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

TALIAH LESLIE, individually and on behalf
of other persons similarly situated; SHELBY
GROCHOWSKI, individually, on behalf of
other persons similarly situated, and in his
representative capacity,

Plaintiffs,
v.

YEEZY APPAREL LLC, a California limited
liability company; KANYE WEST, an
individual; and DOES 1 through 50,
inclusive,

Defendants.

CASE NO. **21STCV17190**
[Hon. Jon R. Takasugi, Dept. 17]

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

*[Filed concurrently with Declarations of
Taliah Leslie, Shelby Grochowski, Frank H
Kim, and Helen U. Kim]*

Date: November 4, 2024
Time: 8:30 a.m.
Dept.: 17

Complaint Filed: May 6, 2021
FAC Filed: May 16, 2024
Trial Date: None Set

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

2 **PLEASE TAKE NOTICE** that on November 4, 2024 at 8:30 a.m. in Department 17 of
3 the above-entitled court, Plaintiffs Taliah Leslie and Shelby Grochowski will move the Court for
4 an Order of Preliminary Approval of the Joint Stipulation of Class Action Settlement and Release
5 of Claims (“Settlement Agreement” or “Settlement”), a copy of which is filed concurrently
6 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 Declarations of Frank H. Kim, Helen U. Kim, Taliah Leslie, and Shelby
11 Grotowski, the Settlement Agreement and Release, all other papers and records on file in this
12 action, and on such oral and documentary evidence as may be presented at the hearing on this
13 Motion.

14 DATED: October 24, 2024

KIM LEGAL, APC

16 By: /s/ Frank Kim

17 Frank H. Kim
18 Attorneys for Plaintiff Taliah Leslie and Shelby
19 Grochowski and the Proposed Class
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Taliah Leslie and Shelby Grochowski (“Plaintiffs”) submits this Memorandum of Points and Authorities in support of Plaintiffs’ Motion for Preliminary Approval of the Class Action and PAGA Settlement Agreement and Class Notice reached between Plaintiffs and Defendants Yeezy Apparel LLC (“Yeezy”) and Ye (formally known as Kanye West) (Yeezy and Ye are collectively the “Defendants”) (collectively, the “Parties”).

By this Motion, Plaintiffs request that the Court:

(1) Grant preliminary approval of the fully executed Class Action and PAGA Settlement Agreement and Class Notice (“Settlement” or “Settlement Agreement”). A true and correct copy of the Settlement Agreement is attached to the concurrently filed Declaration of Frank H. Kim and Declaration of Helen U. Kim as Exhibit “1”;

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

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

II. FACTUAL BACKGROUND

A. Litigation Overview and Procedural History

Plaintiffs were employed by Defendants Yeezy Apparel, LLC and Ye (“Defendants”). (Declaration of Frank H. Kim [“F. Kim Decl.”] ¶ 4.) On or about November 2019, Defendants hired Plaintiff Leslie as an “Assistant Designer” and “Assistant Patternmaker.” Plaintiffs allege that Defendants classified Plaintiff Leslie as an independent contractor when she should have been classified as a non-exempt employee.

On or about November 2019, Defendants hired Plaintiff Grochowski as an “Assistant Patternmaker and “Patternmaker.” (F. Kim Decl. ¶ 5.) Plaintiffs allege that Defendants classified Plaintiff Grochowski as an independent contractor when he should have been classified as a non-

1 exempt employee. (*Id.*) Plaintiffs allege that Defendants eventually reclassified Plaintiff
2 Grochowski as an employee despite giving him the same job duties, but misclassified him as
3 exempt from overtime when his true classification should have been non-exempt. (*Id.*)

4 On May 6, 2021, Plaintiff Leslie filed a PAGA representative action, against Defendants
5 in the Action for various Labor Code violations, including the failure to pay overtime wages,
6 minimum wages, meal and rest break premiums, willful misclassification, wage statement
7 violations, recordkeeping violations, and the failure to pay all wages upon the termination of
8 employment. (F. Kim Decl. ¶ 6.) On November 30, 2021, Plaintiff Leslie filed a First Amended
9 Complaint. (F. Kim Decl. ¶ 7).

10 **B. First Attempt At Private Mediation**

11 The Parties engaged in formal discovery. Shortly thereafter, the parties agreed to private
12 mediation with Steven J. Serratore, Esq. On October 6, 2022, the Parties and their counsel
13 participated in a full-day mediation before Steven J. Serratore, Esq. (F. Kim Decl., ¶ 8.) Plaintiffs’
14 counsel had mediation data analyzed by an expert to prepare a damage model for mediation. (F.
15 Kim Decl. ¶ 9.) Despite efforts to resolve the matter, the Parties were unable to reach a resolution
16 at the mediation. (F. Kim Decl. ¶ 10.)

17 On November 2, 2022, Greenberg Traurig LLP, then counsel for Defendants, filed a motion
18 to withdraw as counsel, which Plaintiff did not oppose. (F. Kim Decl. ¶ 11.) On November 30,
19 2022, the court granted Greenberg Traurig LLP’s request to withdraw as counsel and set an order
20 to show cause for new counsel. (F. Kim Decl. ¶ 12.)

21 On February 24, 2023, Meservy Law, P.C. and Morello Law, P.C. filed a notice of
22 appearance for the Defendants. (Kim Decl. ¶ 13.)

23 **C. Second Mediation and Settlement**

24 In the following months, the Parties resumed their discussions regarding mediation and
25 agreed to mediate with Jonathan Andrews, Esq. from Signature Resolutions. (Kim Decl. ¶ 14.) On
26 October 25, 2023, the Parties and their counsel participated in a full-day mediation before Jonathan
27 Andrews, Esq. (F. Kim Decl. ¶ 15.) After the mediation concluded, the Parties ultimately agreed
28 to the final proposal made during the mediation. The Parties then drafted a long-form settlement

1 agreement based on the terms of the accepted proposal and executed the settlement agreement on
2 March 25, 2024. (F. Kim Decl. ¶ 16.) As part of the settlement agreement, the Parties agreed that
3 Plaintiffs would file a second amended complaint to add Shelby Grochowski as a class plaintiff
4 and allege class allegations for purposes of settlement. (F. Kim Decl. ¶ 17.) On May 16, 2024,
5 pursuant to stipulation and order, Plaintiffs filed their Second Amended Complaint. (*Id.*)

6 Defendants deny any liability or wrongdoing of any kind associated with the claims alleged
7 in the Action, disputes the damages and penalties claimed by Plaintiffs, and further contends that,
8 for any purpose other than settlement, Plaintiffs’ claims are not appropriate for class or
9 representative action treatment. (F. Kim Decl. ¶ 18.) Defendants contend, among other things,
10 that, at all times, they have complied with the California Labor Code, and the Industrial Wage
11 Commission Orders. (*Id.*)

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

21 **III. THE PROPOSED SETTLEMENT CLASS SHOULD BE CERTIFIED FOR** 22 **SETTLEMENT PURPOSES**

23 Originally creatures of equity, class actions have been statutorily embraced by the
24 Legislature whenever “the question [in a case] is one of a common or general interest, of many
25 persons, or when the parties are numerous, and it is impracticable to bring them all before the
26 court” (Code Civ. Proc. § 382; *see, e.g., Fireside Bank v. Sup. Court* (2007) 40 Cal.4th 1069,
27 1078.) They serve an important function by “establishing a technique whereby the claims of many
28 individuals can be resolved at the same time” thereby “eliminat[ing] the possibility of repetitious

litigation and provid[ing] small claimants with a method of obtaining redress.” (*Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 469.) Public policy supports the use of class actions to enforce wage and overtime laws for the benefit of workers. (*See Sav-on Drug Stores, Inc. v. Sup. Court* (2004) 34 Cal.4th 319, 340.)

The certification question is “essentially a procedural one that does not ask whether an action is legally or factually meritorious.” (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 439–440.) A court ruling on a certification motion must determine “whether . . . the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants.” (*Collins v. Rocha* (1972) 7 Cal.3d 232, 238.)

The California Supreme Court has identified three certification requirements: (1) “the existence of an ascertainable and sufficiently numerous class”; (2) “a well-defined community of interest”; and, (3) “substantial benefits from certification that render proceeding as a class superior to the alternatives.” (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.) The “community of interest” requirement includes three additional requirements: (1) common questions of law or fact predominant over individual questions; (2) the class representatives have claims or defenses typical of the class; and (3) the class representatives can adequately represent the class. (*Ibid, citing Fireside Bank, supra*, 40 Cal.4th at 1089.)

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

A. The Proposed Classes Are Ascertainable and Sufficiently Numerous

1. Ascertainability

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

1 Here, the proposed Settlement Class is ascertainable because Defendants have produced in
2 discovery a class list containing the Settlement Class Member's full name, last known address and
3 telephone number that will allow the Settlement Administrator to reasonably determine all putative
4 class members after issuance of the preliminary approval order. (F. Kim Decl. ¶ 20; Ex. 1 at § I,
5 ¶8.) Moreover, Settlement Class Members consist of Defendants' hourly employees, and
6 Defendants are required to keep records of its hourly employees' names, home addresses, and
7 social security numbers. (See Wage Order 7-2001, subsection 7(c); F. Kim Decl. ¶ 21.)

8 **2. Numerosity**

9 There is no set number that is required as a matter of law to maintain a class action. (See,
10 e.g., *Rose v. City of Hayward*, *supra*, 126 Cal.App.3d at p. 934.) Here, the proposed Settlement
11 Class contains approximately 49 hourly non-exempt employees in the State of California. (Ex. 1
12 at § 9.) Therefore, Plaintiffs are confident they will be able to establish that the proposed
13 Settlement Class is ascertainable and sufficiently numerous. (F. Kim Decl. ¶ 22.)

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

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

16 In deciding whether questions of common or general interest predominate, a court must
17 determine whether "the issues which may be jointly tried, when compared with those requiring
18 separate adjudication, are so numerous or substantial that the maintenance of a class action would
19 be advantageous to the judicial process and to the litigants." (*Collins v. Rocha* (1972) 7 Cal.3d
20 232, 238; *accord*, *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.) As a
21 general matter, if the defendant's liability can be determined by facts common to all members of
22 the class, a class will be certified even if the members must individually prove their damages."
23 (*Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 916, 107; *accord*, *Knapp v.*
24 *AT & T Wireless Services, Inc.* (2011) 195 Cal.App.4th 932, 941.)

25 Here, Plaintiffs argue that there are questions of law and fact common to the proposed
26 Settlement Class that predominate over any questions affecting only individual Class Members.
27 (F. Kim Decl. ¶ 23.) These common questions include:

- 28 1) Whether Defendants misclassified workers as independent contractors;

- 2) Whether Defendants misclassified employees as exempt from overtime;
- 3) Whether Defendants failed to pay all wages and/or overtime compensation;
- 4) Whether Defendants failed to provide lawfully required meal periods and/or failed to compensate employees one (1) hour's wages in lieu thereof;
- 5) Whether Defendants failed to provide accurate itemized wage statements;
- 6) Whether Defendants failed to pay all wages owed upon termination of employment; and
- 7) Whether Defendants engaged in unfair competition.

(F. Kim Decl. ¶ 23.)

Plaintiffs' challenge to Defendants' uniform policies and practices involves common factual and legal issues that are amenable to class treatment. (F. Kim Decl. ¶ 24.) As the California Supreme Court has emphasized, "[c]laims alleging that a uniform policy consistently applied to a group of employees is in violation of the wage and hour laws are of the sort routinely, and properly, found suitable for class treatment." (*Brinker, supra*, 53 Cal.4th at 1033; *see also Bradley v. Networkers International, LLC* (2012) 211 Cal.App.4th 1129, 1141-1146.) Moreover, a class of similarly situated employees may be certified based on common questions of fact or law, even if each employee has to establish the amount of his or his damages. (*See Bell v. Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 741; *Sav-On Drug Stores, Inc. v. Superior Court, supra*, 34 Cal.4th at 340.)

Here, Plaintiffs maintain that the proposed Settlement Class Members suffered the same injuries, in the same manner: (1) Settlement Class Members were not paid all wages/overtime; (2) Settlement Class Members did not receive their meal periods as required; (3) Settlement Class Members were not provided accurate itemized wage statements; and (4) Settlement Class Members were not paid all wages owed on a timely basis or upon termination/resignation. (F. Kim Decl. ¶ 25.) Plaintiffs allege that Settlement Class Members worked in the same capacity for the same employer and were subject to the same employment policies and practices, the questions of fact and claims regarding the status of these employees are the same for each member of the Settlement Class. Accordingly, for purposes of settlement, the evidence reviewed by Class Counsel

demonstrates that common meal policies and wage policies applied to the proposed Settlement Class Members and certification for settlement purposes is appropriate. (F. Kim Decl. ¶ 26.)

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 he 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 he 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.)

Plaintiff Leslie worked as an "Assistant Patternmaker" and "Assistant Designer" and Plaintiff Grochowski worked as an "Assistant Patternmaker" and "Patternmaker" for Defendants earning \$25 per hour. (F. Kim Decl. ¶ 27.) Plaintiffs allege that they: (1) worked without being paid all wages and/or overtime; (2) worked without being provided meal or rest periods as required by law; (3) worked without being reimbursed for business-related expenses; (4) worked without being provided accurate itemized wage statements; and (5) worked without being paid all wages due on a timely basis and upon separation. He also alleges derivative claims for unfair business competition (B&P Code §17200) (F. Kim Decl. ¶ 28.) Plaintiffs also contend that their claims are typical of those of the Settlement Class. (F. Kim Decl. ¶ 29.)

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 she can adequately represent the class. (*Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.App.4th 1096, 1104.) The representative,

1 through qualified counsel, must be capable of “vigorously and tenaciously” protecting the interests
2 of the class members. (*Simons v. Horowitz* (1984) 151 Cal.App.3d 834, 846.)

3 Plaintiffs believe that they are capable of fairly representing and adequately protecting the
4 interests of the proposed Settlement Class Members. (F. Kim Decl. ¶ 30.) Plaintiffs’ interests in
5 this litigation are coextensive with the interests of the proposed Settlement Class Members. (F.
6 Kim Decl. ¶ 31.) The members of the proposed Settlement Class all worked for Defendants during
7 the relevant time period and incurred the same type of alleged damages with regard to Defendants’
8 alleged violations of the law. (*Id.*) Moreover, Plaintiffs have agreed to serve as Named Plaintiffs
9 and have retained qualified Counsel who is experienced in prosecuting wage and hour class
10 actions. (F. Kim Decl. ¶ 32.) This demonstrates Plaintiffs’ commitment to bringing about the best
11 possible results for the benefit of the proposed Settlement Class. Plaintiffs have provided their
12 Counsel with all necessary and pertinent information. (F. Kim Decl. ¶ 33.) They have been very
13 active participants in the litigation including having frequent contact with Settlement Class
14 Members and working closely with Class Counsel to develop the theories of liability. (*Id.*)
15 Plaintiffs also participated by phone in the mediation in this matter and were informed of and
16 involved in all of the Settlement negotiations. (F. Kim Decl. ¶ 34.) Therefore, Plaintiffs believe
17 that they have and will continue to adequately represent the proposed Settlement Class Members.
18 (F. Kim Decl. ¶ 35.)

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

20 “The ultimate question in every case of this type is whether . . . the issues which may be
21 jointly tried, when compared with those requiring separate adjudication, are so numerous or
22 substantial that the maintenance of a class action would be advantageous to the judicial process
23 and to the litigants.” (*Lockheed Martin, supra*, 29 Cal.App.4th at 1104–1105.) The California
24 Supreme Court has directed the courts to utilize the class action device to fashion “an effective
25 and inclusive group remedy.” (*Richmond v. Dart Indus., Inc.* (1981) 29 Cal.3d 462, 469.)
26 Normally, in making its class certification decision, the Court must determine that a class action
27 would be superior to alternate means for a fair and efficient adjudication. If the causes of action
28 may be adjudicated in a single proceeding, thereby saving time, reducing waste, and limiting

1 duplication of effort, class certification is superior to individual litigation. (*See, e.g., Vasquez v.*
2 *Superior Court* (1971) 4 Cal.3d 800, 816.) Since the Parties agreed to a settlement in principle
3 and now seek Court approval of that Settlement, Plaintiff submits that there is not as much need
4 as there would be in an ordinary motion for class certification for the Court to determine that the
5 case can be manageably tried.

6 Plaintiffs maintain that class treatment would be the superior method of managing this case.
7 A class action is superior to individual litigation “when numerous parties suffer injury of
8 insufficient size to warrant individual action and when denial of class relief would result in unjust
9 advantage to the wrongdoer.” (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.) In
10 cases such as this, where individual damages may be small, the class action device is the most
11 feasible method of recovery. (*See, e.g. Lockheed Martin, supra*, 29 Cal.4th at 1131.) In this regard,
12 the superiority of class treatment is evident here because individual pursuit of class members’
13 claims may not be economically viable. (F. Kim Decl. ¶ 36.) The only alternative to certification
14 would be to force over 49 employees to join this action, file individual, uniform actions, or abandon
15 their legal rights altogether. (F. Kim Decl. ¶ 37.) Plaintiffs maintain that this economic reality
16 would result in a windfall for Defendants if this case were not certified. (*Id.*)

17 **IV. THE PROPOSED SETTLEMENT**

18 **A. The Settlement Class**

19 For purposes of Settlement Agreement, the settlement class is defined as: “any and all
20 individuals who performed any work as Assistant Patternmakers, Patternmakers, Designers,
21 Assistant Designers, Sewers, Interns, and/or other similar job titles for Yeezy Apparel LLC and/or
22 Ye (formally known as Kanye West) in California, at any time during the Class Period, who have
23 not already entered into general releases with the Released Parties.”. (“Settlement Class Members”
24 or “Class Members”). (F. Kim Decl. ¶ 38; Settlement Agreement, Ex. 1 at § I, ¶ 5.) Based on
25 documents and other information produced by Defendants, there are approximately 49 Settlement
26 Class Members. (F. Kim Decl. ¶ 39; Ex. 1 at § 9.)

27 For purposes of Settlement Agreement, the Aggrieved Employee is defined as: “any and
28 all individuals who performed any work as Assistant Patternmakers, Patternmakers, Designers,

Assistant Designers, Sewers, Interns, and/or other similar job titles for Yeezy Apparel LLC and/or Ye (formally known as Kanye West) in California, at any time during the PAGA Period.” from February 4, 2020, through the date the Court enters an order granting Preliminary Approval of this Agreement. (“Aggrieved Employee”) (F. Kim Decl. ¶ 40; Settlement Agreement, Ex. 1 at § I, ¶¶4, 32.)

B. Gross Settlement Amount

As detailed fully in the Settlement Agreement, the Settlement provides for Defendants to pay a Gross Settlement Amount of \$625,000.00, which includes the sum of the Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment, Individual Class Payments, LWDA PAGA Payment, Individual PAGA Payments, and Administrator’s Expenses. (F. Kim Decl. ¶ 41; Ex. 1 at § I, ¶ 22.)

The Net Settlement Amount is the Gross Settlement Amount, less Court-approved Individual PAGA Payments, the LWDA PAGA Payment, Class Representatives Service Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. (F. Kim Decl. ¶ 42; Ex. 1 at § I, ¶ 28.)

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

Gross Settlement Amount:	\$	625,000.00
Class Representative Service Payment:	\$	15,000.00
PAGA Representative Service Payment	\$	15,000.00
Fees Award:	\$	208,312.00
Costs Award:	\$	25,000.00
PAGA Payment:	\$	75,000.00
		<i>(\$18,750 to the LWDA and \$56,250 to remain in the Net Settlement Fund for PAGA Settlement Group)</i>
<u>Settlement Administration Costs:</u>	<u>\$</u>	<u>6,500.00</u>
Net Settlement Fund	\$	280,188.00

(Ex. 1 at § 3.)

C. Individual Class Payments

The Individual Class Payment amount of each Participating Class Member is an individualized amount that is calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b)

1 multiplying the result by each Participating Class Member's Workweeks (Ex. 1 at § 3, ¶ 2.4; see
2 also Ex. A to the Settlement Agreement [Class Notice].)

3 The Individual PAGA Payment will also be paid on a pro-rata basis. An Individual PAGA
4 Payment's distribution from the employees' share of the LWDA PAGA Payment will be based on
5 (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$18,750.00)
6 by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the
7 PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods.
8 (See Ex. 1 at § 3, ¶ 2.5.2.)

9 Twenty-five percent (25%) of the Gross Settlement Amount to each Participating Class
10 Member shall be deemed payment for settlement of claims for wages (the "Wage Portion"). The
11 Wage Portion is subject to payroll taxes and withholding and will be reported on an IRS Form W-
12 2. (Ex. 1 at § 3, ¶ 2.4.1.) Seventy-five percent (75%) of the Gross Settlement Fund to each
13 Participating Class Member will be allocated to settlement of claims for unreimbursed business
14 expenses, interest and statutory penalties (the "Non-Wage Portion"). The Non- Wage Portion is
15 not subject to payroll taxes and withholdings and will be reported on an IRS Form 1099. (*Id.*) All
16 Individual Settlement Payments to PAGA Settlement Group Members shall be allocated as 100%
17 non-wage payment for civil penalties. (Ex. 1 at § 3 ¶ 2.5.2) The Settlement Agreement provides
18 for a specific and detailed dispute process regarding Individual Settlement Payments. (See Ex. 1
19 at § 3, ¶ 8.6.)

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

21 The detailed Notice Procedure established by the Settlement Agreement will efficiently
22 and accurately ensure that Notice is provided to the Settlement Class Members. (Ex. 1 at § 8, ¶
23 4.) The Parties have agreed to use a reputable third-party claims administrator, ILYM Group, Inc.
24 to administer the Settlement Agreement. (Ex. 1 at § 8 ¶ 1.)

25 The Class Notice will be in English only because the only language used in the workplace
26 setting was in English. (Declaration of Shelby Grochowski ¶ 20.) Therefore, the Class Members
27 are presumed to read English.
28

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

2 Settlement Class Members will have an opportunity to request exclusion from the
3 Settlement Class (i.e. opt out) and to object to the Settlement at the Final Approval Hearing. (Ex.
4 1 at § 8, ¶¶ 5, 7.)

5 Settlement Class Members who do not opt out of the Settlement Class may object to the
6 Settlement Agreement in person at the final approval hearing or by mailing written objections to
7 the Settlement Administrator no later than sixty (60) calendar days after the mailing of the Class
8 Notice. (Ex. 1 at § 8 ¶ 7.2) The Settlement Administrator will provide any written objections to
9 Class Counsel and Defendants' Counsel. (Ex. 1 at § 8, ¶ 3.)

10 Class Members may also opt out of the settlement by submitting a Request for Exclusion
11 no later than sixty (60) calendar days after the mailing of the Class Notice expressing that the
12 Settlement Class Member elects to be excluded from the Settlement. (Ex. 1 at § 8 ¶ 5.1.)

13 **F. The Release**

14 The Released Class Claims, for the Class Period, are defined as: "all claims that were
15 alleged, or reasonably could have been alleged, arising out of the facts stated in the Operative
16 Complaint and ascertained in the course of the Action including, but not limited to, any and all
17 claims involving any (a) alleged failure to pay wages, including contractual, minimum wage,
18 overtime wages, double-time wages, accrued vacation pay wages, and split shift wages; (b) failure
19 to provide compliant, off-duty meal periods, and failure pay any or correct extra compensation
20 owed for failure to provide compliant, off-duty meal periods; (c) failure to provide compliant, off-
21 duty rest breaks, and failure to pay any or correct extra compensation owed for failure to provide
22 complaint, off-duty rest breaks; (d) failure to reimburse for business expenses; (e) failure to
23 provide timely, accurate, and compliant itemized wage statements; (f) failure to keep accurate
24 records regarding wages or hours worked; (g) failure to timely pay wages during employment; (h)
25 failure to timely pay wages on termination of employment; (i) claims for or derivative of
26 misclassification as an independent contractor; (j) claims for restitution, disgorgement, damages
27 expenses, attorneys fees, costs, statutory or civil penalties pursuant to or arising from violation of
28 any of the following: California Labor §§ 201, 202, 203, 204, 210, 216, 218.5, 225.5, 226, 226.2,

226.3, 226.7, 233, 234, 245-248.5, 256, 226.8, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1194.5, 1197, 1197.1, 1198, 1199, 2698 et seq, 2775, 2802, 2804, 2810.5, 3353, the applicable Industrial Welfare Commission Wage Order(s); (k) claims for unfair competition and unfair business practices, including for violation of California Business Code §§ 17200, et seq.; and (l) claims for injunctive relief, declaratory relief, interest, attorneys fees, or costs for any of the foregoing alleged violations during the Class Period. Except as set forth in Section 6.1 with respect to Plaintiffs only, and Section 6.3 below with respect to Aggrieved Employees, Participating Class Members do not release any other claims or claims based on facts occurring after the Class Period. (Ex. 1 § 6 at ¶ 2.)

The Released PAGA Claims, for the PAGA Period, are defined as: “all claims for PAGA/civil penalties that were alleged, or reasonably could have been alleged, arising out of the facts stated in the Operative Complaint and all PAGA Notices, as well as those ascertained in the course of the Action including, but not limited to, any and all claims involving any: (a) alleged failure to pay wages, including contractual, minimum wage, overtime wages, double-time wages, accrued vacation pay wages, and split shift wages; (b) failure to provide compliant, off-duty meal periods, and failure pay any or correct extra compensation owed for failure to provide compliant, off-duty meal periods; (c) failure to provide compliant, off-duty rest breaks, and failure to pay any or correct extra compensation owed for failure to provide complaint, off-duty rest breaks; (d) failure to reimburse for business expenses; (e) failure to provide timely, accurate, and compliant itemized wage statements; (f) failure to keep accurate records regarding wages or hours worked; (g) failure to timely pay wages during employment; (h) failure to timely pay wages on termination of employment; (i) claims for or derivative of misclassification as an independent contractor; (j) claims for civil penalties pursuant to or arising from violation of any of the following: California Labor §§ 201, 202, 203, 204, 210, 216, 218.5, 225.5, 226, 226.2, 226.3, 226.7, 233, 234, 245-248.5, 256, 226.8, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1194.5, 1197, 1197.1, 1198, 1199, 2698 et seq, 2775, 2802, 2804, 2810.5, 3353, and the applicable Industrial Welfare Commission Wage Order(s); and (k) and claims for recovery of attorney’s fees and costs for any of the foregoing alleged violations during the PAGA Period.” (Ex. 1 § 6 at ¶ 3.)

V. ARGUMENT

A. Plaintiff Requests Approval of This Class Action Settlement

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

The proposed settlement satisfies each of these factors. Class Counsel conducted extensive discovery before entering into meaningful settlement negotiations in this matter. (*Id* at F. Kim Decl. ¶¶ 8-16, 43.) This discovery permitted Class Counsel to fairly evaluate the strength of the case and the risks associated with ongoing litigation. (F. Kim Decl. ¶ 44.) The Parties also engaged in meaningful confirmatory discovery after the mediation in which Defendants provided Plaintiffs' counsel with an exemplar wage statement confirming that Defendants cured the alleged paystub and wage blending claims. (F. Kim Decl. ¶ 45.) Class Counsel is experienced in handling wage and hour class actions and, after weighing all of the following factors, supports this Settlement Agreement. (F. Kim Decl. ¶ 88; Declaration of Helen U. Kim ("H. Kim Decl.") ¶ 2-4.)

1. The Strength of Plaintiff's Case

a) The Risks Associated with the Misclassification Theory

Plaintiffs' recovery for their misclassification claim faces significant risks. First, Plaintiffs must establish misclassification under two standards: the standard set forth in *Dynamex Operations W. v. Superior Court* (2018) 4 Cal.5th 903 and codified in California Assembly Bill 5 ("AB 5")

(the “ABC test”), or the one set forth in *S.G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341, 350 (the “*Borello* multi-factor test”).

Since Plaintiffs’ allegations arise from work that occurred before January 1, 2020, the ABC test would apply for Plaintiffs’ claims for violations of the Wage Order, which includes his claim for unpaid overtime, meal and rest breaks, and itemized wage statements. (*Gonzalez v. San Gabriel Transit, Inc.* (2019) 40 Cal.App.5th 1131, 1157; Wage Order No. 12-2001, subd. 7 (requiring employers provide “itemized statement[s]” to workers), subd. 11 and 12 (regulating meal breaks and rest breaks for covered workers). Meanwhile, Plaintiffs’ claim for waiting time penalties, which does not arise from the Wage Order, is governed by the *Borello* common law employment test. The *Borello* test would also apply to Plaintiffs’ PAGA and UCL claims to the extent they are derivative of the waiting time penalties claim.

The *Borello* multi-factor test is a more difficult test for Plaintiff than the ABC test, in large part because it does not place the burden on the defendant to refute the presumption of an employer-employee relationship and because no single factor controls the analysis. Accordingly, should the Court determine that the *Borello* multi-factor test applies to Plaintiff and the Class, Plaintiffs’ claims for misclassification would be subject to an even greater risk of failure.

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

The Court could also determine that Defendants willfully misclassified Plaintiffs and the class but did not engage in a pattern or practice of doing so. Plaintiffs contend Defendants engaged in a willful pattern and practice of misclassifying the Class Members. However, they recognize

1 the significant risks outlined above. Accounting for such risks required a significant reduction in
2 Plaintiffs' initial demand. (Kim Decl. ¶ 47.)

3 **b) The Risks Associated with Overtime Claim**

4 Under state and federal law, overtime compensation is based on an employee's "regular
5 rate of pay." (*Huntington Mem'l Hosp. v. Superior Court* (2005) 131 Cal.App.4th 893, 902.) For
6 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 compensation in addition to hourly wages, the "regular rate" is computed by
9 dividing the employee's total compensation by the total hours worked in that period. (*See Marin*
10 *v. Costco Wholesale Corp.* (2008) 169 Cal.App.4th 804, 807.)

11 Plaintiffs allege that Defendants failed to pay overtime at the proper rate. (F. Kim Decl. ¶
12 47.) While this type of claim normally does not involve much risk, Defendants here argued that
13 some of the Class Members are exempt from the overtime requirements. (F. Kim Decl. ¶ 48.)
14 Plaintiffs dispute this but had to acknowledge the risk posed by Defendants' argument. (F. Kim
15 Decl. ¶ 49.)

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

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

22 Plaintiffs claim that Defendants improperly failed to pay them premium wages as a result
23 of misclassifying them as independent contractors or exempt from overtime. Accordingly, success
24 on these claims is contingent on the Court finding that Defendants misclassified Plaintiff and the
25 Settlement Class and failed to authorize and permit meal and rest breaks. (F. Kim Decl. ¶ 50.)

26 Moreover, Defendants contend that, to establish a violation for missed meal periods, a
27 plaintiff must do more than show that a meal break was not taken. (*Brinker*, 53 Cal.4th at 1004.)
28 So long as an employer provides employees with a "reasonable opportunity" to take a duty-free

1 meal period, it has no further duty to “police meal breaks and ensure no work thereafter is
2 performed.” (Id. at 1040-41.) Instead, a plaintiff must show the employer impeded, discouraged,
3 or prohibited the employee from taking a proper break, or otherwise failed to release the employee
4 of all control. *Id.* “Thus, the crucial issue with regard to the meal break claim is the reason that a
5 particular employee may have failed to take a meal break.” (*Washington v. Joe’s Crab Shack* (N.D.
6 Cal. 2010) 271 F.R.D. 629, 641.)

7 There are also risks to Plaintiffs’ rest period claim. Employers are not required to record
8 rest periods and such rest periods are paid. Thus, unlike meal periods, where there are often records
9 showing whether an employee clocked out or not, there is no such evidence to prove a missed rest
10 period or that the employer refused to authorize and permit one. Managing such claims at trial may
11 be exceedingly difficult. Plaintiffs will depend on sample witness testimony and surveys to prove
12 their claims. (F Kim Decl. ¶ 51) While a victory with such evidence is certainly possible, relevant
13 caselaw makes such claims risky from a trial management and due process perspective. (*See Duran*
14 *v. U.S. Bank National Assn.*, 59 Cal.4th 1, 31 (2014) (explaining “[I]f sufficient common questions
15 exist to support class certification, it may be possible to manage individual issues through the use
16 of surveys and statistical sampling”).)

17 **d) The Risks Associated with the Reimbursement Claim**

18 Under California Labor Code § 2802(a) an employer “shall indemnify his or his employee
19 for all necessary expenditures or losses incurred by the employee in direct consequence of the
20 discharge of his or his duties, or of his or his obedience to the directions of the employer.”

21 Plaintiffs allege that Defendants required employees to incur business expenditures for
22 which they were never reimbursed, including the costs using their personal devices for business
23 purposes. (F. Kim Decl. ¶ 52.) Plaintiffs perceived this as a low-risk claim, but the amount of this
24 claim was relatively small. (F. Kim Decl. ¶ 53.)

25 **e) The Risks Associated with the Inaccurate Wage Statement** 26 **Claim**

27 Labor Code § 226(a)(2) requires that every employer shall, semimonthly or at the time of
28 each payment of wages, furnish each of his or his employees an accurate itemized statement in

1 writing showing total hours worked by the employee. Labor Code § 226(a)(9) requires the wage
2 statement to display all applicable hourly rates in effect during the pay period and the
3 corresponding number of hours worked at each hourly rate by the employee.

4 Plaintiffs acknowledged risk posed by Defendants’ argument that they were not
5 misclassified as an independent contractor under the ABC test, which would completely bar any
6 recovery under this claim. While Plaintiffs believed their wage statement claim was relatively
7 strong given that they did not receive any statement associated with their wage payments, there
8 was still risk that a Court would find no liability as to this issue.¹ (Kim Decl. ¶ 55.)

9 **f) The Risks Associated with the Untimely Payment and Waiting**
10 **Time Penalty Claims**

11 Under Labor Code § 203, if an employer fails to provide wages at the time of an employee’s
12 termination or within 72 hours of resignation, then the employee’s wages shall continue as a
13 penalty for up to 30 days. Section 203 reflects a public policy that favors the full and prompt
14 payment of earned wages. (*See Barnhill v. Robert Saunders & Co.* (1981) 125 Cal.App.3d 1, 7;
15 *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.) Similarly, Labor Code § 204 and 210, an
16 employee may seek a penalty for not being paid timely after the close of a payroll period.

17 Here, Plaintiffs and some members of the Proposed Class are no longer employed by
18 Defendant. (F. Kim Decl. ¶ 55.) Plaintiffs argues that they are owed waiting time penalties due to
19 Defendants’ failure to pay appropriate overtime wages and meal period premiums. (*See Diaz v.*
20 *Grill Concepts Services, Inc.* (2018) 23 Cal.App.5th 859.) (F. Kim Decl. ¶ 56.)

21 In evaluating settlement, Plaintiffs considered Defendants’ argument that a good-faith
22 belief exception applies because their actions were not willful and their payment calculations did
23 not result in underpayment. While Plaintiffs dispute that not knowing the law is a sufficient
24 defense, they still had to acknowledge that this argument posed some risk. (F. Kim Decl. ¶ 57.)
25 Finally, Plaintiffs expected Defendants to argue that the Court has discretion to lower the waiting
26

27 ¹ Although neither party contemplated this risk at the time of settlement, there is
28 additional risk posed by *Naranjo v. Spectrum Security Services, Inc.* (Cal., May 6, 2024) 2024
Daily Journal D.A.R. 3799, where the California Supreme Court recently upheld a “good faith”
defense to a wage statement claim under Labor Code § 226.

time penalty amount where it is significantly higher than the wages owed, which is the case here. Plaintiffs disagree that the Court has this discretion, but nonetheless had to consider this argument when determining an appropriate settlement. (F. Kim Decl. ¶ 58.)

g) The Risks Associated with the PAGA Claim

Plaintiffs are cognizant of risks associated with their PAGA claim and have therefore agreed to discount this claim for multiple reasons. First, the aggrieved employees' PAGA claims arise from the same violations as the foregoing class claims and bear the same risks on the merits. Second, the Court has discretion to award less than the maximum penalty, which Defendants argued would be appropriate considering the low amount of direct wage damages, even if Plaintiffs prevail. (See Labor Code § 2699(e)(2) ["a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory"]; *Carrington v. Starbucks Corporation* (2018) 30 Cal.App.5th 504, 529 [affirming award of 10% of maximum PAGA penalty].) Finally, the Settlement Class is compensated for these violations in the proposed Settlement Agreement, and thus any PAGA recovery for these same violations would be duplicative. Thus, PAGA did not make up a significant percentage of the overall potential liability compared to other claims. (F. Kim Decl. ¶¶ 59-60.) As such, the Settlement Agreement's contemplated PAGA payment of \$75,000 is appropriate. (*Id.*)

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

There is significant expense associated with the class certification process, which the Parties can avoid by entering into the contemplated Settlement Agreement now. (F. Kim Decl. ¶ 61.) If the Court did eventually certify a class, trial of a case involving approximately 49 Class Members would require the retention of expensive expert witnesses, the accrual of extensive litigation costs, and a significant time overlay by the parties. (F. Kim Decl. ¶ 62.) 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. (F. Kim Decl. ¶ 63.) An appeal would result in further delay for the Settlement Class Members who are waiting for a resolution in this

1 matter. (*Id.*)

2 **3. The Risk of Maintaining Class Action Status through Trial**

3 This case has not been certified to be tried as a class action. (F. Kim Decl. ¶ 64.) While
4 Plaintiffs believe there is strong evidence to support certification of several possible subclasses,
5 certification is always hard fought and subject to judicial discretion. Moreover, in class actions,
6 decertification is always a possibility. (*Id.*) In attempting to certify a class, the parties would need
7 to conduct multiple depositions, including of the Named Plaintiff and of several person(s) most
8 knowledgeable regarding Defendants' policies. (*Id.*) There is a risk for both sides as to what these
9 depositions will reveal and whether they will support class certification to the extent expected.
10 (*Id.*)

11 **4. The Amount Offered in Settlement**

12 It was very difficult for the Parties to reach this Settlement of \$625,000.00. (F. Kim Decl.
13 ¶ 65.) This Settlement is the result of adversarial, non-collusive, and arms-length negotiations. (F.
14 Kim Decl. ¶ 66.) The Parties arrived at it after extensive investigation and discovery, careful
15 evaluation of the law, risks, and all information substantiating the amount of penalties reasonably
16 likely to be awarded to the class were the trier of fact to find Defendant liable, and the assistance
17 of two experienced mediators, Steven Serratore and Jonathon Andrews. (F. Kim Decl. ¶ 67.)

18 **a) Plaintiffs' Assessment of Defendants' Maximum Exposure**

19 Plaintiffs assessed full value of the Overtime claim, without any discount, at approximately
20 \$250,000. (F. Kim Decl. ¶ 68.) Plaintiffs used an hourly average rate of \$25, 5 hours of overtime
21 per week, and 4,000 workweeks for Class Members. (F. Kim Decl. ¶ 69.) Plaintiffs calculated
22 the overtime premium only since Defendants paid Class Members their overtime hours, but based
23 on the regular rate. (F. Kim Decl. ¶ 70.)

24 The full value of the Meal Period claim and Rest Period Claim, without any discount, was
25 approximately \$200,000 based on an average of one violation per workweek. (F. Kim Decl. ¶ 71.)

26 With regard to the Reimbursement Claim analysis, Plaintiffs believe it was reasonable to
27 value the potential reimbursement at \$50 per Class Member, for reimbursement for of the cost of
28 using one's personal device for communicating with Defendants. This brought the damages for

1 this claim to \$2,450 (\$50 x 49 Class Members). (F. Kim Decl. ¶ 72.)

2 Plaintiffs valued the Wage Statement Claim, without discount, at approximately \$86,250.
3 (F. Kim Decl. ¶ 73.) This is based on thirty-five (35) workweeks for twenty-five (25) Class
4 Members who worked within one year prior to the filing of this lawsuit. (*Id.*)

5 Plaintiff valued the Waiting Time Claim, tied to the claims for unpaid wages, at \$477,750.
6 (Kim Decl. ¶ 74.) This was based on the full amount of waiting time penalties due to Defendants'
7 failure to pay overtime and premium wages. (*Id.*) Considering the derivative nature of Labor Code
8 section 203 and the disputes over willfulness, Plaintiff determined that accepting a steep discount
9 on this claim was appropriate. (Kim Decl. ¶ 75.)

10 Finally, Plaintiff calculated the value of the PAGA claim at \$500,000 for the PAGA Period,
11 which consists of 1,000 pay periods. (Kim Decl. ¶ 76.) The main risk taken into account with
12 PAGA is the discretionary nature of the penalty award. (Kim Decl. ¶ 77.) The court could award
13 the statutory maximum of one hundred (\$100) dollars for the initial violation and two hundred
14 (\$200) dollars thereafter or – in theory – one cent per wage statement. (*Id.*) While there is a dearth
15 of available authority, in Plaintiff's view, were they to succeed on any of the underlying Labor
16 Code violations (especially waiting time penalties), it is not likely that the Court would also award
17 a large amount of PAGA penalties on top of damages. (Kim Decl. ¶ 78.)

18 Per Plaintiffs' assessment, the maximum potential value of all of Plaintiffs' and the
19 Settlement Class Members' claims was approximately \$1,516,450. (F. Kim Decl. ¶ 79.) However,
20 as a result of the forgoing risks on the merits, Class Counsel believes the Gross Settlement Amount
21 of \$625,000.00 is fair and reasonable. (F. Kim Decl. ¶ 80.)

22 **5. The Experience and Views of Counsel**

23 Finally, counsel's experience and success in similar class actions also weigh in favor of
24 preliminary approval. *See Wershba, supra*, 91 Cal.App.4th at 245. Kim Legal, APC and Helen
25 Kim Law, APC are very experienced in prosecuting complex employment litigation, and on
26 complex wage, hour, and working condition violations. (F. Kim Decl. ¶¶ 86-91 ; H. Kim Decl. ¶¶
27 3-5 .) The firms are well versed in class action litigation and have diligently and aggressively
28 pursued this action. (*Id.*) Kim Legal, APC currently serves as Class Counsel for dozens of pending

class action lawsuits in Northern, Central, and Southern California. (*Id.*) A list of representative cases that Kim Legal, APC has handled is included in the accompanying declaration of Frank H. Kim. (*Id.*) Helen Kim Law, APC has served as Class Counsel for class action lawsuits. A list of representative cases that Helen Kim Law, APC has handled is included in the accompanying declaration of Helen U. Kim (H. Kim Decl. ¶ 4). After factoring in the risks explained above, Class Counsel believes that the proposed settlement is fair and reasonable. (F. Kim Decl. ¶ 91; (H. Kim Decl. ¶ 2.)

6. The PAGA Allocation is Reasonable

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

Here, \$75,000 is allocated to PAGA Penalties. (Kim Decl. ¶ 81.) Given that Defendants will pay a total of \$625,000 as a result of the alleged violations, the class and PAGA settlement is a large disincentive for Defendant to engage in similar Labor Code violations in the future. (Kim Decl ¶ 82.) And, because all Class Members will receive a Class Notice with contact information for Class Counsel, those employees will know to contact Class Counsel in the future if Defendants attempts to engage in similar practices. (*Id.*) These factors – the payment of a large sum and employee notice of violations and potential violations – serve to maximize enforcement of state labor laws. (Kim Decl ¶ 83.) Also, unlike in *Moniz*, here there is no unsubstantiated and disproportionate allocation of civil penalties between different groups of employees. (Kim Decl ¶ 84.) Each Aggrieved Employee will receive the same amount of civil penalty because each worked one Workweek during the PAGA Period. (Kim Decl ¶ 85.) Based on the foregoing, the PAGA allocation and the individual PAGA payment satisfies policies underlying California’s wage and hour laws.

1 **7. The Proposed Plan of Allocation Is Fair and Reasonable**

2 Plans of allocation are subject to the same standard of review as class action settlements;
3 they must be “fair, adequate and reasonable.” (*See, e.g., Officers for Justice v. Civil Service*
4 *Comm’n* (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the proposed plan of allocation
5 compensates Settlement Class Members pro rata based on the number of work weeks worked by
6 the Settlement Class Member during the Settlement Period. The payment to each member of the
7 Settlement Class not excluding him/ herself will be determined by dividing the Net Settlement
8 Amount by the total number of Workweeks worked by all Participating Class Members during the
9 Class Period and multiplying the result by each Participating Class Member’s Workweeks. This
10 allocation distributes Settlement funds proportionally to each class member’s damages, and should
11 therefore be approved as fair, adequate, and reasonable. (Ex. 1 at § 3, ¶2.4.)

12 **8. The Proposed Notice Fairly Apprises the Settlement Class Members of**
13 **the Terms of the Settlement and of the Class Members’ Rights under**
14 **the Settlement**

15 Plaintiffs request that the Court approve the proposed plan and form of Class Notice. The
16 standard for determining the adequacy of notice is whether the notice has “a reasonable chance of
17 reaching a substantial percentage of the class members.” (*Cartt v. Superior Court* (1975) 50
18 Cal.App.3d 960, 974.) Pursuant to the Settlement Agreement, the Notice will be sent to the last
19 known address of all Settlement Class Members, or to an updated address if one is located in the
20 National Change of Address Database. (Ex. 1 at § 8, ¶ 4.2 - 4.3). If any Notices are returned as
21 undeliverable, the Settlement Administrator will undertake another reasonable address verification
22 measure to locate a valid mailing address and will promptly send the Notice to the new address.
23 (*Id.*) As such, the Notice is likely to reach most, if not all, Settlement Class Members.

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

1 settlement. (*Ibid.*)

2 Here, the Notice clearly explains the proposed Settlement Agreement and the options to
3 opt out of the Settlement or object to it at the Final Approval Hearing. (Ex. 1 at § 8, ¶¶ 5-6; see
4 also Ex. A to the Settlement Agreement at pp. 2, 4 [Class Notice].) In short, the Court should
5 approve the proposed Class Notice because it describes the proposed settlement with enough
6 specificity to allow Settlement Class Members to make an informed choice regarding whether to
7 participate.

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

9 The Named Plaintiffs are entitled to an enhancement for their valiant effort and time
10 expended in this matter. (F. Kim Decl. ¶ 93.) The time spent by Taliah Leslie and Shelby
11 Grochowski is significant and includes researching and retaining competent counsel; providing
12 information to Class Counsel regarding the nature of the work at Defendant; compiling relevant
13 documents; working closely with Class Counsel to develop the theories of liability and martial
14 relevant evidence; regularly discussing the status of the case with Class Counsel; participating by
15 telephone during mediation; and responding promptly to Class Counsel's communications
16 regarding settlement. (F. Kim Decl. ¶ 94.) Thus, in addition to the sums paid to Settlement Class
17 Members, Plaintiffs requests a proposed litigation enhancement in the amount of \$15,000.00 for
18 each (totaling \$30,000 total), to be paid from the Gross Settlement Fund. (Ex. 1 at ¶ 3.2.1.) As set
19 forth in the Settlement Agreement, Plaintiffs will also be entering into a general release of liability
20 pursuant to Civil Code Section 1542. (F. Kim Decl. ¶ 95; Ex. 1 at ¶ 6.1.)

21 Class Counsel considers this to be a fair and reasonable enhancement. (F. Kim Decl. ¶ 96;
22 H. Kim Decl. ¶ 7.) The enhancement takes into consideration the time, effort, and expense incurred
23 by Plaintiffs in coming forward to litigate this matter on behalf of all Settlement Class Members.
24 (*Id.*) Plaintiffs will provide a detailed declaration with the Final Approval Motion detailing their
25 participation and further justification for the enhancement. (F. Kim Decl. ¶ 96.)

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

27 As indicated on the Proof of Service, Plaintiffs' Motion for Approval of Class Action
28 Settlement will be concurrently uploaded to the Labor and Workforce Development Agency's

1 (“LWDA”) website on the date this Motion is filed as required by statute. Proof of submission of
2 Plaintiffs’ Motion, a copy of the email from the LWDA confirming receipt, is attached to the
3 Declaration of Frank H. Kim as Exhibit 2. (F. Kim Decl. ¶ 97.)

4 **VIII. CONCLUSION**

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

13
14 DATED: October 24, 2024

KIM LEGAL, APC

15
16 By: /s/ Frank Kim

17 Frank H. Kim

18 Attorneys for Plaintiffs Taliah Leslie and Shelby
19 Grochowski and the Proposed Class
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(PROOF OF SERVICE)
[CCP 1013(a)(3)]

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 3435 Wilshire Blvd., Suite 2700, Los Angeles, CA 90010.

On October 24, 2024, I served all interested parties in this action the following documents described as: **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** addressed as follows:

KAYNE WEST 8025 Melrose Ave Los Angeles, CA 90046 Ye@Yeezy.com	YEEZY APPERAL 8025 Melrose Ave Los Angeles, CA 90046 Ye@Yeezy.com
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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 MAIL) I placed the documents in an envelope and deposited such envelope in the mail with the United States Postal Service. The envelope was mailed with postage thereon fully prepaid.

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

/s/ Frank Kim

Frank H. Kim