

FRANK H. KIM, State Bar No. 264609

fkim@kim-legal.com

KIM LEGAL, APC

3435 Wilshire Blvd, Suite 2700

Los Angeles, CA 90010

Telephone: (323) 482-3300

Facsimile: (866) 652-7819

HELEN U. KIM, State Bar No. 260195

helen@helenkimlaw.com

HELEN KIM LAW, APC

3435 Wilshire Blvd, Suite 2700

Los Angeles, CA 90010

Telephone: (323) 487-9151

Facsimile: (866) 652-7819

Attorneys for Plaintiffs EMMANUEL WRIGHT, ASHLEY DIANA CURRIE, KARIM BENZAKOUR, and RANDAL DAVIS

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]

DECLARATION OF FRANK H. KIM IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Date: June 17, 2022

Time: 9:00 a.m.

Dept.: 6

Complaint Filed: February 1, 2021

Trial Date: None Set

1 I, Frank H. Kim, state and declare as follows:

2 1. I am an attorney admitted before all courts of the State of California. I am the
3 owner of Kim Legal, APC, counsel of record for Plaintiffs Emmanuel Wright, Ashley Diane
4 Currie (incorrectly named as Ashley Diana Currie), Karim Benzakour, and Randal Davis
5 (together, “Plaintiffs”) in this action. I submit this declaration in support of Plaintiffs’
6 Unopposed Motion for Preliminary Approval of Class and Representative Action Settlement. I
7 have personal knowledge of the facts set forth in this declaration and could and would testify to
8 them if called upon to do so.

9 2. I recommend approval of the proposed Settlement, which I consider to be an
10 outstanding result for the proposed Settlement Class (of approximately 220 employees) in light
11 of the potential exposure and the risks of continued litigation. I believe that the Settlement is fair
12 and appropriate, is in the best interests of the Settlement Class, and will result in prompt and
13 significant financial benefit to the participating Settlement Class. The average recovery for an
14 employee within the Settlement Class (the majority of whom worked one day and some of whom
15 worked two days) is approximately \$700. A true and correct copy of the Settlement Agreement
16 is attached hereto as **Exhibit 1**.

17 **Relevant Facts and Procedural History**

18 3. On November 14, 2020, Plaintiffs were employed by Townhouse for one day as
19 talent in a video commercial that was produced by Defendant GWE, LLC d/b/a Townhouse
20 (“Townhouse”). Plaintiffs allege that they were directly employed by Townhouse and jointly
21 employed by its parent company, WPP Group, USA, Inc. (“WPP Group USA”) (Townhouse and
22 GPP Group USA together, “Defendants”).

23 4. Plaintiffs allege that they worked over 8 hours on November 14, 2020 and
24 promised a daily salary in the amount of \$400 to \$500. Plaintiffs allege that because Defendants
25 paid them a daily salary in the amount of \$400 to \$500, they were not separately paid their
26 overtime wages. Plaintiffs also allege that Defendants failed to pay them premium wages for
27 missed rest periods at the appropriate rate of pay, among other claims.

28 5. On February 1, 2021, Plaintiff Emmanuel Wright (“Plaintiff”) filed a Class

1 Action Complaint against Defendants alleging claims for: (1) Failure to Provide Rest Breaks
2 under Labor Code §§ 226.7 and 512; (2) Failure to Pay Overtime under Labor Code §§ 510,
3 1194, and 1199; (3) Penalties Pursuant to Labor Code § 203; (4) Wage Statement Violations
4 under Labor Code § 226(a); and (5) Violation of Business & Professions Code § 17200. Prior to
5 filing the complaint, Plaintiffs' Counsel investigated the facts underlying the alleged violations.

6 6. On March 17, 2021, Plaintiff filed a notice with the California's Labor and
7 Workforce Development Agency ("LWDA") regarding his intent to file an action seeking civil
8 penalties under PAGA. The LWDA did not indicate and has not, as of the date of this
9 declaration, indicated an intention to investigate the alleged Labor Code violations.

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

13 **The Investigation and Mediation Leading up to the Settlement**

14 8. On July 16, 2021, the parties agreed to early mediation. In advance of mediation,
15 Plaintiffs demanded and Defendants provided pertinent data for members in the Settlement Class
16 so that the Parties could fully investigate the claims at issue and understand their strengths and
17 weaknesses.

18 9. Specifically, Defendants provided timekeeping and payroll data for all 169
19 employees within the Settlement Class who were compensated by Defendants at a daily salary,
20 all of whom worked one to two days for Defendants.

21 10. Plaintiffs' Counsel had mediation data analyzed by an expert to prepare a damage
22 model for mediation.

23 11. On November 15, 2021, the parties attended a full-day mediation with
24 experienced mediator Judge Jeffrey K. Winikow (Ret.). In preparation for mediation, the parties
25 prepared detailed mediation briefs. Plaintiff attended the mediation and was an active
26 participant. The mediation concluded at the end of the day with a mediator's proposal and did
27 not settle.

28 12. After the mediation, Plaintiffs' Counsel served formal discovery and began

1 interviewing potential class members from different production sets to gather additional facts
2 supporting Plaintiffs' claims and advising them of the instant lawsuit in an effort to prevent
3 Defendants from entering into individual settlements in amounts that would not, in the opinion of
4 Plaintiffs' Counsel, reflect the true value of their claims.

5 13. As a result of these efforts, Plaintiffs' Counsel retained as clients Ashley Diane
6 Currie, Karim Benzakour, and Randal Davis.

7 14. Meanwhile, the parties were simultaneously engaging in ongoing settlement
8 discussions and in February 2021, entered into a settlement memorandum reflecting a settlement
9 amount that is 1.65 times greater than the mediator's proposal.

10 15. On February 23, 2022, pursuant to stipulation and order, Plaintiff filed a Second
11 Amended Complaint to add Ashley Diane Currie, Karim Benzakour, and Randal Davis as
12 additional parties.

13 16. Based on their own independent investigation and evaluation, Plaintiffs' Counsel
14 is of the opinion that the Settlement Agreement with Defendants is fair, reasonable and adequate,
15 and in the best interest of the Settlement Class in light of all known facts and circumstances,
16 including the risk of significant delay, defenses asserted by Defendants, uncertainties regarding a
17 class and representative action trial on the merits, and numerous potential appellate issues.

18 **The Terms of the Settlement**

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

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

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

28 Gross Settlement Amount:	\$	335,000.00
Fees Award:	\$	111,666.66

Costs Award:	\$	12,000.00
Named Plaintiff Enhancement Payments:	\$	30,000.00
<u>Settlement Administration Costs:</u>	<u>\$</u>	<u>8,200.00</u>

Net Settlement Fund	\$	173,133.34
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(*Id.* at ¶ 1.P.)

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

20. **Settlement Class Member Release:** Settlement Class Members will release “all claims that arose during the Settlement Class Period based on the facts alleged or that could have been alleged in the Complaint for failure to pay minimum wages; failure to pay straight time compensation, overtime compensation, double-time compensation, reporting time compensation, and/or interest; missed, late, short or interrupted meal and/or rest periods, including any claim for any alleged failure to provide meal or rest periods or pay premiums for missed, late, short or interrupted meal or rest periods, or to pay such premiums at the regular rate of compensation; penalties arising out of or related to any or all of the aforementioned claims, including, but not limited to, recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time penalties; inaccurate or otherwise improper wage statements and/or failure to keep or maintain accurate records; unlawful and unfair business practices; and attorneys' fees and costs. The claims released by the Settlement Class Members also include any and all claims 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 alleging a violation of the Wage Orders of the California Industrial Welfare Commission, including but not limited to Wage Order 12-2001; 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,

1 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.2, 1197.5, 1198, 1198.5, 1199, and 2698 et
2 seq.); California Business and Professions Code section 17200, et seq.; the California Civil
3 Code, including but not limited to, sections 3287, 3289, 3336 and 3294; 8 CCR § 11120;
4 California Code of Civil Procedure § 1021.5; the California common law of contract; and the
5 Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*” (*Id.* at ¶ III.G.1.)

6 21. **PAGA Released Claims:** The PAGA Aggrieved Employees release “all claims
7 under PAGA that arose during the PAGA Settlement Period based on the facts alleged in
8 Wright’s notice letter to the Labor & Workforce Development Agency and/or Plaintiffs’
9 Lawsuit, which are or could be the basis of claims under California Labor Code for unpaid
10 wages, including, but not limited to, failure to pay minimum wages; failure to pay straight time
11 compensation, overtime compensation, double-time compensation, reporting time compensation,
12 and/or interest; missed, late, short or interrupted meal and/or rest periods, including any claim for
13 any alleged failure to provide meal or rest periods or pay premiums for missed, late, short or
14 interrupted meal or rest periods, or to pay such premiums at the regular rate of compensation;
15 penalties arising out of or related to any or all of the aforementioned claims, including, but not
16 limited to, recordkeeping penalties, wage statement penalties, minimum-wage penalties, and
17 waiting-time penalties; inaccurate or otherwise improper wage statements and/or failure to keep
18 or maintain accurate records; unlawful and unfair business practices; and attorneys’ fees and
19 costs. The claims released by the PAGA Aggrieved Employees also include any and all claims
20 under PAGA, Cal. Lab. Code § 2698 et seq., that arise out of or in connection with the claims
21 and facts alleged in the Lawsuit, and any claims which could have been asserted in the Lawsuit
22 arising from the alleged facts and/or primary rights alleged to have been invaded to the fullest
23 extent permitted by law. This release includes claims under PAGA alleging a violation of the
24 Wage Orders of the California Industrial Welfare Commission, including but not limited to
25 Wage Order 12-2001; and/or alleging a violation of the California Labor Code (including, but
26 not limited to, sections 201-203, 204, 205.5, 210, 212, 216, 218, 218.5, 218.6, 222.5, 223, 224,
27 225, 225.5, 226, 226.3, 226.7, 226.8, 227.3, 245, 246, 248, 248.1, 450, 510, 511, 512, 516, 558,
28 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.)

22. **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.)

23. **Fees Award, Cost Award, Named Plaintiff Enhancement Payments:** The Settlement Agreement provides for payment, subject to Court approval, to Class Counsel of up to one-third of the settlement fund, or \$111,666.66, 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 this class and/or representative action claims and for the risks they incurred in doing so. (*Id.* at ¶ III.C.1.)

24. **Settlement Administrator and Administration Costs:** The parties have identified ILYM Group, Inc. as the Settlement Administrator for this settlement. The payment to the Settlement Administrator for its services should not exceed \$8,200. (*Id.* at ¶ III.C.4.) The cost of settlement administration will be taken out of the Gross Settlement Amount. (*Id.*)

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

26. **Non-PAGA Class Member Settlement Awards:** After deducting the Fees Award, Costs Award, Named Plaintiff Enhancement Payments, Settlement Administration Costs, and the PAGA Payment, the remainder of the settlement fund (“Class Payout Fund”) will be distributed on a pro rata basis, based on the number of pay periods each worker within the

1 Settlement Class worked between February 1, 2017 through the date the Settlement is
2 preliminary approved by the Court. (*Id.* at ¶ III.C.5.)

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

7 27. **PAGA Penalties to Aggrieved Employees:** PAGA Aggrieved Employees (i.e.
8 the Settlement Class who were employed from March 17, 2020 through the date the settlement is
9 preliminary approved by the Court) will receive payment for PAGA penalties based on the
10 number of pay periods worked by the respective Aggrieved Employee. (*Id.* at ¶¶ I.R-S,
11 III.C.3.b.) All of the individual PAGA payments are penalties and will be reported as such. ((*Id.*
12 at ¶ III.3.2.)

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

19 29. **Settlement Administration and Notice Procedures:** Within 10 days of entry of
20 the Preliminary Approval Order of this Settlement, Defendant will provide the contact
21 information of the Settlement Class. (*Id.* at ¶ III.I.3.b.) Within 14 days of receiving the class
22 information, the Settlement Administrator shall send the Settlement Class a Notice of Proposed
23 Settlement of Class Action (“Class Notice”). (*Id.* at ¶ III.I.3.a.) Prior to the mailing, the
24 Settlement Administrator will perform a search to ensure that the contact information is correct
25 and if any Class Notice is returned, will promptly re-mail the Notice Statement with an updated
26 address. (*Id.*)

27 30. **Class Notice:** The Class Notice will be sent to the Settlement Class. (*See id.* Ex.
28 A.) The Class Notice explains the terms of the Settlement and how to receive a settlement

1 payment, object, or opt-out (for the Settlement Class, but not for Aggrieved Employees). (*Id.*)
2 The Class Notice includes an estimated payment based on the number of pay periods worked by
3 the employees as indicated in Defendants' records. (*Id.*) The Class Notice will include contact
4 information for Class Counsel to answer questions. (*Id.*) The Settlement Class can opt-out of the
5 settlement by submitting a request for exclusion within 60 days after the date of the initial
6 mailing of the Class Notices. (Settlement Agreement at ¶ III.I.3.a.)

7 **Factors in the Decision to Accept the Settlement, Which is an Excellent Result for the**
8 **Settlement Class**

9 31. In my opinion, Settlement Amount represents an outstanding result for the
10 Settlement Class. The \$335,000 Settlement will provide Settlement Class Members with
11 significant payments. For example, applying the formula described in Section 5(a) of the
12 Settlement Agreement, an average Settlement Class Member will receive an estimated award of
13 approximately \$700.

14 32. The settlement monetary relief compares favorably with the estimated full relief
15 for the class. In total, I estimate that success at trial on every claim would result in a total
16 maximum recovery of \$3,162,527.94 for the non-PAGA claims and between \$13,100 to \$52,400
17 for the PAGA claims, for a total maximum exposure of between \$3,179,581.19 to \$3,230,740.95.
18 The gross settlement of \$335,000 amounts to about 10.3% to 10.5% of such a potential
19 maximum recovery.

20 33. Although Plaintiffs and the proposed class have strong claims, the claims face
21 significant procedural challenges, as well as challenges in the class certification and merits stage.
22 For example, Defendants were planning to offer settlement agreements with individuals within
23 the Settlement Class. If Defendants were successful in settling with a fraction of the group of
24 employees who were paid a daily wage over \$1,500, the value of the remaining Settlement Class
25 would decrease substantially and jeopardize the ability to obtain a strong settlement for the
26 Settlement Class as a whole.

27 34. Plaintiffs expect Defendants to have contested class certification on the rest break
28 claim the grounds that the Settlement Class worked in different productions, each requiring

1 individualized inquiries on whether rest breaks were lawfully provided. Plaintiffs' Counsel
2 estimates based on the data that the Settlement Class worked in at least 32 different production
3 sets.

4 35. Plaintiffs also anticipate that Defendants would challenge whether Labor Code §
5 515(d) is applicable only prohibits the payment of all regular and overtime hours for non-exempt
6 employees who are paid a *weekly* salary, rather than a *daily* salary.

7 36. Finally, as detailed below, the waiting penalty claim amounts to over 98% of the
8 maximum exposure for the Settlement Class (excluding PAGA penalties). Although Plaintiffs
9 are confident that they can establish that Defendants' failure to pay was "willful," the value of
10 the entire case is dependent on this fact and poses some risk to Plaintiffs.

11 37. On Plaintiffs' PAGA claims, Plaintiffs anticipate that Defendants would argue
12 that PAGA penalties cannot be "stacked" – i.e., there cannot be more than one PAGA penalty
13 awarded in each pay period for each aggrieved employee.

14 **Exposure Estimates**

15 38. Plaintiffs' Counsel have calculated the maximum total amount for 169 workers
16 within the Settlement Class and PAGA Aggrieved Employees could recover. Without PAGA
17 penalties, the maximum exposure for 169 workers is approximately \$2,429,396.46 based on the
18 calculations below. Since the Settlement Class consists of approximately 220 workers, the total
19 maximum exposure for the Settlement Class is \$3,162,527.94.

20 39. **Overtime:** For the overtime analysis, I have reviewed time and pay records for
21 169 workers with 185 total shifts. Of the 185 total shifts, 60 shifts were over 8 hours, between
22 8.25 and 12 hours. (Another 31 shifts in 2021 were over 8 hours but were paid at overtime
23 rates.) The 60 shifts of unpaid overtime were performed by 60 workers, of which 54 were paid a
24 daily salary ranging from \$200 to \$575 (with an average daily salary of \$437.50) while the
25 remaining 6 workers were paid a daily ranging from \$1,000 to \$2,750 (with an average of
26 \$1,733). Plaintiffs' Counsel calculated a maximum exposure of \$14,351.80 in unpaid overtime
27 for the 169 workers in the Settlement Class (excluding interest).

28 40. **Rest Periods:** For the rest break premiums, there are 183 shifts with over 4 hours.

1 The maximum exposure based on penalties for this violation totals \$17,641.90.

2 41. **Waiting Time Penalties:** For waiting time penalties, Plaintiffs' Counsel
3 calculated the daily rate of pay based on a maximum penalty of 30 days for the 60 separated
4 workers who did not receive their overtime wages, which is \$1,451,303.91. The maximum
5 waiting time penalties for the 109 workers who did not work overtime hours or who were paid
6 their overtime hours, but were not paid by the next regular payday, is \$938,948.85. Therefore,
7 the total estimated amount of waiting time penalties for 169 workers is \$2,390,252.76.

8 42. **Wage Statements:** Plaintiffs' wage statement claim was calculated at \$50 for
9 each of the 169 workers within the Settlement Class, starting one year prior to the date Plaintiff
10 Wright filed his complaint. The maximum exposure for Settlement Class for wage state
11 violations is \$7,150.

12 43. **PAGA:** I estimate that estimate that the total exposure on Plaintiff Wright's
13 representative PAGA claims is relatively small compared to the class claims. The penalties
14 could stem from Defendants' overtime violations, rest period violations, waiting time violations,
15 and wage statement violations. However, because none of the 169 workers within the Settlement
16 Class worked more than one pay period, I estimate that the likely recovery on Plaintiff's PAGA
17 claim ranges from \$13,100 to \$52,400. On Plaintiff's PAGA claims, Plaintiff anticipates that
18 Defendants would argue that PAGA penalties cannot be "stacked" – i.e., there cannot be more
19 than one PAGA penalty awarded in each pay period for each aggrieved employee.

20 44. The award of such penalties is not automatic if Plaintiffs prevail on the underlying
21 violations, but is a matter of discretion for the Court. The Court can reduce the PAGA award
22 under the view that such penalties are "oppressive" under Labor Code section 2699(e)(2). Given
23 these risks, which must be added to the risk that Plaintiffs will lose on some or all of the
24 underlying claims giving rise to PAGA penalties, I view the allocation of \$25,000 of the
25 settlement to PAGA penalties to be a very good settlement for the PAGA claims, as confirmed
26 by cases cited in the accompanying Motion. The PAGA allocation is appropriate in light of the
27 shorter PAGA liability period compared to the Settlement Class liability period if this case were
28 to be litigated. The allocation is approximately 7.4% of gross settlement amount.

1 45. Based on the foregoing, I estimate a total exposure, including PAGA penalties, to
2 be between \$2,442,496.46 to \$2,481,976.46 for the 169 workers that I have reviewed and
3 \$3,179,581.19 to \$3,230,740.95 for the approximately 220 workers within the Settlement Class.

4 46. However, Plaintiffs would face many potential risks if the case were to proceed,
5 including: (1) denial of Plaintiffs' motion for class certification; and (2) denial on summary
6 judgment due to various legal defenses to Plaintiffs' claims such as overtime pay. In addition,
7 extensive litigation would be costly, time-consuming, and uncertain as Plaintiffs would have to
8 litigate class certification, establish class-wide liability, and demonstrate damages for numerous
9 claims. Such efforts would likely take years, necessitate expert witness testimony, and include
10 other costs, risks, and potential delays. Appeals could further delay and jeopardize recovery. By
11 contrast, the Settlement, with a total settlement fund of \$335,000 ensures timely relief and
12 substantial recovery of the wages, damages, and other amounts that Plaintiffs and Class
13 Members contend they are owed.

14 47. Given these substantial litigation risks, I estimate that a more realistic recovery of
15 the claims if tried to judgment would be about \$1,271,832.48 to \$1,292,296.38 or about a 40%
16 discount. With a more realistic recovery in mind, the Settlement represents an impressive 26%
17 recovery of the estimated total value of the action at trial, well within the range of
18 reasonableness.

19 48. Absent settlement, Plaintiffs and the Settlement Class would face a lengthy delay
20 before receiving any potential recovery. Plaintiffs would have to prevail on a future motion for
21 class certification, as well as complete class-wide merits discovery, defeat a likely motion for
22 summary adjudication, and prepare for and prevail at trial. If Plaintiffs and the Settlement Class
23 prevailed on some or all of their claims at trial, they would almost certainly face an appeal. Even
24 if the class were 100% successful at every stage, they likely would not receive any relief for
25 years. By contrast, if the settlement is approved, Plaintiffs and the Settlement Class will receive
26 substantial relief within two years of the filing of the complaint. I anticipate that the Settlement
27 Class will receive their checks around November 2022. Thus, this settlement confers an
28 advantage on the Settlement Class by ensuring significant and timely relief for their claims.

1 **Class Certification for Settlement Purposes Is Appropriate**

2 49. The Settlement Class is numerous. Defendants have ascertained 169 workers
3 within the Settlement Class from Defendants' employment records.

4 50. The Settlement Class is ascertainable because Defendants have agreed in the
5 Settlement Agreement to provide a class list to the Settlement Administrator containing the
6 Settlement Class member's full name, Social Security number, last known address, the dates of
7 employment, and the number of pay periods for each PAGA Aggrieved Employee and each
8 member of the Settlement Class during the PAGA Period and Settlement Class Period for all
9 putative class members after issuance of the preliminary approval order.

10 51. Moreover, Settlement Class consist of Defendants' hourly employees, and
11 Defendants are required to keep records of its hourly employees' names, home addresses, and
12 social security numbers.

13 52. There are questions of law and fact common to the proposed Settlement Class that
14 predominate over any questions affecting only individual members within the Settlement Class.

15 53. These common questions include:

- 16 1) Whether Defendants failed to provide lawfully required rest periods and/or failed
17 to compensate employees one (1) hour's wages in lieu thereof;
- 18 2) Whether Defendants failed to pay all wages and/or overtime compensation;
- 19 3) Whether Defendants failed to pay all wages owed upon termination of
20 employment;
- 21 4) Whether Defendants failed to provide accurate itemized wage statements; and
- 22 5) Whether Defendants engaged in unfair competition.

23 54. Plaintiffs' challenge to Defendants' uniform policies and practices involves
24 common factual and legal issues that are amenable to class treatment.

25 55. Here, Plaintiffs maintain that the proposed Settlement Class suffered the same
26 injuries, in the same manner: (1) Settlement Class did not receive their rest periods or paid a
27 premium for rest missed rest breaks; (2) Settlement Class were not paid all overtime wages; (3)
28 Settlement Class were not paid all wages owed on a timely basis or upon termination/resignation;

1 and (4) Settlement Class were not provided accurate itemized wage statements.

2 56. Plaintiff alleges that Settlement Class worked in the same capacity for the same
3 employer and were subject to the same employment policies and practices, the questions of fact
4 and claims regarding the status of these employees are the same for each member of the
5 Settlement Class. Accordingly, for purposes of settlement, the evidence reviewed by Class
6 Counsel demonstrates that common meal policies and wage policies applied to the proposed
7 Settlement Class and certification for settlement purposes is appropriate.

8 57. I determined from reviewing the records provided in this case that Plaintiffs
9 worked as background talent for Defendants for over eight hours in exchange for a daily salary in
10 the amount of \$400.

11 58. Plaintiffs allege that they: (1) worked without being provided meal periods as
12 required by law; (2) worked without being paid all overtime wages; (3) worked without being
13 provided accurate itemized wage statements; and (4) worked without being paid all wages due on
14 a timely basis and upon separation. Plaintiffs also allege derivative claims for unfair business
15 competition (B&P Code §17200).

16 59. Plaintiffs also contend that their claims are typical of those of the Settlement
17 Class.

18 60. Plaintiffs believe that they are capable of fairly representing and adequately
19 protecting the interests of the proposed Settlement Class.

20 61. The members of the proposed Settlement Class all worked for Defendants during
21 the relevant time period and incurred the same type of alleged damages with regard to
22 Defendants' alleged violations of the law.

23 62. Moreover, Plaintiffs have agreed to serve as Named Plaintiffs and has retained
24 qualified Counsel who is experienced in prosecuting wage and hour class actions. Plaintiffs has
25 shown themselves to be committed and able class representatives. Plaintiffs helped Class
26 Counsel by gathering and explaining their time and pay records, identifying potential witnesses,
27 and with respect to Plaintiff Wright, participating actively in the mediation. Therefore, Plaintiffs
28 believes that they have and will continue to adequately represent the proposed Settlement Class.

1 ‘Plaintiffs are applying for a service award of \$7,500 in recognition of their time and effort in
2 pursuing resolution for the Settlement Class.

3 63. The superiority of class treatment is evident here because individual pursuit of
4 class members’ claims may not be economically viable.

5 64. The only alternative to certification would be to force 169 employees to join this
6 action, file individual, uniform actions, or abandon their legal rights altogether. Plaintiffs
7 maintain that this economic reality would result in a windfall for Defendants if this case were not
8 certified.

9 65. Proposed Class Counsel are qualified to represent the Settlement Class. I am one
10 of Class Counsel in this matter. My qualifications are as follows: I received my J.D. from the
11 University of California, Hastings College of the Law in 2009. Following law school, I practiced
12 subrogation litigation for one year at Gibson, Robb, Lindh, LLP and consumer finance litigation
13 for two years at Severson & Werson, APC and Bryan Cave, LLP (now Bryan Cave Leighton
14 Paisner, LLP). In 2013, I joined the in-house legal team at Westlake Financial Services
15 (“WFS”), the largest privately-held automobile finance lender in the country. In 2017, I was
16 appointed as General Counsel, a position that I held until my resignation in January 2020 in
17 order to open my own practice.

18 66. During my time at WFS, I was responsible for managing the company’s human
19 resources and employment-related matters for a workforce of over 1,300 employees. I also
20 managed the company’s nationwide litigation matters, including several California wage and
21 hour class actions like *DeLeon, et al. v. Westlake Services, LLC*, (LASC BC526750) and
22 *Yeganeh v Westlake Services, LLC* (LASC BC700568). In that capacity, I was attorney of record
23 for Western Funding Incorporated (a subsidiary of WFS) in *Western Funding Incorporated v.*
24 *Vegas Valley Motors Corp* (LASC BC655813), where I secured a trial verdict in the amount of
25 \$1,730,000 and was awarded attorney fees at an hourly rate of \$695.

26 67. In 2020, I founded Kim Legal, APC (“Kim Legal”), a plaintiff’s employment
27 class action law firm. I am lead counsel in a number of pending wage-and-hour putative class
28 actions and/or PAGA actions involving Labor Code violations pertaining to models, dancers, or

1 other talent who are paid a daily salary: *Azima v. Big Hit Entertainment, et al.* (LASC
2 20STCV43656); *Bandara v. Bonobos, Inc., et al.* (LASC 20STCV27353); *Chang v. KFC*
3 *Corporation, et al.* (20STCV39721); *Macias v. UMG Recordings, Inc., et al.* (LASC
4 20STCV39494); *Pearson v. West Brands, LLC, et al.* (LASC 20STCV31684); *Rivera v. L'Oreal*
5 *USA SD, Inc., et al.* (LASC 21STCV12548); *Saravia v. John McNeil Studio, Inc.* (ACSC
6 RG20082076); *Shedova v. Sibling Rivalry Films, LLC* (LASC 21STCV40683); *DeBuck v. Object*
7 *and Animal USA, Inc.* (LASC 22STCV02972); *Wright v. Home Box Office, Inc., et al.* (LASC
8 21STCV19636).

9 **Attorneys' Fees and Costs**

10 68. As of May 6, 2022, I expended approximately 95 hours in this litigation. My
11 lodestar as of April 30, 2022 is approximately \$66,025. I expect that I will incur approximately
12 50 additional hours of time to see this case through completion of the settlement, including:
13 finalizing and filing these preliminary approval papers; appearing for the hearing on the
14 preliminary approval motion; finalizing the Court-approved Notice forms; working with
15 Defendants and the Settlement Administrator to distribute the Notices; supervising the Notice
16 distribution; responding to inquiries or challenges from the Settlement Class; responding to any
17 request for exclusion or objections; preparing and filing final approval papers, including a final
18 motion for a class representative enhancement award and an attorneys' fee and costs award;
19 attending the final approval hearing; working with Defendants and the Settlement Administrator
20 on the distribution of awards to the Settlement Class Members; monitoring the award
21 distributions to the Settlement Class Members; and reporting to the Court that the distribution of
22 settlement funds has been completed.

23 69. The hours spent (and to be spent) reflect time spent reasonably litigating this case.
24 My fees, together with the fees incurred by my co-counsel, Helen Kim Law, APC, exceed the
25 requested fee award, indicating that Plaintiffs' Counsel requested award is reasonable. The
26 requested fee award is one-third of the gross settlement.

27 70. My firm has also incurred at least \$9,500 in litigation costs as of April 30, 2022.
28 These costs include court-filing and process-serving fees, mediation costs, online research costs,

1 postage and printing costs. The total costs are modest and reflects efficient litigation of the case.
2 Plaintiffs' Counsel will provide the Court with updated costs information and additional briefing
3 in the final approval motion.

4 **Exhibits**

5 71. Attached hereto as **Exhibit 1** is a true and correct copy of the fully executed
6 Settlement Agreement.

7 72. Attached hereto as **Exhibit 2** is a true and correct copy of the proof of submission
8 of Plaintiffs' Motion and all related documents, and copy of the email from the LWDA
9 confirming receipt.

10 I declare under penalty of perjury under the laws of the State of California that the
11 foregoing is true and correct. Executed this 6th day of May, 2022, in Los Angeles, California.

12
13 /s/ Frank H. Kim

14 Frank H. Kim
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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: **DECLARATION OF FRANK H. KIM IN SUPPORT OF PLAINTIFFS' 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