless of whether Class Members were actually able to take a compliant meal period at all. (Szamet Decl. ¶48.) Further, Plaintiffs allege that Defendant violated California’s meal period laws by not paying Plaintiffs and other similarly situated Class Members one (1) hour of pay at the employees’ regular rate of compensation for each workday that the first meal period was not provided within the first (5) hours of the shift. (Szamet Decl. ¶49.) Because premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses) and cannot simply be paid at an employee’s base hourly rate, Plaintiffs alleged that if meal period premiums were provided, Defendant had a consistent policy of paying meal period premiums at the base rate and not the blended rate in violation of Labor Code §§ 226.7 and 512.² (Szamet Decl. ¶50.)

Defendant vehemently denied this claim. (Szamet Decl. ¶51.) Defendant argued that Plaintiffs and all Class Members frequently had downtime throughout each working day and Class Members were able to take all required meal periods. (Szamet Decl. ¶52.) Further, Defendant argued that Class Members had the means to report missed, late, or short meal periods, and those records indicate few (if any) reported problems during the Class Period. (Szamet Decl. ¶53.)

² On July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, the California Supreme Court set forth the formula for calculating the one extra hour of premium pay 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 Plaintiff argues that because the records show meal period violations, the burden would
2 shift to Defendant. In *Donahue v. AMN Services*, the Court adopted the rebuttable presumption
3 discussed by Justice Werdegar in her concurring opinion in *Brinker Restaurant Corp. v. Superior*
4 *Court*, 53 Cal. 4th 1004 (2012). Under this presumption, “[i]f an employer’s records show no meal
5 period for a given shift over five hours, a rebuttable presumption arises that the employee was not
6 relieved of duty and no meal period was provided.” (*Donohue v. AMN Services, LLC* (2021) 11
7 Cal.5th 58, 74.) The Court further explained that this presumption applies not only to records
8 showing “missed meal periods” but also when records show “short and delayed meal periods” (*Id.*
9 at 76.) and “the presumption goes to the question of liability and applies at the summary judgment
10 stage, not just at the class certification stage.” (*Id.*)

11 Plaintiffs anticipated that Defendant would argue, that while *Donahue* does create a
12 presumption, it is significant that “[a]pplying the presumption does not mean that time records
13 showing missed, short, or delayed meal periods result in ‘automatic liability’ for employers.” (*Id.*
14 at 77; Szamet Decl. ¶54.) To the contrary, Pegasus would argue that it “can rebut the presumption
15 by presenting evidence that employees were compensated for noncompliant meal periods or that
16 they had in fact been provided compliant meal periods during which they chose to work.” (*Id.*)
17 Defendant would argue that since its maintained a valid written policy to “provide” a meal period
18 per *Brinker*, that to determine liability on this claim would necessitate asking each and every Class
19 Member “whether they were provided a compliant meal period but chose to work”. (*Id.* at 78;
20 Szamet Decl. ¶55.) In addition to its policy and practice of making meal periods available and the
21 abundant downtime that Defendant maintains Plaintiffs and the Class Members had to actually
22 take meal periods, Defendant also argued that if for some reason the workflow did not permit for
23 a timely meal period, then the records do show many meal period premiums were paid. (Szamet
24 Decl. ¶56.)

25 Plaintiff believes this is not enough for Defendant to overcome the strong presumption set
26 forth in *Donohue*. Indeed, *Donohue* provided specific guidance: It explains that employers must
27 “give employees a mechanism for recording their meal periods” and “ensure that employees use
28 the mechanism properly.” (*Id.* at 78.) One such way is to incorporate a “dropdown menu” in the

1 timekeeping system that comes up if an employee misses a meal break, or takes a late or a short
2 break, and requires the employee to explain the reason for the noncompliant break (i.e., whether a
3 proper break was not provided or whether it was the employee's choice). Because this solution
4 was explicitly endorsed by the Court and not the type of system Defendant used, Plaintiffs believe
5 Pegasus will not be able to overcome that presumption set forth in *Donohue* and that Plaintiffs will
6 be able to use Defendant's records to prove liability for each and every non-compliant meal period.
7 (Szamet Decl. ¶57.) Nonetheless, Plaintiffs acknowledge that shifts showing a meal period
8 premium was paid should be excluded for damages purposes. (Szamet Decl. ¶58.)

9 Plaintiffs were aware that this would be a hotly contested issue and had to acknowledge
10 that there was certainly some risk associated with this claim. (Szamet Decl. ¶59.)

11 c) The Risks Associated with the Rest Break Claim

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

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

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

19 Section 11 of the applicable IWC Wage Order provides:

20 “(A) Every employer shall authorize and permit all employees to take rest periods,
21 which insofar as practicable shall be in the middle of each work period. Nothing in
22 this provision shall prevent an employer from staggering rest periods to avoid
23 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
24 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)
25 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
26 work area.

27 (B) Rest periods need not be authorized in limited circumstances when the
28 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
workday or compensate the employee for the missed ten (10) minutes of rest time

1 at his/her regular rate of pay within the same pay period.

2 (C) A rest period need not be authorized for employees whose total daily work time
3 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.

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

7 During the relevant time period, Plaintiffs contend that they and all other Class Members
8 were not provided with rest breaks as required by law and did not receive an additional hour of
9 premium pay at their regular rate of compensation for each missed rest break. (Szamet Decl. ¶60.)

10 Here, Plaintiffs contend that Defendant routinely failed to provide Plaintiffs and the Class
11 with rest breaks of not less than ten (10) minutes as required by the Labor Code during the relevant
12 time period. (Szamet Decl. ¶61.) Plaintiffs contend they were routinely unable to take a compliant
13 first rest periods and not able to take a second (or third) rest period. (Szamet Decl. ¶62.) As such,
14 Plaintiffs contend there is at least one rest period violation per person, per day during the covered
15 period. (Szamet Decl. ¶63.)

16 As with meal periods, Defendant argued that it maintained a facially compliant policy that
17 "provided" all required rest periods, it never interfered with Plaintiffs' or any Class Members'
18 ability to take all compliant rest periods, and there was regularly downtime available to take all
19 necessary rest breaks. (Szamet Decl. ¶64; Briscoe Decl., ¶7.) Plaintiffs acknowledge that rest
20 period claims can be difficult to prove on a classwide basis due to the lack of records. (Szamet
21 Decl. ¶65.) This is especially true when an employer maintains a facially compliant rest period
22 policy. (Szamet Decl. ¶66.) Defendant disclosed that, during the entire class period, there were
23 fewer than a dozen reported instances of missed or short rest periods and that employees had ample
24 downtime due to the nature of their work. (Briscoe Decl., ¶¶6-7.) Defendant argued that this would
25 devolve into a series of mini-trials where the trier of fact would be entitled to hear from each class
26 member as to whether they were in fact provided the opportunity to take all required rest periods
27 each day. (Szamet Decl. ¶67.) Of course, Defendant argued this would defeat class certification
28 and make it nearly impossible to prove this claim on a classwide basis. (Szamet Decl. ¶68.) Based

1 on this risk, Plaintiffs believed it was appropriate to significantly discount this claim. (Szamet
2 Decl. ¶69; Briscoe Decl., ¶¶ 6-7.)

3 d) The Risks Associated with the Paid Sick Leave Claim

4 Labor Code section 246(l) requires that employers pay sick time pay to non-exempt
5 employees at that employee's "regular rate of pay."

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

10 During the relevant time period, Plaintiffs alleged that Defendant failed to include
11 commissions, non-discretionary bonuses and/or other items of compensation when determining
12 the "regular rate of pay" for Plaintiffs and their other non-exempt employees for purposes of sick
13 time pay. (Szamet Decl. ¶70.)

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

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

24 During the relevant time period, Plaintiffs alleged that Defendant intentionally and
25 willfully failed to pay Plaintiffs and the other members of the Class their sick pay at the rate of pay
26 required by law. (Szamet Decl. ¶71.) Accordingly, Plaintiffs contend that they did not receive the
27 full amount of paid sick time that they were entitled to receive by law and were therefore denied
28 the right to use sick leave within the meaning of Labor Code sections 233(a) and (c). (Szamet

Decl. ¶72.)

Defendant argued that “Spot Bonus(es)” were compensation for non-working time and therefore properly excluded from the regular rate, and as such, pay for sick time was appropriately paid out. (Szamet Decl. ¶73.) Furthermore, Defendant disclosed that, during the class period, no California employee received a Spot Bonus and took paid sick leave in the same pay period; thus, Defendant asserted, the claim had no value at all. (Briscoe Decl., ¶7.)

As such, Plaintiffs believed it was appropriate to significantly discount this claim. (Szamet Decl. ¶74; Briscoe Decl., ¶8.)

e) The Risks Associated with the Inaccurate Wage Statement Claim

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

Here, Plaintiffs alleged that Defendant failed to issue Plaintiffs and the Class Members accurate itemized wage statements showing all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee based on Defendant’s alleged failure to properly blend all non-discretionary compensation. (Szamet Decl. ¶75.)

Defendant contends that this is a derivative argument, and Plaintiffs did not plead a direct violation of section 226(a). (Szamet Decl. ¶76.) Thus, if Defendant were to succeed on the wage claim based on the arguments set forth above, that Plaintiff’s section 226(a) claim would also fail. (Szamet Decl. ¶77.) Defendant also argued that under *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308 (2018), the Court set out a simple rule for determining what falls under those certain circumstances: hours worked versus wages earned. The court held that “only the absence of the hours worked will give rise to an inference of injury,” and “the absence of accurate wages earned will be remedied by the violated wage and hour law itself.”] Defendant would apply *Maldonado* to argue that a potential mistake on a wage statement (i.e. a potential failure to blend Spot Award cannot give rise to section 226(a) liability, only completely missing information that

is required to be shown such as total hours worked.) (Szamet Decl. ¶78.)

f) The Risks Associated with the Waiting Time Penalty Claim

Labor Code § 203(a) provides:

(a) If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall 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.

Under Labor Code section 203, “willful” simply means that “the employer intentionally failed or refused to perform an act which was required to be done . . . “[W]il[l]ful” . . . does not necessarily imply anything blameable, or any malice or wrong toward the other party.” *Diaz v. 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. ¶79.) 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. ¶80.)

The viability of this claim is tied to the wage claim. (Szamet Decl. ¶81.) 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]

1 of wages which the employer knows to be due.’” (*Diaz v. Grill Concepts Services, Inc.* (2018) 23
2 Cal.App.5th 859, 868.) If, however, Plaintiff’s wage claim failed, this claim would also likely fail.

3 g) The Risks Associated with the PAGA Claim

4 California’s Private Attorneys General Act (“PAGA”), Labor Code § 2698, *et seq.*, permits
5 private litigants to recover civil penalties for violations of the Labor Code. PAGA provides that
6 plaintiffs may recover previously established civil penalties (section 2699(a)) or, if none were
7 established, plaintiffs may recover default penalties provided in section 2699(f) in the amount of
8 \$100 per employee per pay period for the initial violation and \$200 for subsequent violations.

9 Plaintiffs discounted the PAGA claim for multiple reasons. First, the aggrieved
10 employees’ PAGA claims are arguably derivative of all the foregoing class claims. (Szamet Decl.
11 ¶82.) Second, and most importantly, a court has discretion to award less than the maximum
12 penalty. (Szamet Decl. ¶83; Labor Code § 2699(e)(2) (“a court may award a lesser amount than
13 the maximum civil penalty amount specified by this part if, based on the facts and circumstances
14 of the particular case, to do otherwise would result in an award that is unjust, arbitrary and
15 oppressive, or confiscatory”). *See e.g., Carrington v. Starbucks Corporation* (2018) 30
16 Cal.App.5th 504, 241 Cal.Rptr.3d 647, 669 (affirming award of 10% of maximum PAGA penalty).
17 *See Nordstrom Commissions Cases*, 186 Cal.App.4th 576, 589 (2010) (affirming settlement
18 allocating \$0 of \$6.4 million settlement to PAGA penalties).³ Third and finally, the Settlement
19 Class is compensated for these violations in the proposed Joint Stipulation of Settlement, and thus
20 any PAGA recovery for these same violations could arguably be construed as duplicative. (Szamet
21 Decl. ¶84.) As such, Plaintiffs contend that the Settlement’s contemplated PAGA payment of
22 \$20,000 is appropriate. (Szamet Decl. ¶85).

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

24 There is significant expense associated with the class certification process, which the
25 Parties can avoid by entering into the contemplated Settlement Agreement now. (Szamet Decl.
26 ¶86.) If the Court did eventually certify a class, trial of a case involving 118 Settlement Class

27 ³ After a trial, Los Angeles Superior Court Complex Judge Ann Jones awarded only \$55,000 in back wages
28 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.

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. ¶87; Briscoe Decl., ¶¶6-7.) 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. ¶88; *Id.*) An appeal would result in further delay for the Settlement Class Members who are waiting for a resolution in this matter. (*Id.*)

4. The Risk of Maintaining Class Action Status through Trial

This case has not been certified to be tried as a class action. (Szamet Decl. ¶89.) 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 need to conduct multiple depositions, including of the Named Plaintiffs and of several person(s) most knowledgeable regarding Defendant's policies. (*Ibid.*) There is a risk for both sides as to what these depositions will reveal and whether they will support class certification to the extent expected. (*Ibid.*)

5. The Amount Offered in Settlement

It was very difficult for the Parties to reach this Settlement of \$381,357.14. (Szamet Decl. ¶90.) This Settlement is the result of adversarial, non-collusive, and arms-length negotiations. (Szamet Decl. ¶91; Briscoe Decl., ¶9.) The Parties arrived at it after extensive investigation and discovery, careful evaluation of the law, risks, and all information substantiating the amount of penalties reasonably likely to be awarded to the class were the trier of fact to find Defendant liable, and the assistance of an experienced mediator, David Rotman. (*Id.*)

a) Plaintiffs' Assessment of Defendant's Maximum Exposure

Plaintiffs worked with an expert to review Defendant's sample of time and pay records and put together a comprehensive damage model. (Szamet Decl. ¶92.)

Plaintiffs assessed the full value of the Minimum Wage/Overtime claim, without any discount, at approximately \$26,500. (Szamet Decl. ¶93.) This calculation was based on an average rate of pay of \$32.00/hour and was determined based on bonus codes that appeared in Defendant's

1 records. (Szamet Decl. ¶94.) Plaintiffs assumed for purposes of the damage model all such
2 bonuses appearing in the records were non-discretionary bonuses that must be blended. (Szamet
3 Decl. ¶95.) As mentioned above, were Defendant to successfully establish that some or all of these
4 bonuses are discretionary bonuses that do not need to be blended, the value of this claim could be
5 zero. (Szamet Decl. ¶96.)

6 Plaintiffs assessed the full value of the Meal Period claim, without any discount, at
7 approximately \$335,000.00. (Szamet Decl. ¶97.) This is based on the assumption that each Class
8 Member suffered one meal period violation per day, per week (5 premiums in total per week).
9 (Szamet Decl. ¶98.) There were approximately 10,468 shifts worked in the pay data. (Szamet
10 Decl. ¶99.) If a meal premium is due for every shift worked at the average rate of pay of \$32.00/hr,
11 the total amount due is \$335,000. (Szamet Decl. ¶100.) Notably, this assumes a meal period
12 violation occurs each working shift. (Szamet Decl. ¶101.) If Plaintiff could not establish this or,
13 perhaps, could only prove 2 meal period violations per week, this number is reduced dramatically
14 to \$134,000. (Szamet Decl. ¶102.)

15 Plaintiffs assessed the full value of the Rest Period claim, without any discount, at
16 approximately \$335,000.00. (Szamet Decl. ¶103.) The analysis is the same as set forth above with
17 the meal period claim. (Szamet Decl. ¶104.) It assumes that each Class Member suffered one
18 rest period violation per day, per week (5 premiums in total per week). (Szamet Decl. ¶105.) As
19 there were approximately 10,468 shifts worked in the pay data, if a rest premium is due for every
20 shift worked at the average rate of pay of \$32.00/hr, the total amount due is \$335,000. (Szamet
21 Decl. ¶106.) Again, this assumes a rest period violation occurs each working shift. (Szamet Decl.
22 ¶107.) If Plaintiff could only prove 2 rest period violations per week, this number is reduced
23 dramatically to \$134,000. (Szamet Decl. ¶108.)

24 Based on the information disclosed by Defendant, counsel for Sayad attributed negligible
25 value to the paid sick leave claim. Defendant disclosed that there were no instances of paid sick
26 leave being paid and nondiscretionary bonuses being earned in the same pay period throughout the
27 entirety of the class period. (Briscoe Decl., ¶ 7.)

28 Plaintiffs valued the Wage Statement Claim, without discount, at \$130,000. (Szamet Decl.

¶109.) There were 4,143 pay periods in the one-year statutory period. (Szamet Decl. ¶110.) Labor Code §226(e)(1) uses \$50 for the initial pay period and \$100 thereafter and puts a \$4,000 cap on wage statement penalties per employee. (Szamet Decl. ¶111.) Using the \$50 for the initial and \$100 for each subsequent wage statement issued (pay period), the estimated exposure is \$130,000 for the 118 class members. (Szamet Decl. ¶112.) Due to the risk discussed above that 226(a) liability wouldn't attach under *Naranjo* and *Maldonado*, Plaintiffs determined that a discount of this claim was fair for settlement purposes. (Szamet Decl. ¶113.)

Plaintiffs valued the Waiting Time Claim, tied to the Wage/Overtime claim, at \$606,720. (Szamet Decl. ¶114.) Considering the derivate nature of Labor Code § 203 here and the dispute over whether class members were owed any wages as discussed above, Plaintiffs determined that accepting a significant discount on this claim was appropriate. (Szamet Decl. ¶115.)

Finally, Plaintiffs calculated the value of the PAGA claim at \$135,600 for Settlement Class Members (using \$100 per pay period x 1,356 pay periods during the one statutory period). (Szamet Decl. ¶116.) The main risk taken into account with PAGA is the discretionary nature of the penalty award. (Szamet Decl. ¶117.) A judge can award the statutory maximum of \$100 for the initial violation and \$200 thereafter or – in theory – one cent per wage statement. (Szamet Decl. ¶118.) While there is a dearth of available authority, in Plaintiffs' view, were they to succeed on any of the underlying Labor Code violations, it is not likely that a Judge would also award a large amount of penalties of top of any damages recovered. (Szamet Decl. ¶119.)

Per Plaintiffs' assessment, the maximum potential value of all of Plaintiffs' and the Settlement Class Members' claims was approximately \$1,568,820. (Szamet Decl. ¶120.) However, as a result of the forgoing risks on the merits, Class Counsel believes the Gross Settlement Amount of \$381,357.14 is fair and reasonable. (Szamet Decl. ¶121; Briscoe Decl. ¶8.)

6. The Extent of Discovery Completed and Stage of the proceedings

As outlined above, Class Counsel conducted a thorough investigation into the facts of the claims alleged. (Szamet Decl. ¶122.) The agreement to settle did not occur until Class Counsel exchanged and possessed sufficient information to make an informed judgement regarding the likelihood of success on the merits and the results that could be obtained through further litigation.

1 7. The Experience and Views of Counsel

2 Kingsley & Kingsley is very experienced in prosecuting employment litigation, and the
3 firm has focused its practice since 2000 on wage, hour, and working condition violations. (Szamet
4 Decl. ¶¶123-124.) The firm is well versed in class action litigation and has diligently and
5 aggressively pursued this action. (*Ibid.*) Kingsley & Kingsley, APC currently serves as Class
6 Counsel for dozens of pending class action lawsuits in Northern, Central, and Southern California.
7 (*Ibid.*) A list of representative cases that Kingsley & Kingsley, APC has handled is included in
8 the accompanying declaration of Kelsey M. Szamet. (Szamet Decl. ¶¶123-124.) Similarly, Mayall
9 Hurley P.C., counsel for Sayad, has substantial experience litigating wage and hour class actions
10 and have been approved as class counsel on numerous occasions. (Briscoe Decl. ¶¶25-28.) After
11 factoring in the risks explained above, Class Counsel believes that the proposed settlement is fair
12 and reasonable. (Szamet Decl. ¶125.)

13 8. The Presence of a Governmental Participant

14 There is no governmental participant in this action except, arguably, the LWDA as there is a
15 PAGA claim at issue. (Szamet Decl. ¶126.)

16 9. The Proposed Plan of Allocation Is Fair and Reasonable

17 Plans of allocation are subject to the same standard of review as class action settlements;
18 they must be “fair, adequate and reasonable.” (*See, e.g., Officers for Justice v. Civil Service*
19 *Comm’n* (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the proposed plan of allocation
20 compensates Settlement Class Members pro rata based on the number of compensable work weeks
21 worked by the Settlement Class Member during the Class Period. The payment to each Settlement
22 Class Member not excluding him/ herself will be determined on an individualized basis based upon
23 the compensable pay periods worked by the Settlement Class Member. (Ex. A at § 2, ¶2.6.) This
24 allocation distributes Settlement Agreement funds proportionally to each class member’s potential
25 damages and should therefore be approved as fair, adequate, and reasonable. (Szamet Decl. ¶127.)

26 10. The Reaction of the Class Members to the Proposed Settlement

27 To date, there are no requests to be excluded from the proposed Settlement Agreement and
28 no objections. (Islas Decl. ¶¶10-13.) Such indicates that the reaction of Settlement Class Members

on the whole is positive and weighs in favor of approval.

V. ENHANCEMENT TO PLAINTIFFS

Plaintiffs' Counsel request a total enhancement of \$8,000.00 for the Named Plaintiffs, with \$5,000.00 being allocated to Named Plaintiff Damont Richardson and \$3,000.00 to Named Plaintiff Raoof Abdul Sayad, for their work on behalf of the Settlement Class. (Szamet Decl. ¶168; Briscoe Decl. ¶22.) "Courts routinely approve incentive awards to compensate named Plaintiffs for the services they provide and the risks they incurred during the course of the class action litigation." *Ingram v. The Coca-Cola Company*, 200 F.R.D. 685, 694 (N.D. Ga 2001) (internal quotations and citations omitted); *see also Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995). In *Coca-Cola*, the Court approved service awards of \$300,000 to each named Plaintiffs in recognition of the services they provided to the class by responding to discovery, participating in the mediation process, and taking the risk of stepping forward on behalf of the class. *Coca-Cola*, 200 F.R.D. at 694; *see also, e.g. Van Vranken*, 901 F. Supp. at 299 (approving \$50,000 participation award to Plaintiffs); *Glass v. UBS Financial Services, Inc.*, Case No. C-06-4068 MMC, 2007 WL 227862, at *17 (N.D. Cal. Jan. 26, 2007) (approving \$25,000 enhancement to each named Plaintiffs). Named Plaintiffs are adequate class representative because they have diligently, adequately and fairly represented the Settlement Class and have not placed their interests above any member of the Settlement Class. (*see* Declarations of Damont Richardson ("Richardson Decl.") ¶¶3-15 and Raoof Abdul Sayad ("Sayad Decl.") ¶¶3-15.)

Here, Class Counsel requests an enhancement for Named Plaintiffs' valiant effort and time expended in this matter. The time spent by Named Plaintiffs 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. (Szamet Decl. ¶169; Briscoe Decl. ¶24; Richardson Decl. ¶¶5-11; Sayad Decl. ¶¶5-11.) 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. ¶170; Briscoe Decl. ¶24; Ex. A at ¶2.10.)

1 Class Counsel considers this to be a fair and reasonable enhancement. (Szamet Decl. ¶171;
2 Briscoe Decl. ¶22.) The enhancement takes into consideration the time, effort, and expense
3 incurred by Named Plaintiffs in coming forward to litigate this matter on behalf of all Settlement
4 Class Members. (Szamet Decl. ¶172; Briscoe Decl. ¶24.) Additionally, the Named Plaintiffs were
5 at risk for paying for Defendant’s legal fees and costs in the event that Defendant prevailed at trial.
6 (Szamet Decl. ¶173; Briscoe Decl. ¶23.)

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

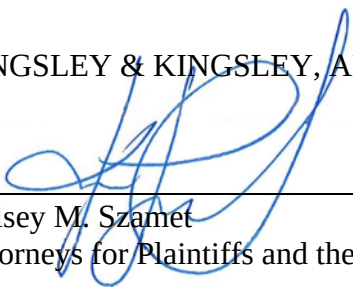
8 As indicated on the Proof of Service, Plaintiffs’ Motion for Final Approval of Class Action
9 Settlement (“Motion”) will be concurrently uploaded to the LWDA’s website on the date this
10 Motion is filed as required by statute. Proof of submission of Plaintiffs’ Motion, all related
11 documents, and copy of the email from the LWDA confirming receipt is attached to the
12 Declaration of Kelsey M. Szamet as Exhibit “F.” (Szamet Decl. ¶178.)

13 **VII. CONCLUSION**

14 Plaintiffs respectfully submit that the proposed Settlement Agreement is fair, adequate,
15 reasonable, and in the best interest of the Settlement Class Members. Therefore, Plaintiffs
16 respectfully request that the Court (1) grant Final Approval of the Settlement Agreement and all
17 of its terms; (2) award attorneys’ fees and costs in the amount detailed in the concurrently filed
18 Motion for Attorneys’ Fees and Costs; (3) award ILYM Group, Inc. claims administration fees of
19 \$8,000.00; and (4) award the Named Plaintiffs an enhancement of \$8,000.00; and (5) enter
20 judgment.

21
22 DATED: August 31, 2022

KINGSLEY & KINGSLEY, APC

23
24 By: 

25 Kelsey M. Szamet
26 Attorneys for Plaintiffs and the proposed class
27
28

(PROOF OF SERVICE)
[CCP 1013(a)(3)]
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On August 31, 2022, I served all interested parties in this action the following documents described as: **NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

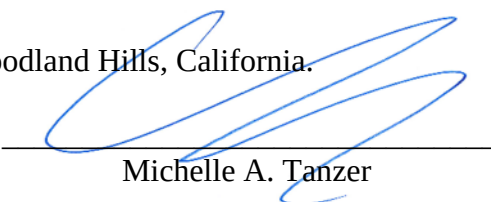
Heather Hearne hdh@kullmanlaw.com The Kullman Firm, PLC 4605 Bluebonnet Blvd., Suite A Baton Rouge, LA 70809	Emil Davtyan emil@davtyanlaw.com Davtyan Law Firm, Inc. 880 E. Broadway Glendale, CA 91205 John P. Briscoe jbriscoe@mayalllaw.com Mayall Hurley P.C. 2453 Grand Canal Boulevard Stockton, California 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 August 31, 2022, at Woodland Hills, California.



Michelle A. Tanzer