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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

GRANT WESTBROOK, an individual, on
behalf of himself and others similarly
situated,

PLAINTIFF,

v.

C.L.M.P. LTD.; and DOES 1 thru 50,
inclusive,

DEFENDANTS.

CASE NO. 37-2021-00019187-CU-OE-CTL

[Case Assigned for All Purposes to Hon.
Ronald F. Frazier in Dept. C-65]

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

*[Filed concurrently with Motion for Approval
of Attorneys' Fees and Costs; Declarations of
Liane Katzenstein Ly, Grant Westbrook and
Makenna Snow, Proposed Order, and
Judgment]*

Date: September 29, 2023

Time: 8:30 A.M.

Dept.: C-65

Complaint Filed: April 29, 2021

FAC Filed: July 6, 2021

SAC Filed: April 27, 2023

Trial Date: None Set

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on September 29, 2023 at 8:30 A.M. in Department C-65 of the above-entitled court, Plaintiff Grant Westbrook ("Plaintiff") will, and hereby does, move the Court for an Order of Final Approval of the Class Settlement in this case. Plaintiff moves the Court for an order:

1. Granting final approval of the settlement in the case pursuant to the Joint Stipulation Re: Class Action and Representative Settlement Agreement ("Settlement Agreement"), a copy of which is attached to the concurrently-filed Declaration of Liane Katzenstein Ly as Exhibit "A";

2. Affirming Kingsley & Kingsley, APC as Class Counsel;

3. Affirming Grant Westbrook as Class Representative and awarding an enhancement award of \$5,000.00;

4. Awarding ILYM claims administration fees of \$5000.00 for its services as Settlement Administrator; and,

5. Entering judgment.

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

The Motion will be based on this Notice of Motion, the attached Memorandum of Points and Authorities, the Declarations of Liane Katzenstein Ly, Grant Westbrook, Makenna Snow, 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: September 6, 2023

KINGSLEY & KINGSLEY, APC

By:


Liane Katzenstein Ly
Attorneys for Plaintiff GRANT WESTBROOK and
the Proposed Class

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Grant Westbrook (“Plaintiff”) submits this Motion for Final Approval of Class
4 Settlement and requests that the Court:

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

8 2. Award attorneys’ fees and costs as detailed in the concurrently-filed Motion for
9 Attorneys’ Fees and Costs;

10 3. Award ILYM claims administration fees of \$5000.00 for its services as Settlement
11 Administrator;

12 4. Affirm named Plaintiff Grant Westbrook as Class Representative and award a
13 cumulative Class Representative payment of \$5,000.00; and

14 5. Enter judgment.

15 **II. FACTUAL BACKGROUND**

16 **A. Litigation Overview and Procedural History**

17 C.L.M.P. LTD. (“Defendant” or “CLMP”) is a San Diego corporation and staffing agency,
18 which employed Plaintiff and the Proposed Class on behalf of Adame Landscape. Plaintiff and the
19 Proposed Class are hourly employees of CLMP.

20 On April 29, 2021, Plaintiff filed a class action complaint on behalf of himself and the
21 Proposed Class alleging that Defendant (1) failed to pay all wages for overtime work as required
22 under Labor Code §§ 510, 1194, and 1199; (2) failed to provide meal breaks pursuant to Labor
23 Code §§ 226.7 and 512; (3) provided them with incomplete wage statements that violated Labor
24 Code § 226(a); (4) failed to pay wages after termination within the statutory time limits set by
25 Labor Code § 203; and (5) engaged in unfair competition in violation of Business & Professions
26 Code § 17200. (Declaration of Liane Katzenstein Ly (“Ly Decl.”) ¶4.) On the same day, Plaintiff
27 also sent his initial notice to both CLMP and the Labor and Workplace Development Agency
28 (“LWDA”) pursuant to Labor Code § 2699 et seq., or California Labor Code’s Private Attorneys

General Act (“PAGA”), notifying the LWDA of the same. On July 2, 2021, Plaintiff filed a First Amended Complaint (“FAC”) adding a sixth (6) cause of action, a representative action under PAGA. (Ly Decl. ¶5.)

B. The Discovery Process

The parties have engaged in early stages of discovery and settlement negotiations. (Ly Decl. ¶7.) On December 3, 2021, Plaintiff served his first set of Special Interrogatories and Requests for Production. (*Id.*) On February 17, 2022, Defendant served its responses to Plaintiff’s first set of Special Interrogatories and Requests for Production but did not produce any documents. (Ly Decl. ¶8.)

After extensive negotiations, the parties reached an impasse and agreed to a mandatory settlement conference. (Ly Decl. ¶9.) Subsequent thereto, Class Counsel and CLMP engaged in further settlement discussions and eventually reached this settlement. (Ly Decl. ¶10.)

Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in the Action, disputes the damages and penalties claimed by Plaintiff, and further contends that, for any purpose other than settlement, Plaintiff’s claims are not appropriate for class or representative action treatment. (Ly Decl. ¶11.) Defendant contends, among other things, that, at all times, it has complied with the California Labor Code, and the Industrial Wage Commission Orders. (*Id.*) It is CLMP’s position that, if this case were to be litigated, class certification would be denied, and the PAGA claims would be found to be without procedural and substantive merit. (*Id.*)

Based on their own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement Agreement with Defendant is fair, reasonable and adequate, and in the best interest of the settlement classes in light of all known facts and circumstances, including the risk of significant delay, defenses asserted by Defendant, uncertainties regarding a class and representative action trial on the merits, and numerous potential appellate issues. (Ly Decl. ¶12.) Although Defendant denies any liability, Defendant is agreeing to this Settlement Agreement solely to avoid the cost of litigation. (*Id.*) Accordingly, the Parties and their counsel desire to fully,

1 finally, and forever settle, compromise and discharge all disputes and claims arising from or
2 relating to the Action on the terms set forth here. (*Id.*)

3 C. Preliminary Approval

4 On May 9, 2023, the Court issued an Amended Order preliminarily approving the
5 settlement in this case, approving the proposed Class Notice, ordering that the Settlement
6 Administrator send notice to the Settlement Class, and setting a date for the Final Approval and
7 Fairness Hearing. (Ly Decl. ¶13.)

8 **III. THE PRELIMINARILY APPROVED SETTLEMENT**

9 A. The Settlement Class

10 For purposes of settlement, the Class is defined as: “All non-exempt, hourly-paid
11 California employees employed by CLMP and who were assigned to work at Adame Landscape,
12 Inc., during the Class Period.” (“Class”) Members of the Class are referred to herein individually
13 as a “Class Member” and collectively as “Class Members.” CLMP represents that the Class
14 includes approximately 73 individuals as of the date of the Settlement Agreement. (Ly Decl. ¶14;
15 Settlement Agreement, Ex. A at § II, ¶3.)

16 The “Temperature Check Sub-Class” means all Class Members who were subjected to a
17 temperature prior to entering the Adame Landscape, Inc., facility, beginning on March 19, 2020.
18 Members of the Temperature Check Sub-Class are referred to herein individually as a
19 “Temperature Check Sub-Class Member” and collectively as “Temperature Check Sub-Class
20 Members.” CLMP represents that the Temperature Check Sub-Class includes approximately 23
21 individuals as of the date of the Settlement Agreement. (Ly Decl. ¶15; Settlement Agreement, Ex.
22 A at § II, ¶16.)

23 The Class Period is April 29, 2017 through June 7, 2022. (Ly Decl. ¶16; Ex. A at § II, ¶5.)
24 Based on documents and other information produced by Defendant, there are approximately 73
25 Class Members. (Ly Decl. ¶17; Ex. A at §V., ¶11g.)

26 The final Settlement Class contained 73 individuals. (Snow Decl. ¶14.)

27 ///

28 ///

1 B. The Aggrieved Employees

2 For purposes of Settlement, the Aggrieved Employees are defined as: “all non-exempt,
3 hourly-paid California employees employed by CLMP and who were assigned to work at Adame
4 Landscape, Inc., during the PAGA Period.” (“Aggrieved Employees” or “PAGA Members”). (Ly
5 Decl. ¶18; Settlement, Ex. A at § II, ¶2.)

6 The PAGA Period is April 29, 2020 through June 7, 2022. (Ly Decl. ¶18; Ex. A at § II,
7 ¶19.) Based on documents and other information produced by Defendant, there are approximately
8 23 Aggrieved Employees. (Ly Decl. ¶20.)

9 C. Settlement Payments

10 As detailed fully in the Settlement Agreement, the Settlement provides for Defendant to
11 pay a Maximum Settlement Amount of \$42,500.00, which includes the sum of the Individual
12 Settlement Payments, the Class Representative service award, the Class Counsel Award, PAGA
13 Payment, and the Settlement Administration Costs. (Ly Decl. ¶21; Ex. A at § II, ¶11.)

14 The Net Settlement Amount is the Maximum Settlement Amount, less Class Counsel
15 Award, Class Representative Enhancement, PAGA Payment, and Settlement Administration
16 Costs. (Ly Decl. ¶22; Ex. A at § II, ¶12.)

17 Plaintiff now requests final approval of the allocation of the Maximum Settlement Amount
18 to determine the Net Settlement Amount for distribution to the Settlement Class as follows:

19	Maximum Settlement Amount:	\$	42,500.00
20	Attorneys’ Fees (1/3):	\$	14,166.66
21	Requested Case Costs:	\$	3,737.31
22	Claims Administration:	\$	5,000.00
23	PAGA Penalties:	\$	2,500.00
24			<i>(\$1,875.00 to the LWDA; \$625.00 to</i>
25			<i>remain in the Net Settlement</i>
26			<i>Amount)</i>
27	Named Plaintiff Enhancement:	\$	<u>5,000.00</u>
28	Net Settlement Amount:	\$	12,721.03

29 D. Individual Settlement Payments

30 The Individual Settlement Payment amount of each Participating Class Member is an
31 individualized amount that is based on the number of compensable Workweeks worked by the

1 Participating Class Member during the Class Period. (Ex. A at § VI, ¶16; see also Ex. 1 to the
2 Settlement Agreement Class Notice].) Specifically, Individual Settlement Payments will be paid
3 from the Net Settlement Amount and shall be paid pursuant to the settlement formula as follows:
4 the combination of that Participating Class Member's (1) Class Settlement Payment plus, (2) if the
5 Participating Class Member is also a Participating Temperature Check Sub-Class Member, his or
6 her Temperature Check Settlement Payment. If the Participating Class Member is not also a
7 Participating Temperature Check Sub-Class Member, then the Participating Class Member's
8 Individual Settlement Payment is equal to his or her Class Settlement Payment. (*Ibid.*)

9 Thirty-three percent and one-third (33.33%) of the Maximum Settlement Amount to each
10 Participating Class Member shall be deemed payment for settlement of claims for wages and
11 expenses and will be subject to appropriate deductions and withholdings calculated and made by
12 the Settlement Administrator. (Ex. A at § VI., ¶17.) Sixty-six percent and two-thirds (66.66%) of
13 the Maximum Settlement Amount to each Participating Class Member shall be deemed payment
14 for settlement of claims for penalties and interest and other non-wage payments not subject to
15 withholdings. (*Id.*)

16 The Settlement Agreement provides for a specific and detailed dispute process regarding
17 Individual Settlement Payments. (See Ex. A at § VI, ¶16.)

18 The Individual PAGA Payment will be an equal payment to all Aggrieved Employees
19 members calculated as follows: twenty-five percent (25%) of the PAGA Payment (or \$625.00)
20 divided by the number of Aggrieved Employees. (See Ex. A at § VI, ¶7.)

21 Based on these calculations, the average potential recovery is \$118.72 per Class Members.
22 (Snow Decl. ¶16.)

23 E. Class Notice

24 The Court approved the proposed Class Notice, and directed the mailing of the Notice by
25 first-class mail to Class Members in accordance with the proposed implementation schedule. (Ly
26 Decl. ¶23.) The procedures for giving notice to the Class Members, as set forth in the Settlement
27 Agreement and Plaintiffs' Motion for Preliminary Approval and approved by the Court, have been
28 fully and properly carried out. (Snow Decl. ¶3.)

1 To date, ILYM received zero (0) request to be excluded (“opt-outs”) from the proposed
2 Settlement Agreement and zero (0) objections. (Snow Decl. ¶¶11-12.)

3 F. Check Mailed Settlement – No Reversion

4 The Parties agreed to, and the Court preliminary approved, a checks-mailed settlement
5 without the possibility of reversion of settlement funds to Defendant. Under the Settlement
6 Agreement, every Class Member will receive a settlement check and Class Members do not need
7 to submit a claim in order to receive a settlement check. Any funds that remain uncashed after
8 180 days shall be turned over by the Settlement Administrator, with information for each Class
9 Member who failed to timely cash his/her settlement check, to the State of California Controller’s
10 Office Unclaimed Property Fund. (Ex. 1 at § VI, ¶19.)

11 **IV. THE COURT SHOULD ORDER FINAL APPROVAL OF THE SETTLEMENT**

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

18 A. The Settlement is Entitled to a Presumption of Fairness

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

24 As to the first *Dunk* factor, this settlement is the result of adversarial, non-collusive, and
25 arm’s-length negotiations overseen by an experienced mediator. All settlement discussions were
26 made by experienced and informed counsel, who believe that this settlement represents a favorable
27 resolution for the Class Members. (Ly Decl. ¶24.) The settlement negotiations have been, at all
28 times, adversarial and non-collusive, and no self-dealing or other type of misconduct by either side

1 has taken place. (Ly Decl. ¶25.)

2 Second, the Parties engaged in formal and informal discovery that permitted Class Counsel
3 to fairly evaluate the strength of the case and the risks associated with ongoing litigation. In
4 addition, Defendant produced additional data and documents informally for purposes of
5 settlement. This included the number of allegedly violating itemized wage statements at issue, the
6 class size, and all versions of itemized wage statements issued to the Class Members. (Ly Decl.
7 ¶26.) Receipt of appropriate discovery allowed Class Counsel to fairly evaluate the exposure and
8 risks associated with each claim alleged in the lawsuit. (Ly Decl. ¶27.)

9 Third, Class Counsel have significant experience in cases of this type, including several
10 years prosecuting wage, hour, and working condition violations. (Ly Decl. ¶28.) Class Counsel is
11 thus qualified to evaluate the class claims and viability of the defenses. Class Counsel believes that
12 the settlement is fair, reasonable, adequate, and in the best interests of the class and that the average
13 recovery for each Class Members of over \$118.72 is substantial, given the risks inherent in
14 litigation and the defenses asserted. (Ly Decl. ¶29.)

15 Finally, the fourth *Dunk* factor considers the percentage of objectors. Here, there were zero
16 (0) request to be excluded and no objectors. (Snow Decl. ¶¶11-12.) As all of the *Dunk* factors are
17 satisfied, this settlement is entitled to a presumption of fairness.

18 B. The Court Should Approve This Class Action Settlement Because it Satisfies Each
19 of the Kullar Factors

20 In *Kullar v. Foot Locker Retail, Inc* (2008) 168 Cal.App.4th 116, 128, the court set forth
21 several factors that should be analyzed in determining whether to approve a class action settlement.
22 These factors include: (1) the strength of plaintiff's case; (2) the risk, expense, complexity and
23 likely duration of further litigation; (3) the risk of maintaining class action status through trial; (4)
24 the amount offered in settlement; (5) the extent of discovery completed and stage of the
25 proceedings; (6) the experience and views of counsel; (7) the presence of a governmental
26 participant; and (8) the reaction of the class members to the proposed settlement.

27 In *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal. App. 4th 399,
28 409, the court clarified that a Kullar showing does not require the parties to submit the outer

1 reaches of maximum possible recovery without taking into account the actual risks of certification,
2 decertification, dispositive motions, and trial, so long as there is a record which allows “an
3 understanding of the amount that is in controversy and the realistic range of outcomes of the
4 litigation.” *Munoz*, 186 Cal. App. 4th at 409.

5 The proposed settlement satisfies each of these factors. (Ly Decl. ¶30.) Class Counsel
6 conducted extensive formal and informal discovery before entering into meaningful settlement
7 negotiations in this matter. (*Id.* at Ly Decl. ¶¶7-12.) This discovery permitted Class Counsel to
8 fairly evaluate the strength of the case and the risks associated with ongoing litigation. (Ly Decl.
9 ¶31.) Class Counsel is experienced in handling wage and hour class actions and, after weighing all
10 of the following factors, supports this Settlement Agreement. (Ly Decl. ¶32.)

11 1. The Strength of Plaintiffs’ Case

12 a) The Risks Associated with the Minimum Wage/Overtime Claim

13 California Labor Code §§ 1194 and 1199 require an employer to pay its employees the
14 legal minimum wage and the legal overtime compensation applicable. Labor Code § 510(a) states
15 that eight hours of labor constitutes a day’s work and any work in excess of eight hours in one
16 workday and any work in excess of 40 hours in any one workweek must be compensated at the
17 rate of no less than one and one-half times the regular rate of pay for an employee. Any work in
18 excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate
19 of pay. California law also requires that any compensation, including non-discretionary bonuses,
20 must be included in the regular rate of pay.

21 Plaintiff maintains that Defendant violated these statutes by failing to pay all required
22 overtime when employees worked shifts of over eight (8) hours. During the COVID-19 pandemic,
23 Defendant allegedly required Plaintiff and class members to wait and receive a temperature check
24 when entering Defendant’s facility. (Ly Decl. ¶33.) This time spent waiting was “clocked out” and
25 as such, Plaintiff and the Proposed Class were not compensated at the applicable rate of pay. (*Id.*)
26 According to Defendant, there are 23 employees who worked shifts of over 8 hours during the
27 relevant time period and further estimates that there are approximately 269.71 workweeks at issue.
28 As such, Plaintiff and the Proposed Class were paid at a regular rate less than the rate required

1 under California law for all work in excess of eight (8) hours in a workday and/or forty (40) hours
2 in a workweek.

3 Defendant contests that the employees actually spent any time waiting for temperature
4 checks. (Ly Decl. ¶34.) Defendant also argues that the time spent “off the clock,” if any, is de
5 minimums and not compensable. (Ly Decl. ¶35.) While Plaintiff disagrees that the amount worked
6 off the clock could ever be de minimums such that it is not compensable, Plaintiff acknowledges
7 that the damages owed are very small. (Ly Decl. ¶36.)

8 b) The Risks Associated with the Meal Break Claim

9 Plaintiff alleges that Defendant failed to provide lawful meal periods to Plaintiff and all
10 other employees when they worked shifts of over five (5) hours. Plaintiff and Class Members were
11 required to stay on the premises when taking their meal breaks, resulting in an on-duty meal break
12 where they were not free from the employer’s control under *Brinker Restaurant Corp. v. Superior*
13 *Court* (2012) 53 Cal.4th 1004.

14 Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of
15 compensation for each meal period the employer fails to provide. Employees are entitled to a first
16 meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the
17 first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts
18 over ten (10) hours.

19 Under this rule, “[e]mployers must afford employees uninterrupted half-hour periods in
20 which they are relieved of any duty or employer control and are free to come and go as they
21 please.” (*Brinker, supra*, 53 Cal.4th at p. 1037.) In order for a meal period to qualify as a lawful
22 break under California law, an employer must (1) relieve its employees of all duty; (2) relinquish
23 control over their activities; (3) permit them a reasonable opportunity to take an uninterrupted 30-
24 minute break; and (4) not impede or discourage them from doing so. (*Id.* at p. 1040.)

25 In the present case, Plaintiff alleges that CLMP maintained a policy and uniform practice
26 of not providing lawful, duty-free meal periods where Plaintiff and class members were free from
27 CLMP’s control and were free to come and go as they pleased. (*Brinker, supra*, 53 Cal.4th at
28 p.1040.) (Ly Decl. ¶37.) CLMP maintained a uniform policy that Plaintiff and class members were

1 required to stay on the premises during their 30-minute meal periods of shifts over five (5) hours,
2 which failed to relieve them of all duties for the entire 30-minute period. (*Id.* at 1035.) Therefore,
3 CLMP is required to show that, because it failed to provide lawful meal periods, CLMP paid meal
4 period premiums for these on-duty meal periods. (Ly Decl. ¶38.) Defendant disagrees, maintaining
5 that employees were free to leave the premises and many did. (Ly Decl. ¶39.) This is an issue that
6 will have to be litigated heavily and will likely result in conflicting testimony. (Ly Decl. ¶40.)
7 There is a risk that the Court will find Defendant’s position more credible. If that happened, the
8 claim is worth nothing. (Ly Decl. ¶41.)

9 c) The Risks Associated with the Inaccurate Wage Statement Claim

10 Labor Code § 226(a) states, in relevant part:

11 (a) Every employer shall, semimonthly or at the time of each payment of wages,
12 furnish each of his or her employees, ... an accurate itemized statement in writing
showing:

13 (1) gross wages earned,
14 (2) total hours worked by the employee...
...

15 (9) all applicable hourly rates in effect during the pay period and the
16 corresponding number of hours worked at each hourly rate by the
employee...

17 Plaintiff contends that Defendant issued wage statements that undeniably violate these
18 provisions. Defendant’s itemized wage statements do not properly indicate gross wages earned or
19 all applicable hourly rates in effect during the pay period and the corresponding number of hours
20 worked at each hourly rate by the employee because the wage statements fail to include the
21 applicable regular and overtime rates and the number of hours worked at the corresponding rate.
22 (Ly Decl. ¶42.) Defendant required Plaintiff and class members to wait in line for temperature
23 checks while “off the clock” and failed to pay meal premiums for “on duty” meal periods. (Ly
24 Decl. ¶43.) Additionally, Defendant’s wage statements are deficient because they do not show all
25 deductions from pay or accurately report total hours worked. (Ly Decl. ¶44.) This is a derivative
26 claim stemming from the allegations above. As such, it suffers from the same risks as the overtime
27 claim and the meal period claim.

28 ///

1 d) The Risks Associated with the Waiting Time Penalty

2 Plaintiff contends that Defendant has failed to pay each employee wages at the time of termination
3 and/or resignation by not paying all wages and overtime, and not providing premium payments to
4 all former employees who missed meal periods. (Ly Decl. ¶45.) Labor Code § 203 provides that
5 if an employer fails to provide wages at the time of an employee's termination or within 72 hours
6 of resignation, then the employee's wages shall continue as a penalty for up to thirty (30) days.
7 For purposes of section 203, wages include premium payments for missed meal periods. (*Murphy*
8 *v. Kenneth Cole Productions, Inc.* (2002) 40 Cal.4th 1094.) Section 203 reflects a public policy
9 that favors the full and prompt payment of earned wages. (See, e.g., *Barnhill v. Robert Saunders*
10 *& Co.* (1981) 125 Cal.App.3d 1, 7; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.)

11 Here, since Defendant failed to provide all overtime wages and premium payments to
12 Plaintiff and others immediately or within 72 hours of termination during the liability period,
13 Defendant has violated section 203. (Ly Decl. ¶46.) Therefore, under California Law, so called
14 "waiting time" penalties would be triggered for each former employee in the Class.

15 While Defendant may attempt to argue that the good-faith belief exception applies and that
16 its actions were not willful, the well-settled meaning of "willful" as used in section 203 is that an
17 employer has intentionally failed or refused to perform an act which was required to be done.
18 (*Amaral v. Cintas Corp.* No. 2 (2008) 163 Cal.App.4th 1157, 1201.) Thus, waiting time penalties
19 apply and each former employee would be entitled to thirty (30) days of wages.

20 The risks associated with this claim are the "willful" analysis and the fact that the actual
21 wages owed are small in relation to the waiting time penalties.

22 e) The Risks Associated with the PAGA Claim

23 California's Private Attorneys General Act ("PAGA"), Labor Code § 2698, *et seq.*, permits
24 private litigants to recover civil penalties for violations of the Labor Code. PAGA provides that
25 plaintiffs may recover previously established civil penalties (section 2699(a)) or, if none were
26 established, plaintiffs may recover default penalties provided in section 2699(f) in the amount of
27 \$100 per employee per pay period for the initial violation and \$200 for subsequent violations.

28 The Parties discounted the PAGA claim for multiple reasons. (Ly Decl. ¶47.) First, the

aggrieved employees' PAGA claims are derivative of all the foregoing class claims. (Ly Decl. ¶48.) Second, a court has discretion to award less than the maximum penalty. (Ly Decl. ¶49.) Labor Code § 2699(e)(2) ("a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory"). See e.g., *Carrington v. Starbucks Corporation* (2018) 30 Cal.App.5th 504, 241 Cal.Rptr.3d 647, 669 (affirming award of 10% of maximum PAGA penalty). Finally, the Settlement Class is compensated for these violations in the proposed Settlement Agreement, and thus any PAGA recovery for these same violations would be duplicative. (Ly Decl. ¶50.) As such, the Settlement Agreement's contemplated PAGA payment of \$2,500.00 is appropriate. (Ly Decl. ¶51.) See *Nordstrom Commissions Cases*, 186 Cal.App.4th 576, 589 (2010) (affirming settlement allocating \$0 of \$6.4 million settlement to PAGA penalties).

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

There is significant expense associated with the class certification process, which the Parties can avoid by entering into the contemplated Settlement Agreement now. (Ly Decl. ¶52.) If the Court did eventually certify a class, trial of a case involving approximately 73 Class Members would require the retention of expensive expert witnesses, the accrual of extensive litigation costs, and a significant time overlay by the parties. (Ly Decl. ¶53.) Moreover, given the complexity and unsettled nature of the issues in this case it is likely that any outcome at trial would have resulted in a lengthy and costly appeal. (Ly Decl. ¶54.) An appeal would result in further delay for the Class Members who are waiting for a resolution in this matter. (*Id.*)

3. The Risk of Maintaining Class Action Status through Trial

This case has not yet been certified to be tried as a class action. (Ly Decl. ¶55.) While Plaintiff maintains that there is strong evidence to support certification, certification is always hard fought and subject to judicial discretion. Moreover, in class actions, decertification is always a possibility. (*Id.*) In attempting to certify a class, the parties would need to conduct multiple depositions, including of the Class Representative and of several person(s) most knowledgeable regarding Defendant's wage and meal policies. (*Id.*) There is a risk for both sides as to what these

depositions will reveal and whether they will support class certification to the extent expected.
(*Id.*)

4. The Amount Offered in Settlement

It was very difficult for the Parties to reach this Settlement of \$42,500.00. (Ly Decl. ¶56.) This Settlement is the result of adversarial, non-collusive, and arms-length negotiations. (Ly Decl. ¶57.) The Parties arrived at it after extensive investigation and discovery, careful evaluation of the law, risks, and all information substantiating the amount of penalties reasonably likely to be awarded to the class were the trier of fact to find Defendant liable. (*Id.*)

a) Plaintiff's Assessment of Defendant's Maximum Exposure

Plaintiff assessed full value of the Minimum Wage/Overtime claim, without any discount at approximately \$15,373.47. (Ly Decl. ¶58.) This calculation assumed that Class Members worked 30 minutes a day off the clock for the temperature check. (Ly Decl. ¶59.) Plaintiff used an hourly average rate of \$15.20 and 269.71 total work weeks for 23 Class Members. (Ly Decl. ¶60.)

The full value of the Meal Period claim, without any discount, was approximately \$28,760.20. (Ly Decl. ¶61.) This amount is based on an hourly rate of \$12.93 for 69 Class Members for 444.86 work weeks and it assumes 5 on duty meal periods a week. (Ly Decl. ¶62.)

Plaintiff valued the Wage Statement Claim, without discount, at \$25,821.00. (Ly Decl. ¶63.) Plaintiff used \$100 for each wage statement issued (pay period). (Ly Decl. ¶64.) This figure is overstated because Labor Code §226(e)(1) uses \$50 for the initial pay period (not \$100) and puts a \$4,000 cap on wage statement penalties per employee. (Ly Decl. ¶65.)

Plaintiff valued the Waiting Time Claim, tied to the Wage/Overtime claim, at \$214,120.80. (Ly Decl. ¶66.) Considering the derivative nature of Labor Code §203 and the dispute over whether class members were owed any wages, Plaintiff determined that accepting a discount on this claim was appropriate. (Ly Decl. ¶67.)

Finally, Plaintiff calculated the value of the PAGA claim at \$80,913.00 for Class Members (using \$100 per pay period). (Ly Decl. ¶68.)

Per Plaintiff's assessment, the maximum potential value of all of Plaintiff's and the Class Members' claims was approximately \$364,988.47. (Ly Decl. ¶69.) The value of the core overtime

claim and meal period claim is \$44,133.20. If you strip away the penalties and focus on the value of the core claims, this Settlement is very reasonable. Given the risks outlined above, Class Counsel believes this is a fair and reasonable Settlement. (Ly Decl. ¶70.)

5. The Extent of Discovery Completed and Stage of the Proceedings

As outlined above, Class Counsel conducted a thorough investigation into the facts of the claims alleged. (Ly Decl. ¶71.) The agreement to settle did not occur until Class Counsel exchanged and possessed sufficient information to make an informed judgement regarding the likelihood of success on the merits and the results that could be obtained through further litigation. (*Id.*)

6. The Experience and Views of Counsel

Kingsley & Kingsley is very experienced in prosecuting and defending employment litigation, and the firm has focused its practice since 2000 on wage, hour, and working condition violations. (Ly Decl. ¶¶72-73.) The firm is well versed in class action litigation and has diligently and aggressively pursued this action. (*Ibid.*) Kingsley & Kingsley, APC currently serves as Class Counsel for dozens of pending class action lawsuits in Northern, Central, and Southern California. (*Ibid.*) A list of representative cases that Kingsley & Kingsley, APC has handled is included in the accompanying declaration of Liane Katzenstein Ly (*Ibid.*) After factoring in the risks explained above, Class Counsel believes that the proposed settlement is fair and reasonable. (Ly Decl. ¶74.)

7. The Presence of a Governmental Participant

There is no governmental participant in this action. (Ly Decl. ¶75.)

8. The Proposed Plan of Allocation Is Fair and Reasonable

Plans of allocation are subject to the same standard of review as class action settlements; they must be “fair, adequate and reasonable.” (See, e.g., *Officers for Justice v. Civil Service Comm’n* (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the proposed plan of allocation compensates Class Members pro rata based on the number of Workweeks worked by the Class Member during the Class Period. The lump sum payment to each member of the Settlement Class not excluding him/ herself will be determined by dividing eighty percent (80%) of Net Settlement

1 Amount based on the number of qualifying Workweeks in a non-exempt, hourly paid position with
2 CLMP worked by a Participating Class Member during the Class Period. (Ex. A at § VI, ¶16a.)
3 The Temperature Check Settlement Payments shall be calculated and apportioned from twenty
4 percent (20%) of Net Settlement Amount based on the number of qualifying Workweeks in a
5 nonexempt, hourly paid position with CLMP worked by a Participating Temperature Check Sub-
6 Class Member during the Class Period (Ex. A at § VI, ¶16b.) This allocation distributes Agreement
7 funds proportionally to each Class Member’s potential damages and should therefore be approved
8 as fair, adequate, and reasonable. (Ly Decl. ¶76.)

9 9. The Reaction of the Class Members to the Proposed Settlement

10 To date, there are zero (0) request to be excluded from the proposed Settlement Agreement
11 and zero (0) objections. (Snow Decl. ¶¶11-12.) Such indicates that the reaction of Class Members
12 on the whole is positive and weighs in favor of approval.

13 **V. ENHANCEMENT TO PLAINTIFF**

14 Plaintiff’s Counsel request an enhancement of \$5,000.00 to the Class Representative Grant
15 Westbrook for his work on behalf of the Settlement Class. (Ly Decl. ¶113.) “Courts routinely
16 approve incentive awards to compensate named plaintiffs for the services they provide and the
17 risks they incurred during the course of the class action litigation.” *Ingram v. The Coca-Cola*
18 *Company*, 200 F.R.D. 685, 694 (N.D. Ga 2001) (internal quotations and citations omitted); *see*
19 *also Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995). In *Coca-*
20 *Cola*, the Court approved service awards of \$300,000 to each named plaintiff in recognition of the
21 services they provided to the class by responding to discovery, participating in the mediation
22 process, and taking the risk of stepping forward on behalf of the class. *Coca-Cola*, 200 F.R.D. at
23 694; *see also, e.g. Van Vranken*, 901 F. Supp. at 299 (approving \$50,000 participation award to
24 plaintiffs); *Glass v. UBS Financial Services, Inc.*, Case No. C-06-4068 MMC, 2007 WL 227862,
25 at *17 (N.D. Cal. Jan. 26, 2007) (approving \$2500 enhancement to each named plaintiff).

26 Mr. Westbrook is an adequate class representative because he has diligently, adequately
27 and fairly represented the Settlement Class and has not placed his interests above any member of
28 the Settlement Class. (see Declaration of Grant Westbrook (“Westbrook Decl.”) ¶¶3-14.)

1 Here, Class Counsel requests an enhancement for Mr. Westbrook’s valiant effort and time
2 expended in this matter. The time spent by Grant Westbrook is significant and includes
3 researching and retaining competent counsel; providing information to Class Counsel regarding
4 the nature of the work at Defendant; compiling relevant documents; working closely with Class
5 Counsel to develop the theories of liability and martial relevant evidence; regularly discussing the
6 status of the case with Class Counsel; discussing the case via telephone with many Class Members
7 and responding promptly to Class Counsel’s communications regarding settlement. (*Id.*). (Ly Decl.
8 ¶114; Westbrook Decl. ¶¶6-10.) As set forth in the Settlement Agreement, Plaintiff will also be
9 entering into a general release of liability pursuant to Civil Code Section 1542. (Ly Decl. ¶115;
10 Ex. 1 at § VI, ¶5.)

11 Class Counsel considers this to be a fair and reasonable enhancement. (Ly Decl. ¶116.)
12 The enhancement takes into consideration the time, effort, and expense incurred by Mr. Westbrook
13 in coming forward to litigate this matter on behalf of all Class Members. (Ly Decl. ¶117.)
14 Additionally, the Class Representative was at risk for paying for Defendant’s legal fees and costs
15 in the event that Defendant prevailed at trial. (Ly Decl. ¶118.)

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

17 As indicated on the Proof of Service, Plaintiff’s Motion for Final Approval of Class Action
18 Settlement (“Motion”) will be concurrently uploaded to the Labor and Workforce Development
19 Agency’s (“LWDA”) website on the date this Motion is filed as required by statute. Proof of
20 submission of Plaintiff’s Motion, all related documents, and copy of the email from the LWDA
21 confirming receipt is attached to the Declaration of Liane Katzenstein Ly as Exhibit “F.” (Ly Decl.
22 ¶123.)

23 **VII. CONCLUSION**

24 Plaintiff respectfully submits that the proposed Settlement Agreement is fair, adequate,
25 reasonable, and in the best interest of the Class Members. Therefore, Plaintiff respectfully requests
26 that the Court (1) grant Final Approval of the Settlement Agreement and all of its terms; (2) award
27 attorneys’ fees and costs in the amount detailed in the concurrently filed Motion for Attorneys’
28 Fees and Costs; (3) award ILYM claims administration fees of \$5000.00; and (4) award the Class

Representative an enhancement of \$5,000.00; and (5) enter judgment.

DATED: September 6, 2023

KINGSLEY & KINGSLEY, APC

By: 

Liane Katzenstein Ly
Attorneys for Plaintiff GRANT WESTBROOK and
the Proposed Class

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

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

On September 6, 2023, I served all interested parties in this action the following documents described as: **NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Jennifer S. Branch
Ryan Blackstone-Gardner
jbranch@lbbklaw.com
rbg@lbbklaw.com
Lagasse Branch Bell + Kinhead LLP
4365 Executive Dr., Suite 950
San Diego, CA 92121

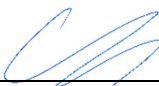
☐ **(BY MAIL)** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage fully prepaid at Encino, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☒ **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.

☒ **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).

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

Executed on September 6, 2023, at Encino, California.



Michelle Tanzer