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

EMMANUEL WRIGHT, individually and on behalf of all others similarly situated, and in his representative capacity; ASHLEY DIANA CURRIE, individually and on behalf of all others similarly situated; KARIM BENZAKOUR, individually and on behalf of all others similarly situated; and RANDAL DAVIS, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

GWE, LLC, a foreign limited liability company; WPP Group USA, Inc., a foreign corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No.: 21STCV03820

[Case Assigned for All Purposes to Hon. Elihu M. Berle in Dept. 6]

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

[Filed concurrently with Declaration of Frank H. Kim]

Date: June 17, 2022
Time: 9:00 a.m.
Dept.: 6

Complaint Filed: February 1, 2021
Trial Date: None Set

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on June 17, 2022 at 9:00 a.m. in Department 6 of the above-entitled court, Plaintiffs Emmanuel Wright, Ashley Diane Currie (erroneously named as Ashley Diana Currie), Karim Benzakour, and Randal Davis (together, “Plaintiffs”) will move the Court for an Order (1) granting preliminary approval of the parties’ class action settlement; (2) ordering the proposed Class Notice to be sent to the settlement class; (3) granting conditional certification of the settlement class; (4) conditionally appointing Plaintiffs as Class Representatives and Plaintiffs’ Counsel as Class Counsel; and (5) setting a date for Final Approval.

The Motion will be based on this Notice of Motion, the attached Memorandum of Points and Authorities, the Declaration of Frank H. Kim, the Settlement Agreement, 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: May 6, 2022

KIM LEGAL, APC
HELEN KIM LAW, APC

By: /s/ Frank H. Kim
 Frank H. Kim, Esq.
 Helen U. Kim, Esq.
 Attorneys for Plaintiffs and the
 Proposed Class

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Emmanuel Wright, Ashley Diana Currie (erroneously named as Ashley Diana
4 Currie), Karim Benzakour, and Randal Davis (together, “Plaintiffs”) seek preliminary approval
5 of a \$335,000 class action settlement of wage and hour claims on behalf of approximately 220
6 non-exempt employees who worked one or two days for Defendants GWE, LLC d/b/a
7 Townhouse (“Townhouse”) and WPP Group, USA, Inc. (“WPP Group USA”) (together,
8 “Defendants”). Plaintiffs alleged that they and the putative class members were not paid
9 minimum wages and overtime wages, were not provided rest periods, did not receive accurate
10 wage statements, and were not paid all wages upon termination. Plaintiffs also allege that they
11 and the putative class members are entitled to relief under California’s Unfair Competition Law,
12 Business and Professions Code §§ 17200 *et seq.*

13 This settlement will provide a substantial remedy for the class. (*See Settlement*
14 *Agreement of Class and Private Attorneys General Act Claims (“Settlement Agreement”), Ex. 1*
15 *to the Declaration of Frank H. Kim in Support of Plaintiffs’ Motion for Preliminary Approval of*
16 *Class and Representative Action Settlement (“FKim Decl.”), filed herewith). The parties*
17 *finalized the Settlement Agreement just over a year after the original complaint was filed. The*
18 *Settlement Agreement contemplates that the Settlement Class who do not opt-out (the*
19 *“Settlement Class Members”)* will receive payments from the Gross Settlement Amount around
20 November 2022. The average recovery for a Settlement Class Member (the majority of whom
21 worked only one day and all of whom worked no more than two days) is approximately \$700.

22 The terms of the Settlement Agreement are fair, reasonable, and adequate, satisfying the
23 criteria for preliminary judicial approval. Defendants do not oppose this motion. Plaintiffs
24 respectfully requests that this Court: (1) grant preliminary approval of the parties’ class action
25 settlement; (2) order the proposed Class Notice to be sent to the settlement class; (3) grant
26 conditional certification of the settlement class; (4) conditionally appoint Plaintiffs and
27 Plaintiffs’ Counsel as Class Representative and Class Counsel; and (5) set a date for Final
28 Approval.

II. PRE-SETTLEMENT PROCEEDINGS

A. Factual Background

On November 14, 2020, Plaintiffs were employed by Townhouse for one day as talent in a video commercial. (FKim Decl., ¶ 3.) Plaintiffs allege that they were directly employed by Townhouse and jointly employed by its parent company, WPP Group USA. (*Id.*)

Plaintiffs worked over 8 hours on November 14, 2020 and promised a daily salary in the amount of \$400 to \$500. (FKim Decl., ¶ 2.) Plaintiffs allege that because Defendants paid them a daily salary in the amount of \$400 to \$500, they were not separately paid their overtime wages. (*Id.*) Plaintiffs also allege that Defendants failed to pay them premium wages for missed rest periods at the appropriate rate of pay, among other claims. (*Id.*)

B. Procedural Background

On February 1, 2021, Plaintiff Emmanuel Wright (“Plaintiff”) filed a Class Action Complaint against Defendants alleging claims for: (1) Failure to Provide Rest Breaks under Labor Code §§ 226.7 and 512; (2) Failure to Pay Overtime under Labor Code §§ 510, 1194, and 1199; (3) Penalties Pursuant to Labor Code § 203; (4) Wage Statement Violations under Labor Code § 226(a); and (5) Violation of Business & Professions Code § 17200. (FKim Decl. ¶ 5.)

On March 17, 2021, Plaintiff filed a notice with the California’s Labor and Workforce Development Agency (“LWDA”) regarding his intent to file an action seeking civil penalties under PAGA. (FKim Decl., ¶ 6.) The LWDA did not indicate and has not, as of the date of this motion, indicated an intention to investigate the alleged Labor Code violations. (*Id.*)

On June 8, 2021, Plaintiff filed a First Amended Complaint to add a claim under PAGA under Labor Code § 2699, *et seq.*, which included allegations of a minimum wage violation. (FKim Decl., ¶ 7.)

On July 16, 2021, the parties agreed to early mediation. In advance of mediation, Plaintiffs demanded and Defendants provided pertinent data for workers in the Settlement Class so that the parties could fully investigate the claims at issue and understand their strengths and weaknesses. (FKim Decl., ¶ 8.)

Specifically, Defendants provided timekeeping and payroll data for 169 employees who

1 were compensated by Defendants at a daily salary, all of whom worked one to two days for
2 Defendants. (FKim Decl., ¶ 9.)

3 Plaintiffs' Counsel had mediation data analyzed by an expert to prepare a damage model
4 for mediation. (FKim Decl., ¶ 10.)

5 On November 15, 2021, the parties attended a full-day mediation with experienced
6 mediator Judge Jeffrey K. Winikow (Ret.). (FKim Decl., ¶ 11.) In preparation for mediation, the
7 parties prepared detailed mediation briefs. Plaintiff attended the mediation and was an active
8 participant. (*Id.*) The mediation concluded at the end of the day with a mediator's proposal and
9 did not settle. (*Id.*)

10 After the mediation, Plaintiffs' Counsel served formal discovery and began interviewing
11 potential class members from different production sets to gather additional facts supporting
12 Plaintiffs' claims and advising them of the instant lawsuit in an effort to prevent Defendants
13 from entering into individual settlements in amounts that would not, in the opinion of Plaintiffs'
14 Counsel, reflect the true value of their claims. (FKim Decl., ¶ 12.)

15 As a result of these efforts, Plaintiffs' Counsel retained as clients Ashley Diane Currie,
16 Karim Benzakour, and Randal Davis. (FKim Decl., ¶ 12.)

17 Meanwhile, the parties were simultaneously engaging in ongoing settlement discussions
18 and in February 2021, entered into a settlement memorandum reflecting a settlement amount that
19 is 1.65 times greater than the mediator's proposal. (FKim Decl., ¶ 13.)

20 On February 23, 2022, pursuant to stipulation and order, Plaintiff filed a Second
21 Amended Complaint to add Ashley Diane Currie, Karim Benzakour, and Randal Davis as
22 additional parties. (FKim Decl., ¶ 14.)

23 Based on their own independent investigation and evaluation, Plaintiffs' Counsel is of the
24 opinion that the Settlement Agreement with Defendants is fair, reasonable and adequate, and in
25 the best interest of the Settlement Class in light of all known facts and circumstances, including
26 the risk of significant delay, defenses asserted by Defendants, uncertainties regarding a class and
27 representative action trial on the merits, and numerous potential appellate issues. (FKim Decl., ¶
28 15.)

1 **III. THE SETTLEMENT AGREEMENT**

2 The Settlement Agreement resolves claims of Plaintiffs and the proposed Class, including
3 Aggrieved Employees. The basic terms of the Settlement are:

4 **A. Gross Settlement Amount:** The Gross Settlement Amount is three hundred and
5 thirty-five thousand dollars (\$335,000). (*See* Settlement Agreement at ¶ III.B.1.) The Net
6 Settlement Fund is the Gross Settlement Amount minus the sum of: (1) Fees Award; (2) Cost
7 Award; (3) Named Plaintiff Enhancement Payments; and (4) Settlement Administration Costs.
8 (*Id.* at ¶ I.P.) Defendants will separately pay for employer-side taxes on the amounts distributed
9 as wages. (*Id.* at ¶ III.D.1.)

10 Below is Plaintiffs' Counsel's estimate of the Net Settlement Fund:

11	Gross Settlement Amount:	\$	335,000.00
12	Fees Award:	\$	111,666.66
13	Costs Award:	\$	12,000.00
	Named Plaintiff Enhancement Payments:	\$	30,000.00
	<u>Settlement Administration Costs:</u>	<u>\$</u>	<u>8,200.00</u>

14 **Net Settlement Fund** **\$ 173,133.34**

15 (*Id.* at ¶ I.P.)

16 **B. Class Members:** The "Settlement Class" is defined as: "all current and former
17 non-exempt employees in California who served as background talent or extras for Defendants
18 and were compensated at a fixed salary during the Settlement Class Period" from February 1,
19 2017 through the date the Settlement is preliminary approved by the Court. (*Id.* at ¶ I.Y.)

20 **C. Settlement Class Member Release:** Settlement Class Members will release "all
21 claims that arose during the Settlement Class Period based on the facts alleged or that could have
22 been alleged in the Complaint for failure to pay minimum wages; failure to pay straight time
23 compensation, overtime compensation, double-time compensation, reporting time compensation,
24 and/or interest; missed, late, short or interrupted meal and/or rest periods, including any claim for
25 any alleged failure to provide meal or rest periods or pay premiums for missed, late, short or
26 interrupted meal or rest periods, or to pay such premiums at the regular rate of compensation;
27 penalties arising out of or related to any or all of the aforementioned claims, including, but not
28 limited to, recordkeeping penalties, wage statement penalties, minimum-wage penalties, and

1 waiting-time penalties; inaccurate or otherwise improper wage statements and/or failure to keep
2 or maintain accurate records; unlawful and unfair business practices; and attorneys' fees and
3 costs. The claims released by the Settlement Class Members also include any and all claims that
4 arise out of or in connection with the claims and facts alleged in the Lawsuit, and any claims
5 which could have been asserted in the Lawsuit arising from the alleged facts and/or primary
6 rights alleged to have been invaded to the fullest extent permitted by law. This release includes
7 claims alleging a violation of the Wage Orders of the California Industrial Welfare Commission,
8 including but not limited to Wage Order 12-2001; the California Labor Code (including, but not
9 limited to, sections 201-203, 204, 205.5, 210, 212, 216, 218, 218.5, 218.6, 222.5, 223, 224, 225,
10 225.5, 226, 226.3, 226.7, 226.8, 227.3, 245, 246, 248, 248.1, 450, 510, 511, 512, 516, 558, 1174,
11 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.2, 1197.5, 1198, 1198.5, 1199, and 2698 et
12 seq.); California Business and Professions Code section 17200, *et seq.*; the California Civil
13 Code, including but not limited to, sections 3287, 3289, 3336 and 3294; 8 CCR § 11120;
14 California Code of Civil Procedure § 1021.5; the California common law of contract; and the
15 Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*” (*Id.* at ¶ III.G.1.)

16 **D. PAGA Released Claims:** The PAGA Aggrieved Employees release “all claims
17 under PAGA that arose during the PAGA Settlement Period based on the facts alleged in
18 Wright’s notice letter to the Labor & Workforce Development Agency and/or Plaintiffs’
19 Lawsuit, which are or could be the basis of claims under California Labor Code for unpaid
20 wages, including, but not limited to, failure to pay minimum wages; failure to pay straight time
21 compensation, overtime compensation, double-time compensation, reporting time compensation,
22 and/or interest; missed, late, short or interrupted meal and/or rest periods, including any claim for
23 any alleged failure to provide meal or rest periods or pay premiums for missed, late, short or
24 interrupted meal or rest periods, or to pay such premiums at the regular rate of compensation;
25 penalties arising out of or related to any or all of the aforementioned claims, including, but not
26 limited to, recordkeeping penalties, wage statement penalties, minimum-wage penalties, and
27 waiting-time penalties; inaccurate or otherwise improper wage statements and/or failure to keep
28 or maintain accurate records; unlawful and unfair business practices; and attorneys’ fees and

costs. The claims released by the PAGA Aggrieved Employees also include any and all claims under PAGA, Cal. Lab. Code § 2698 *et seq.*, that arise out of or in connection with the claims and facts alleged in the Lawsuit, and any claims which could have been asserted in the Lawsuit arising from the alleged facts and/or primary rights alleged to have been invaded to the fullest extent permitted by law. This release includes claims under PAGA alleging a violation of the Wage Orders of the California Industrial Welfare Commission, including but not limited to Wage Order 12-2001; and/or alleging a violation of the California Labor Code (including, but not limited to, sections 201-203, 204, 205.5, 210, 212, 216, 218, 218.5, 218.6, 222.5, 223, 224, 225, 225.5, 226, 226.3, 226.7, 226.8, 227.3, 245, 246, 248, 248.1, 450, 510, 511, 512, 516, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.2, 1197.5, 1198, 1198.5, 1199, and 2698 *et seq.*).” (*Id.* at ¶ III.G.2.)

E. PAGA Payment: The Settlement Agreement provides a PAGA allocation of twenty-five thousand dollars (\$25,000) from the Class Payment Fund, of which 75% (\$18,750) will be distributed to the LWDA and 25% (\$6,250) will be distributed to the “PAGA Aggrieved Employees” (*i.e.*, the Settlement Class who were employed from of March 17, 2020 through the date the settlement is preliminarily approved by the Court). (*Id.* at ¶¶ III.C.3, I.T.) Aggrieved Employees are not permitted to opt-out or exclude themselves from the PAGA payment or the PAGA release. (*Id.* at ¶ III.I.4.a.)

F. Attorneys’ Fees, Costs, and Service Awards: The Settlement Agreement provides for payment, subject to Court approval, to Class Counsel of up to one-third of the settlement fund, or \$111,66.67, for attorneys’ fees. (*Id.* at ¶ III.C.2.) Class Counsel may request, and Defendants agree not to oppose, reimbursement of reasonable and actual costs expended in prosecuting this litigation from the settlement fund, in an amount up to \$12,000. (*Id.*) It also specifies that Plaintiffs may request up to \$7,500 of the fund as a service award for their efforts in bringing these class and/or representative action claims and for the risks they incurred in doing so. (*Id.* at ¶ III.C.1.)

G. Settlement Administrator and Administration Costs: The parties have identified ILYM Group, Inc. as the Settlement Administrator for this settlement. The payment to

1 the Settlement Administrator for its services should not exceed \$8,200. (*Id.* at ¶ III.C.4.) The cost
2 of settlement administration will be taken out of the Gross Settlement Amount. (*Id.* at ¶ .)

3 **H. Requests for Exclusion:** The Settlement Class may choose to opt-out of the
4 settlement (but not from the PAGA payment or PAGA release). (*Id.* at ¶ III.I.3.a.) Workers
5 within the Settlement Class who do not opt-out are referred to as “Settlement Class Members.”
6 (*Id.* at ¶ I.AA.)

7 **I. Non-PAGA Class Member Settlement Awards:** After deducting the Fees
8 Award, Costs Award, Named Plaintiff Enhancement Payments, Settlement Administration Costs,
9 and the PAGA Payment, the remainder of the settlement fund (“Class Payout Fund”) will be
10 distributed on a pro rata basis, based on the number of pay periods each Settlement Class
11 Member worked between February 1, 2017 through the date the Settlement is preliminary
12 approved by the Court. (*Id.* at ¶ III.C.5.)

13 Each individual settlement payment will be reduced by any required legal deductions, but
14 Defendants but Defendants will separately pay for their share of the payroll taxes. (*Id.* at ¶
15 III.D.1.) These individual settlements payments will represent wages (75%) and penalties (25%)
16 and will be reported as such. (*Id.* at ¶ III.C.5.)

17 **J. PAGA Penalties to Aggrieved Employees:** Aggrieved Employees (i.e. the
18 Settlement Class who were employed from March 17, 2020 through the date the settlement is
19 preliminary approved by the Court) will receive payment for PAGA penalties based on the
20 number of pay periods worked by the respective Aggrieved Employee. (*Id.* at ¶¶ I.R-S,
21 III.C.3.b.) All of the individual PAGA payments are penalties and will be reported as such. (*Id.*
22 at ¶ III.3.C.5.)

23 **K. Uncashed Checks:** If any of the Settlement Class Members or Aggrieved
24 Employees do not cash their settlement check(s) within 180 days after the date it is mailed, those
25 funds will be distributed to the Controller of the State of California to be held pursuant to the
26 Unclaimed Property Law, California Civil Code section 1500 *et seq.*, for the benefit of those
27 Settlement Class Members and PAGA Aggrieved Employees who did not cash their checks until
28 such time that they claim their property. (*Id.* at ¶ III.C.6.b.)

1 **L. Settlement Administration and Notice Procedures:** Within 10 days of entry of
2 the Preliminary Approval Order of this Settlement, Defendant will provide the contact
3 information of the Settlement Class. (*Id.* at ¶ III.I.3.b.) Within 14 days of receiving the class
4 information, the Settlement Administrator shall send the Settlement Class a Notice of Proposed
5 Settlement of Class Action (“Class Notice”). (*Id.* at ¶ III.I.3.a.) Prior to the mailing, the
6 Settlement Administrator will perform a search to ensure that the contact information is correct
7 and if any Class Notice is returned, will promptly re-mail the Notice Statement with an updated
8 address. (*Id.* at ¶ III.I.3.a.)

9 **M. Class Notice:** The Class Notice will be sent to the Settlement Class. (*See id.* Ex.
10 A.) The Class Notice explains the terms of the Settlement and how to receive a settlement
11 payment, object, or opt-out (for the Settlement Class, but not for Aggrieved Employees). (*Id.*)
12 The Class Notice includes an estimated payment based on the number of pay periods worked by
13 the employees as indicated in Defendants’ records. (*Id.*) The Class Notice will include contact
14 information for Class Counsel to answer questions. (*Id.*) The Settlement Class can opt-out of the
15 settlement by submitting a request for exclusion within 60 days after the date of the initial
16 mailing of the Class Notices. (Settlement Agreement at ¶ III.I.3.a.)

17 **IV. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT**
18 **AGREEMENT BECAUSE IT IS FAIR, REASONABLE, AND ADEQUATE**

19 A class action settlement requires the approval of a court after a hearing. (Cal. Rules of
20 Court 3.769(a); *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1800-01 (1996).) Court
21 approval is a two-step process. (*See In re Cellphone Termination Fee Cases*, 180 Cal. App. 4th
22 1110, 1118 (2009).) First, the court conducts a preliminary review of the settlement, the
23 proposed notice to the Settlement Class, and the proposal to certify a settlement class. (Cal.
24 Rules of Court 3.769(c), (d).) Then, after notice of the settlement has been distributed to the
25 Settlement Class, the court conducts a final review looking into the fairness of the proposed
26 settlement. (Cal. Rules of Court 3.769(g).)

27 To determine whether the terms of a class settlement are “fair, adequate and reasonable,”
28 courts consider factors including,

1 the strength of plaintiffs' case, the risk, expense, complexity and likely duration
2 of further litigation, the risk of maintaining class action status through trial, the
3 amount offered in settlement, the extent of discovery completed and the stage of
4 the proceedings, the experience and views of counsel, the presence of a
5 governmental participant, and the reaction of the class members to the proposed
6 settlement.

7 (*Dunk*, 48 Cal. App. 4th at 1801, 1803 (citing *Officers for Justice v. Civil Serv. Comm'n*, 688
8 F.2d 615, 624 (9th Cir. 1982).) A proposed class action settlement is presumed fair where: (1)
9 the settlement is reached through arm's-length bargaining; (2) investigation and discovery are
10 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
11 litigation; and (4) the percentage of objectors is small. (*Munoz v. BCI Coca-Cola Bottling Co. of*
12 *L.A.*, 186 Cal. App. 4th 399, 408 (2010) (quoting *Dunk*, 48 Cal. App. 4th at 1802).) In
13 determining the adequacy of a class action settlement, a court must be independently satisfied
14 that "the consideration being received for the release of class members' claims is reasonable in
15 light of the strengths and weaknesses of the claims and the risks of the particular litigation."
16 (*Munoz*, 186 Cal. App. 4th at 408 (citing *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th
17 116, 129 (2008)).)

18 Here, the terms of the Settlement Agreement should be deemed presumptively fair
19 because: (1) the proposed settlement was the product of non-collusive, arm's-length bargaining;
20 (2) the settlement provides reasonable compensation to each Class Member in light of the risks
21 of litigation; (3) the Settlement Class is represented by experienced counsel; (4) the allocation of
22 PAGA penalties are reasonable; (5) the proposed content of and procedures for the Class Notice
23 are adequate; (6) the service awards for the Class Representative is reasonable; and (7) the
24 requested attorneys' fees award is reasonable. Together, these factors support the conclusion that
25 the Settlement is fair, adequate, and reasonable.

26 **A. The Settlement is Presumptively Fair Because it is the Result of Non-**
27 **Collusive, Arms-Length, and Informed Negotiations by Experienced**
28 **Counsel.**

A settlement is presumptively fair where it was reached through arm's-length bargaining,
was informed by adequate exchanged information, and conducted by experienced counsel.
(*Munoz*, 186 Cal. App. 4th at 408.)

1 The parties here negotiated the Settlement Agreement in good faith after significant
2 investigation and exchange of information regarding the claims, which was done under the
3 supervision of well-experienced counsel. Plaintiffs' Counsel investigated the claims through
4 interviews with potential class members from different production sets and with information
5 produced by Defendants. (FKim Decl. ¶¶ 8, 12.) Defendants provided, and Plaintiffs analyzed,
6 the time and pay records for members in the Settlement Class who were compensated at a daily
7 salary. (*Id.* at ¶ 9).

8 In anticipation of mediation, Plaintiffs' Counsel had a damages analysis prepared by an
9 expert and the parties prepared detailed mediation briefs. (*Id.* at ¶¶ 10-11). During mediation, the
10 parties discussed their positions with experienced mediator Judge Jefferey Winikow (Ret.). (*Id.*
11 at ¶ 11.) Plaintiffs' Counsel, Kim Legal, APC ("Kim Legal") and Helen Kim Law, APC ("Helen
12 Kim Law"), are experienced and qualified to evaluate the class claims, the viability of the
13 defenses asserted, and the risks and benefits of trial and settlement. (*Id.* at ¶¶ 65-67; Decl. of
14 Helen U. Kim in Support of Plaintiffs' Motion for Preliminary Approval of Class and
15 Representative Action Settlement ("HKim Decl.") ¶¶ 5-6.) Kim Legal and Helen Kim Law have
16 significant experience litigating wage and hour cases, including involving claims similar to the
17 ones in this case. (FKim Decl. ¶ 67; HKim Decl. ¶¶ 5-6).

18 The Settlement is the result of non-collusive, arms-length, and informed negotiation
19 between the parties, which supports the presumption that it is fair and should be approved.

20 **B. The Settlement is Within the Range of Reasonableness Because it Provides**
21 **Reasonable Compensation for the Settlement Class' Damages in Light of**
22 **Significant Litigation Risks.**

23 The amount of the settlement in light of the strength of Plaintiffs' case is the most
24 important reasonableness factor. (*See Kullar*, 168 Cal. App. 4th at 130.) Here, the Settlement will
25 provide the Settlement Class Members with a substantial payment for their claims. The estimated
26 average award (after the deduction of attorneys' fees and costs, the service award, settlement
27 administration costs, and LWDA payment) for each Settlement Class Member is approximately
28 \$700. FKim Decl. at ¶ 31.) The Settlement Class are not required to submit a claim form to
participate or receive their settlement awards. (*Id.* at ¶ 25.)

1 Plaintiffs and the proposed settlement Class faced several significant litigation risks if
2 they decided to pursue their claims all the way to judgment. For example, after the unsuccessful
3 mediation, Defendants were planning to offer settlement agreements with each of the Settlement
4 Class. (*Id.* at ¶ 33.) If Defendants were successful in settling with a fraction of the group of
5 employees who were paid a daily wage over \$1,500, the value of the remaining class would
6 decrease substantially and jeopardize the ability to obtain a strong settlement for the class as a
7 whole. (*Id.*)

8 Moreover, Plaintiffs expect Defendants to have contested class certification on the rest
9 break claim the grounds that the Settlement Class worked in different productions, each requiring
10 individualized inquiries on whether rest breaks were lawfully provided. (*Id.* at ¶ 34.) Plaintiffs’
11 Counsel estimates based on the data that the Settlement Class worked in at least 32 different
12 production sets. (*Id.*)

13 Plaintiffs also anticipate that Defendants would challenge whether Labor Code § 515(d)
14 is applicable only prohibits the payment of all regular and overtime hours for non-exempt
15 employees who are paid a *weekly* salary, rather than a *daily* salary.

16 Finally, as detailed below, the waiting penalty claim amounts to over 98% of the
17 maximum exposure for the Class (excluding PAGA penalties). Although Plaintiffs are confident
18 that they can establish that Defendants’ failure to pay was “willful,” the value of the entire case
19 is dependent on this fact and poses some risk to Plaintiffs. Therefore, a discount on this claim is
20 reasonable.

21 On Plaintiffs’ PAGA claims, Plaintiffs anticipate that Defendants would argue that
22 PAGA penalties cannot be “stacked” – i.e., there cannot be more than one PAGA penalty
23 awarded in each pay period for each aggrieved employee.

24 The Settlement’s monetary relief compares favorably with Plaintiffs’ Counsel’s estimated
25 full relief for the Settlement Class. Plaintiffs’ Counsel calculated a maximum total exposure to
26 be 3,162,527.94 for the non-PAGA claims and between \$13,100 to \$52,400 for the PAGA
27 claims, for a total maximum exposure of between \$3,179,581.19 to \$3,230,740.95. (FKim Decl.
28 ¶ 32.) However, Plaintiffs’ Counsel believe a likely recovery in this action would be much lower,

1 given the litigation risks discussed above. (*Id.* ¶¶ 33-37.) Plaintiffs’ Counsel expects that the
2 claims of the Class after trial, given the substantial litigation risks, would be closer to
3 \$1,271,832.48 to \$1,292,296.38. (*Id.* at ¶ 47.) In other words, the \$335,000 Gross Settlement
4 Amount represents a reasonable 10.3% to 10.5% of the maximum exposure and an impressive
5 26% recovery for the Settlement Class if tried to judgment. (*Id.* at ¶¶ 32, 47; *see e.g., Thomas*,
6 2013 U.S. Dist. LEXIS 204256, at *19-20 (granting final approval of class settlement involving
7 California Labor Code claims where total settlement reflected 3.7% to 12.8% of all potential
8 recoveries); *Van Ba Ma v. Coridien Holding, Inc.*, No. SACV 12-02161-DOC (RNBx), 2014
9 U.S. Dist. LEXIS 13296 (C. D. Cal. Jan. 31, 2014) (granting preliminary approval of class
10 settlement of California Labor Code claims where total settlement represented 9.1% of the
11 estimated total value of the action); *Cooley v. Indian River Transp. 26 Co.*, No. 1:18-cv-00491,
12 2019 U.S. Dist. LEXIS 11694, at *21-22 (E.D. Cal. Jan. 24, 2019) (granting preliminary
13 approval of class settlement of California Labor code claims where total settlement represented
14 11% of the estimated total value of the action).)

15 While Plaintiffs’ Counsel remains confident that Defendants failed to comply with
16 California law, they recognize that a fact finder could find for Defendants on any one or more of
17 their claims. Extensive litigation would not only be costly and time-consuming but also
18 uncertain. Plaintiffs would have to litigate class certification, establish class-wide liability, and
19 demonstrate damages for numerous claims. Such efforts would likely take years, necessitate
20 expert witness testimony, and include other costs, risks, and potential delays. Appeals could
21 further delay and jeopardize recovery. By contrast, the Settlement, with a Settlement Fund of
22 \$335,000 ensures timely relief and substantial recovery of the wages, damages, and other
23 amounts that Plaintiffs and the Settlement Class contend they are owed. (FKim Decl. ¶ 46.)

24 **C. Plaintiffs’ Counsel is Experienced in Similar Litigation and Endorses the**
25 **Settlement.**

26 As discussed above, Plaintiffs’ Counsel are experienced and qualified to evaluate the
27 class claims, the viability of the defenses asserted, and the risks and benefits of trial and
28 settlement. (FKim Decl. ¶¶ 65-67; HKim Decl. ¶ 3.) Based on their experience, Plaintiffs’
Counsel endorses the settlement as an excellent result for the classes, which militates in favor of

preliminary approval. (FKim Decl. ¶ 2; HKim Decl. ¶ 3; *see Kullar*, 168 Cal. App. 4th at 133 (“The [trial] court may and undoubtedly should continue to place reliance on the competence and integrity of counsel”).)

D. Settlement of Penalties under the Private Attorneys General Act of 2004 is Reasonable.

The PAGA allocation from the California Class portion of the settlement fund is \$25,000, which represents 7.4% of the settlement fund. (FKim Decl. ¶ 43.) Of the PAGA Allocation, 75% will be distributed to the LWDA and 25% will be distributed to PAGA Aggrieved Employees. (Settlement Agreement at ¶¶ III.1.4.a.) Plaintiffs’ Counsel has notified the LWDA of the preliminary approval hearing. (FKim Decl. at ¶ 72.)

The PAGA allocation is appropriate in light of the fact that the maxim PAGA exposure is \$13,100 to \$52,400 if this case were to be litigated. (FKim Decl. ¶ 43.) The PAGA allocation is within the range of reasonable settlements courts have approved, including this Court. (*See Rodriguez v. Swissport N. Am.*, No. BC441173, 2017 Cal. Super. LEXIS 7936 (L.A. Cnty. Super. Ct. April 11, 2017) (approving payment to LWDA in the amount of \$22,500 out of total settlement fund of \$4,900,000, or 0.46%); *Whitaker v. Space Expl. Techs. Corp.*, No. BC578922, 2017 Cal. Super. LEXIS 8432 (L.A. Cnty. Super. Ct. June 15, 2017) (approving \$89,437.50 to the LWDA out of a total settlement amount of \$3,975,000, or 2.25%); *Murphy v. CVS Caremark Corp.*, No. BC464785, 2017 Cal. Super. LEXIS 8582 L.A. Cnty. Super. Ct. Feb. 28, 2017) (approving \$50,000 to the LWDA out of a total settlement amount of \$12,750,000, or 0.39%); *Dft, Inc. Wage and Hour Cases*, Judicial Council Coordination Proceeding No. 4882, 2018 Cal. Super. LEXIS 3900 (L.A. Cnty. Super. Ct. July 6, 2018) (preliminarily approving \$22,500 to the LWDA out of a total settlement amount of \$550,000, or 4.09%); *Lenard v. Buy Baby*, No. BC648134, 2019 Cal. Super. LEXIS 451 (L.A. Cnty. Super. Ct. Feb. 28, 2019) (approving \$30,000 to the LWDA out of a total settlement amount of \$1,100,000, or 2.73%).) These lower allocations previously approved provide further evidence that the PAGA allocation in this settlement is reasonable.

E. The Proposed Class Notice Content and Procedure are Adequate.

1 Procedurally, notice to class members must have a “reasonable chance of reaching a
2 substantial percentage of the class members.” (*Wershba v. Apple Comput., Inc.*, 91 Cal. App. 4th
3 224, 251 (2001) (quoting *Cartt v. Super. Ct.*, 50 Cal. App. 3d 960, 974 (1975)).) Here,
4 Defendants will provide the Settlement Administrator information about the Settlement Class,
5 including last known addresses and social security numbers. (Settlement Agreement at ¶¶
6 III.I.3.a., III.I.3.b.) The Class Notices will be mailed to the Settlement Class’ last known address
7 or their updated address. (*Id.*) Prior to the mailing, the Settlement Administrator will perform a
8 search to ensure that the contact information is correct and if any Class Notice is returned, will
9 promptly re-mail the Notice Statement with an updated address. (*Id.* at ¶ III.I.3.a.) The
10 procedure for notifying the Settlement Class of the settlement was designed to reach everyone in
11 the Settlement Class.

12 The Settlement Class has the right to challenge the calculation of their Settlement Award.
13 (*Id.* at ¶ III.I.3.a.) The Settlement Class may also submit a written request for exclusion to opt-
14 out of the settlement Class or submit a written objection to the Settlement within sixty (60)
15 calendar days of the mailing of the Class Notice. (*Id.*)

16 As to its content, the “notice given to the class must fairly apprise the class members of
17 the terms of the proposed compromise and of the options open to dissenting class members.”
18 *Wershba*, 91 Cal. App. 4th at 251 (quoting *Trotsky v. L.A. Fed. Sav. & Loan Ass’n*, 48 Cal. App.
19 3d 134, 151-52 (1975)). The proposed Class Notice informs the Settlement Class of: (1) the
20 material terms of the settlement, (2) the proposed fees and costs of Plaintiffs’ Counsel and for the
21 Settlement Administrator, (3) the proposed service award to the Class Representative, (4) how
22 the Settlement Class may opt out of or object to the Settlement, (5) details about the court
23 hearing on settlement approval and the submission and presentation of objections, and (6) how
24 the Settlement Class can obtain additional information. (Settlement Agreement, Ex. A; *see* Cal.
25 Rules of Court 3.766(d) and 3.769(f).) The proposed Class Notice also provides information
26 about the calculation of awards under the distribution formula, how to challenge the calculation
27 of the distribution formula, and the tax treatment of the awards. (Settlement Agreement, Ex. A.)
28 The proposed Class Notice provides the Settlement Class “sufficient information to decide

whether they should accept the benefits offered, opt out and pursue their own remedies, or object to the settlement.” (*Wershba*, 91 Cal. App. 4th at 252 (citing *Trotsky*, 48 Cal. App. 3d at 151-52).)

F. The Service Award to Plaintiffs is Reasonable and Routinely Awarded.

Class representatives are eligible for reasonable service awards to compensate them for the expense or risk they have incurred in conferring a benefit on other members of the class. (*See Munoz*, 186 Cal. App. 4th at 412.) Class Representative Plaintiffs Wright’s service award of \$7,500 is appropriate in light of his contributions to the investigation of the case and to its settlement. Plaintiffs Wright has spent his time discussing his experiences working for Townhouse with Plaintiffs’ Counsel. Plaintiffs helped Plaintiffs’ Counsel by gathering and explaining documents relevant to the Complaint, identifying potential witnesses, and actively participating at the mediation. (Kim Decl. ¶ 62.) Plaintiffs Ashley Diane Currie, Karim Benzakour, and Randal Davis were also instrumental in securing a significant settlement by preventing Defendants from settling individually with the Settlement Class and agreeing to settle for an amount that was 1.6 times the mediator’s proposal. (FKim Decl. ¶¶ 12-14.)

The requested service awards are consistent with service awards approved by courts. (*See, e.g., Rodriguez*, No. BC441173, 2017 Cal. Super. LEXIS 7936, at *22-23 (approving \$10,000 in service award for each of three plaintiffs); *Lee v. Activision Blizzard*, No. BC575665, 2017 Cal. Super. LEXIS 8070, at *12-13 (L.A. Super. Ct. June 28, 2017) (approving a \$10,000 incentive award to the class representative); *Wells Fargo Bank Wage and Hour Cases*, Judicial Council Coordination Proceeding No. 4702, 2018 Cal. Super. LEXIS 2473, at *9 (L.A. Super. Ct. May 31, 2018) (approving \$10,000 service award payments to each of seven plaintiffs); *Miceli v. Int’l Coffee & Tea*, BC557239, 2017 Cal. Super. LEXIS 9075, at *2 (L.A. Cnty. Super. Ct. June 23, 2017) (approving \$10,000 service award to the class representative).)

Because Plaintiff Wright put forth significant time and effort towards the investigation, litigation, and settlement of this case, and Plaintiffs Ashley Diane Currie, Karim Benzakour, and Randal Davis were instrumental in negotiating a significant settlement for the Settlement Class Members, a \$7,500 service award for each is reasonable.

G. The Requested Attorneys' Fees, Expenses, and Costs are Reasonable, Fair, and Appropriate.

Plaintiff and the Settlement Class, as prevailing parties in the settlement of this wage and hour class action, are entitled to recover reasonable attorney's fees and costs. (*See* Cal. Lab. Code §§ 226(e)(1) (an employee "suffering injury" as the result of an employer's "knowing and intentional failure" to provide accurate wage statements is entitled to "an award of costs and reasonable attorney's fees"), Cal. Lab. Code § 1194 ("any employee receiving less than ... the legal overtime compensation" is eligible to recover reasonable attorneys' fees and costs of suit), Cal. Lab. Code § 2699(g)(1) (an employee whose actions result in civil penalties under PAGA is "entitled to an award of reasonable attorney's fees and costs"); Cal. Civ. Proc. Code § 1021.5 (awarding reasonable attorneys' fees and costs where a plaintiff's actions results in the enforcement of an important right, conferred a significant benefit to a large class of persons, and private enforcement was necessary). "Class action litigation can result in an attorney fee award pursuant to a statutory fee shifting provision or through the common fund doctrine when, as in this case, a class settlement agreement establishes a relief fund from which the attorney fee is to be drawn." *Laffitte v. Robert Half Int'l, Inc.*, 1 Cal. 5th 480, 489 (2016) (involving attorney's fee award in wage and hour class action against an employer).)

There are two methods used to calculate attorney's fees in class action litigation: the percentage method and the lodestar-multiplier method. (*Id.*) "The percentage method calculates the fee as a percentage share of a recovered common fund or the monetary value of plaintiffs' recovery." (*Id.*) The common fund method provides both "[f]airness to the successful litigant, who might otherwise receive no benefit because his recovery might be consumed by the expenses" and "encouragement of the attorney for the successful litigant, who will be more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured that he will be promptly and directly compensated should his efforts be successful." (*Bank of Am. v. Cory*, 164 Cal. App. 3d 66, 90 (1985) (citation omitted).) The lodestar method, on the other hand, "is calculated by multiplying the reasonable hours expended by a reasonable hourly rate." (*Wershba*, 91 Cal. App. 4th at 254. "The court may then enhance

1 the lodestar with a multiplier, if appropriate.” *Id.* (citations omitted). “Multipliers can range from
2 2 to 4 or even higher.” *Id.* at 255 (citations omitted).)

3 While Plaintiffs’ formal request for attorneys’ fees and costs will be submitted in a later
4 motion, Plaintiffs note that the requested fee and cost award is reasonable under either approach.
5 The key consideration, under either approach, is whether the degree of success achieved by the
6 settlement justifies the requested fee and cost award. Here, both approaches support Plaintiffs’
7 requested attorneys’ fee and cost awards given the excellent results achieved. The Settlement
8 Class consists of 220 employees. (FKim Decl. ¶ 9.) The estimated average award for each Class
9 Member is approximately \$1,061.33. (*Id.* at ¶ 2.) The settlement also represents 23% of the
10 likely recovery if this case was litigated through trial. (*Id.* at ¶ 47.) This sizeable recovery is
11 particularly notable when the considering that this settlement was achieved just over a year after
12 filing the initial lawsuit.

13 In addition, under the common fund approach, the requested fee of \$111,666.66
14 represents one-third of the settlement fund, which is in line with common fund awards routinely
15 approved by courts. Moreover, this percentage of the fund award strikes a fair balance between
16 asking the benefiting the Settlement Class to contribute to the fees that made their settlement
17 awards possible with properly incentivizing counsel to pursue meritorious litigation in an
18 expeditious and efficient manner.

19 A lodestar-multiplier “cross-check” further confirms that the requested fee award justifies
20 preliminary approval. As of April 30, 2022, Plaintiffs’ Counsel have incurred a current lodestar
21 of approximately \$82,900. (*See* FKim Decl. ¶ 68 (\$60,025); HKim Decl. ¶ 4 (\$16,875).) This
22 lodestar is comprised of the approximately 122 hours expended by Plaintiffs’ Counsel in this
23 litigation so far, as documented by the detailed and contemporaneous billing records maintained
24 by Plaintiffs’ Counsel. (FKim Decl. ¶ 68; HKim Decl. ¶ 4.) In addition, Plaintiffs’ Counsel
25 expects to incur approximately 50 additional hours of time to see this case through completion of
26 the settlement, including: finalizing and filing these preliminary approval papers; appearing for
27 the hearing on the preliminary approval motion; finalizing the Court-approved Notice forms;
28 working with Defendants and the Settlement Administrator to distribute the Notices; supervising

1 the Notice distribution; responding to Class Member inquiries or challenges; responding to any
2 request for exclusion or objections; preparing and filing final approval papers, including a final
3 motion for a class representative enhancement award and an attorneys' fee and costs award;
4 attending the final approval hearing; working with Defendants and the Settlement Administrator
5 on the distribution of awards to the Class; monitoring the award distributions to the Class; and
6 reporting to the Court that the distribution of settlement funds has been completed. (FKim Decl.
7 ¶ 68.) The hours spent and to be spent litigating this case are reasonable.

8 Plaintiffs are also entitled to recover litigation costs and expenses reasonably incurred in
9 the prosecution of his wage-and-hour claims. (*See* Cal. Lab. Code §§ 226(e)(1), 1194(a),
10 2699(g)(1); Cal. Civ. Proc. Code § 1021.5.) Plaintiffs' Counsel seek reimbursement for taxable
11 and commonly reimbursed costs, including filing and process serving fees, court reporter fees,
12 mediator fees, copying, delivery, telecommunication charges, legal research charges, and the
13 like. (FKim Decl. ¶ 70.) Plaintiffs' Counsel will provide the Court with updated costs
14 information in the final approval motion. (FKim Decl. ¶ 70.)

15 Because the requested attorneys' fees and costs are reasonable under either the common
16 fund or lodestar approach, the Court should preliminarily approve them. At final approval,
17 Plaintiffs' Counsel will provide updated lodestar and cost information to the Court along with
18 additional support for the requested awards. (*Id.* at ¶ 69-70.)

19 **V. CERTIFICATION FOR SETTLEMENT PURPOSES IS APPROPRIATE**

20 **A. The Proposed Classes Are Ascertainable and Sufficiently Numerous**

21 **1. Ascertainability**

22 Putative class members are deemed "ascertainable" when they may be "readily identified
23 without unreasonable expense or time by reference to official records." (*Rose v. City of Hayward*
24 (1981) 126 Cal.App.3d 926, 932.) In determining whether a class is ascertainable, a court
25 scrutinizes the class definition, the size of the class and the means of identifying class members.
26 (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.)

27 Here, the proposed Settlement Class is ascertainable because Defendant has agreed in the
28 Settlement Agreement to provide a class list to the Settlement Administrator containing

1 Settlement Class Member's full name, Social Security number, last known address, the dates of
2 employment, and the number of pay periods that will allow the Settlement Administrator to
3 reasonably determine Eligible Pay Periods for all putative class members after issuance of the
4 preliminary approval order. (Kim Decl. ¶ 50; Ex. 1 at ¶ III.I.3.b.) Moreover, the Settlement Class
5 consists of Defendants' hourly employees, and Defendants are required to keep records of its
6 hourly employees' names, home addresses, and social security numbers. (*See* Wage Order 7-
7 2001, subsection 7(c); Kim Decl. ¶ 52.)

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 220 hourly non-exempt employees in the State of California. (Kim
12 Decl. ¶ 49.) Therefore, Plaintiffs are confident they will be able to establish that the proposed
13 Settlement Class is ascertainable and sufficiently numerous. (FKim Decl. ¶¶ 49-52.)

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
19 would be advantageous to the judicial process and to the litigants." (*Collins v. Rocha* (1972) 7
20 Cal.3d 232, 238; *accord, Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319,
21 326.) As a general matter, if the defendant's liability can be determined by facts common to all
22 members of the class, a class will be certified even if the members must individually prove their
23 damages." (*Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 916, 107;
24 *accord, Knapp v. 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 within the
27 Settlement Class. (FKim Decl. ¶ 52.) These common questions include:

- 28 1) Whether Defendants failed to provide lawfully required rest periods and/or failed

1 to compensate employees one (1) hour's wages in lieu thereof;

2 2) Whether Defendants failed to pay all minimum and/or overtime compensation;

3 3) Whether Defendant failed to reimburse business-related expenses;

4 4) Whether Defendants failed to pay all wages owed upon termination of
5 employment;

6 5) Whether Defendants failed to provide accurate itemized wage statements; and

7 6) Whether Defendant engaged in unfair competition.

8 (FKim Decl. ¶ 54.)

9 Plaintiffs' challenge to Defendant's uniform policies and practices involves common
10 factual and legal issues that are amenable to class treatment. (Kim Decl. ¶ 54.) As the California
11 Supreme Court has emphasized, "[c]laims alleging that a uniform policy consistently applied to a
12 group of employees is in violation of the wage and hour laws are of the sort routinely, and
13 properly, found suitable for class treatment." (*Brinker, supra*, 53 Cal.4th at 1033; *see also*
14 *Bradley v. Networkers International, LLC* (2012) 211 Cal.App.4th 1129, 1141-1146.) Moreover,
15 a class of similarly situated employees may be certified based on common questions of fact or
16 law, even if each employee has to establish the amount of his or her damages. (*See Bell v.*
17 *Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 741; *Sav-On Drug Stores, Inc. v. Superior*
18 *Court, supra*, 34 Cal.4th at 340.)

19 Here, Plaintiffs maintain that the proposed Settlement Class suffered the same injuries, in
20 the same manner: (1) the Settlement Class did not receive its rest breaks or paid a premium for
21 rest missed rest breaks; (2) the Settlement Class was not paid all overtime wages; (3) the
22 Settlement Class was not paid all wages owed on a timely basis or upon termination/resignation;
23 and (4) the Settlement Class was not provided accurate itemized wage statements. (Kim Decl. ¶
24 53.) Plaintiffs allege that the Settlement Class worked in the same capacity for the same
25 employer and were subject to the same employment policies and practices, the questions of fact
26 and claims regarding the status of these employees are the same for each member of the
27 Settlement Class. (Kim Decl. ¶ 56.) Accordingly, for purposes of settlement, the evidence
28 reviewed by Plaintiffs' Counsel demonstrates that common rest policies and wage policies

1 applied to the proposed Settlement Class and certification for settlement purposes is appropriate.
2 (*Id.*)

3 **2. The Named Plaintiffs Have Claims Typical of the Proposed Class**

4 A putative class representative's claim must be "typical," but not necessarily identical, to
5 the claims of other class members. The test of typicality "is whether other members have the
6 same or similar injury, whether the action is based on conduct which is not unique to the Class
7 Representatives, and whether other class members have been injured by the same course of
8 conduct." (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502.) Thus, it is sufficient
9 that the representative is similarly situated so that he or she will have the motive to litigate on
10 behalf of all class members. (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502.)
11 Thus, it is sufficient that the representative is similarly situated so that he or she will have the
12 motive to litigate on behalf of all class members. (*See, e.g., Classen v. Weller* (1983) 145
13 Cal.App.3d 27, 45.) It is not necessary that the class representative have personally incurred all
14 of the damages suffered by each of the other class members. (*Wershba v. Apple Computer, Inc.*
15 (2001) 91 Cal.App.4th 224, 238.)

16 Plaintiffs worked as talent for a video commercial production in exchange for a daily
17 salary in the amount of \$400 to \$500. (Kim Decl. ¶¶ 3-4.) Plaintiffs allege that they: (1) worked
18 without being provided meal periods as required by law; (2) worked without being paid all
19 wages and/or overtime; (3) worked without being provided accurate itemized wage statements;
20 and (4) worked without being paid all wages due on a timely basis and upon separation. They
21 also alleges derivative claims for unfair business competition (B&P Code §17200) (FKim Decl.
22 ¶ 5.) Plaintiffs also contend that her claims are typical of those of the Settlement Class. (FKim
23 Decl. ¶ 59.)

24 **3. Plaintiffs Contend That As The Named Plaintiffs They Have and Will** 25 **Fairly Represent the Interests of the Settlement Class**

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

1 846.)

2 Plaintiffs believe that they capable of fairly representing and adequately protecting the
3 interests of the proposed Settlement Class. (FKim Decl. ¶ 60.) Plaintiffs’ interests in this
4 litigation are coextensive with the interests of the proposed Settlement Class. The members of
5 the proposed Settlement Class all worked for Defendants during the relevant time period and
6 incurred the same type of alleged damages with regard to Defendant’s alleged violations of the
7 law. (FKim Decl. ¶ 61.) Moreover, Plaintiffs have agreed to serve as Named Plaintiffs and has
8 retained qualified Counsel who is experienced in prosecuting wage and hour class actions.
9 (FKim Decl. ¶ 62.) This demonstrates their commitment to bringing about the best possible
10 results for the benefit of the proposed Settlement Class. Plaintiffs have provided their Counsel
11 with all necessary and pertinent information. (*Id.*) They have been a very active participant in
12 the litigation by gathering and explaining their time and pay records, identifying potential
13 witnesses, and with respect to Plaintiff Wright, participating actively in the mediation. (*Id.*)
14 Therefore, Plaintiffs believes that they have and will continue to adequately represent the
15 proposed Settlement Class. (*Id.*)

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

17 “The ultimate question in every case of this type is whether . . . the issues which may be
18 jointly tried, when compared with those requiring separate adjudication, are so numerous or
19 substantial that the maintenance of a class action would be advantageous to the judicial process
20 and to the litigants.” (*Lockheed Martin, supra*, 29 Cal.App.4th at 1104–1105.) The California
21 Supreme Court has directed the courts to utilize the class action device to fashion “an effective
22 and inclusive group remedy.” (*Richmond v. Dart Indus., Inc.* (1981) 29 Cal.3d 462, 469.)

23 Normally, in making its class certification decision, the Court must determine that a class
24 action would be superior to alternate means for a fair and efficient adjudication. If the causes of
25 action may be adjudicated in a single proceeding, thereby saving time, reducing waste, and
26 limiting duplication of effort, class certification is superior to individual litigation. (*See, e.g.,*
27 *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 816.) Since the parties agreed to a settlement in
28 principle and now seek Court approval of that Settlement, Plaintiffs submit that there is not as

1 much need as there would be in an ordinary motion for class certification for the Court to
2 determine that the case can be manageably tried.

3 Plaintiffs maintain that class treatment would be the superior method of managing this
4 case. A class action is superior to individual litigation “when numerous parties suffer injury of
5 insufficient size to warrant individual action and when denial of class relief would result in
6 unjust advantage to the wrongdoer.” (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381,
7 385.) In cases such as this, where individual damages may be small, the class action device is the
8 most feasible method of recovery. (*See, e.g. Lockheed Martin, supra*, 29 Cal.4th at 1131.) In this
9 regard, the superiority of class treatment is evident here because individual pursuit of class
10 members’ claims may not be economically viable. (FKim Decl. ¶ 63.) The only alternative to
11 certification would be to force approximately 220 employees to join this action, file individual,
12 uniform actions, or abandon their legal rights altogether. (Kim Decl. ¶ 64.) Plaintiffs maintain
13 that this economic reality would result in a windfall for Defendant if this case were not certified.
14 (*Id.*)

15 **VI. SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT**
16 **AGENCY**

17 As indicated on the Proof of Service, Plaintiffs’ Motion for Approval of Class Action
18 Settlement will be concurrently uploaded to the Labor and Workforce Development Agency’s
19 (“LWDA”) website on the date this Motion is filed as required by statute. Proof of submission
20 of Plaintiffs’ Motion, all related documents, and copy of the email from the LWDA confirming
21 receipt is attached to the Declaration of Frank H. Kim as Exhibit 2. (Kim Decl. ¶ 72.)

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1 **VII. CONCLUSION**

2 Plaintiffs respectfully submit that the proposed Settlement Agreement is fair, adequate,
3 reasonable, and in the best interest of the Settlement Class. Therefore, the parties respectfully
4 request that the Court: (1) grant preliminary approval of the parties' class action settlement; (2)
5 order the proposed Class Notice to be sent to the settlement class; (3) grant conditional
6 certification of the settlement class; (4) conditionally appoint Plaintiffs as Class Representatives
7 and Plaintiffs' Counsel as Class Counsel; and (5) set a date for Final Approval.

8 DATED: May 6, 2022

KIM LEGAL, APC
HELEN KIM LAW, APC

10 By: /s/ Frank H. Kim
11 Frank H. Kim, Esq.
12 Helen U. Kim, Esq.
13 Attorneys for Plaintiffs 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 May 6, 2022, I served all interested parties in this action the following documents described as: **MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

[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 below 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 May 6, 2022, at Los Angeles, California.

/s/ Frank H. Kim

Frank H. Kim