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

*Filed concurrently with Declaration of Liane
Katzenstein Ly and Proposed Order]*

Date: March 24, 2023

Time: 8:30 a.m.

Dept.: C-65

Complaint Filed: April 29, 2021

FAC Filed: July 6, 2021

Trial Date: Not Set

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

2 **PLEASE TAKE NOTICE** that on March 24, 2023, at 8:30 a.m. in Department C-65 of
3 the above-entitled court, Plaintiff GRANT WESTBROOK will move the Court for an Order of
4 Preliminary Approval of the Joint Stipulation Re: Class and Representative Action Settlement
5 Agreement (“Settlement Agreement”), a copy of which is filed concurrently herewith.

6 The Motion will be made on the grounds that the proposed Settlement Agreement is fair,
7 adequate, reasonable, and in the best interest of the Class and the Parties.

8 The Motion will be based on this Notice of Motion, the attached Memorandum of Points
9 and Authorities, the Declaration of Liane Katzenstein Ly, the Settlement Agreement and Release,
10 all other papers and records on file in this action, and on such oral and documentary evidence as
11 may be presented at the hearing on this Motion.

12
13 DATED: October 31, 2022

KINGSLEY & KINGSLEY, APC

14
15 By: 

16 Liane Katzenstein Ly
17 Attorneys for Plaintiff GRANT WESTBROOK and
18 the proposed class
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff GRANT WESTBROOK (“Plaintiff”) submits this Memorandum of Points and
4 Authorities in support of Plaintiff’s Motion for Preliminary Approval of the Joint Stipulation Re:
5 Class and Representative Action Settlement Agreement reached between Plaintiff and Defendant
6 C.L.M.P. Ltd. (“Defendant”) (Plaintiff and Defendant together, the “Parties”).

7 By this Motion, Plaintiff requests that the Court:

8 (1) Grant preliminary approval of the fully-executed Joint Stipulation Re: Class and
9 Representative Action Settlement Agreement (“Settlement” or “Settlement Agreement”). A true
10 and correct copy of the Settlement Agreement is attached hereto as Exhibit “A”;

11 (2) Approve the proposed Notice to Class Members, a copy of which is attached to the
12 Settlement Agreement as Exhibit “1,” and direct that the Notice be sent to Class Members in the
13 manner set forth in the Settlement Agreement; and

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

17 **II. FACTUAL BACKGROUND**

18 A. Litigation Overview and Procedural History

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

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

1 also sent his initial notice to both CLMP and the Labor and Workplace Development Agency
2 (“LWDA”) pursuant to Labor Code § 2699 et seq., or California Labor Code’s Private Attorneys
3 General Act (“PAGA”), notifying the LWDA of the same. On July 2, 2021, Plaintiff filed a First
4 Amended Complaint (“FAC”) adding a sixth (6) cause of action, a representative action under
5 PAGA. (Ly Decl. ¶5.)

6 B. The Discovery Process

7 The parties have engaged in early stages of discovery and settlement negotiations. (Ly
8 Decl. ¶6.) On December 3, 2021, Plaintiff served his first set of Special Interrogatories and
9 Requests for Production. (*Id.*) On February 17, 2022, Defendant served its responses to Plaintiff’s
10 first set of Special Interrogatories and Requests for Production but did not produce any documents.
11 (Ly Decl. ¶7.)

12 After extensive negotiations, the parties reached an impasse and agreed to a mandatory
13 settlement conference. (Ly Decl. ¶8.) Subsequent thereto, Class Counsel and CLMP engaged in
14 further settlement discussions and eventually reached this settlement. (Ly Decl. ¶9.)

15 Defendant denies any liability or wrongdoing of any kind associated with the claims
16 alleged in the Action, disputes the damages and penalties claimed by Plaintiff, and further contends
17 that, for any purpose other than settlement, Plaintiff’s claims are not appropriate for class or
18 representative action treatment. (Ly Decl. ¶10.) Defendant contends, among other things, that, at
19 all times, it has complied with the California Labor Code, and the Industrial Wage Commission
20 Orders. (*Id.*) It is CLMP’s position that, if this case were to be litigated, class certification would
21 be denied, and the PAGA claims would be found to be without procedural and substantive merit.
22 (*Id.*)

23 Based on their own independent investigation and evaluation, Class Counsel is of the
24 opinion that the Settlement Agreement with Defendant is fair, reasonable and adequate, and in the
25 best interest of the settlement classes in light of all known facts and circumstances, including the
26 risk of significant delay, defenses asserted by Defendant, uncertainties regarding a class and
27 representative action trial on the merits, and numerous potential appellate issues. (Ly Decl. ¶11.)
28 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, finally, and forever settle, compromise and discharge all disputes and claims arising from or relating to the Action on the terms set forth here. (*Id.*)

III. THE PROPOSED SETTLEMENT CLASS SHOULD BE CERTIFIED FOR SETTLEMENT PURPOSES

Originally creatures of equity, class actions have been statutorily embraced by the Legislature whenever “the question in a case] is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court” (Code Civ. Proc. § 382; *see, e.g., Fireside Bank v. Sup. Court* (2007) 40 Cal.4th 1069, 1078.) They serve an important function by “establishing a technique whereby the claims of many individuals can be resolved at the same time” thereby “eliminating] the possibility of repetitious litigation and providing] small claimants with a method of obtaining redress.” (*Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 469.) Public policy supports the use of class actions to enforce wage and overtime laws for the benefit of workers. (*See Sav-on Drug Stores, Inc. v. Sup. Court* (2004) 34 Cal.4th 319, 340.)

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

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

1 the class. (*Ibid*, citing *Fireside Bank*, *supra*, 40 Cal.4th at 1089.)

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

5 A. The Proposed Classes Are Ascertainable and Sufficiently Numerous

6 1. Ascertainability

7 Putative class members are deemed “ascertainable” when they may be “readily identified
8 without unreasonable expense or time by reference to official records.” (*Rose v. City of Hayward*
9 (1981) 126 Cal.App.3d 926, 932.) In determining whether a class is ascertainable, a court
10 scrutinizes the class definition, the size of the class and the means of identifying class members.
11 (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.)

12 Here, Plaintiff maintains that the proposed Settlement Class is ascertainable for several
13 reasons: First, Defendant has agreed in the Settlement Agreement to provide a class list to the
14 Settlement Administrator containing the full name, last known address to the extent available in
15 CLMP’s business records, social security number, dates of employment in a non-exempt, hourly-
16 paid position with CLMP during the Class Period, and membership in the Temperature Check Sub-
17 Class for all putative class members after issuance of the preliminary approval order. (Ly Decl.
18 ¶12; Ex. A at § I., ¶4.) Second, Class Member consist of Defendant’s hourly employees, and
19 Defendant is required to keep records of its hourly employees’ names, home addresses, and social
20 security numbers. (*See* Wage Order 4-2001, subsection 7(c); Ly Decl. ¶13.) Third and finally,
21 Defendant produced documents related to the Class and sufficient for Plaintiff to evaluate the total
22 potential damages and liability risks. (Ly Decl. ¶14.)

23 2. Numerosity

24 There is no set number that is required as a matter of law to maintain a class action. (*See*,
25 *e.g.*, *Rose v. City of Hayward*, *supra*, 126 Cal.App.3d at p. 934.) Here, the proposed Settlement
26 Class contains, based upon information and belief, approximately 73 hourly non-exempt
27 employees in the State of California. (Ly Decl. ¶15; Ex. A at § VI, ¶11g.) Therefore, Plaintiff is
28 confident he will be able to establish that the proposed Settlement Class is ascertainable and

1 sufficiently numerous. (Ly Decl. ¶16.)

2 B. There Is a Well-Defined Community of Interest

3 1. There Are Predominant Questions of Law and Fact

4 In deciding whether questions of common or general interest predominate, a court must
5 determine whether “the issues which may be jointly tried, when compared with those requiring
6 separate adjudication, are so numerous or substantial that the maintenance of a class action would
7 be advantageous to the judicial process and to the litigants.” (*Collins v. Rocha* (1972) 7 Cal.3d
8 232, 238; *accord, Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.) As a
9 general matter, if the defendant’s liability can be determined by facts common to all members of
10 the class, a class will be certified even if the members must individually prove their damages.”
11 (*Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 916, 107; *accord, Knapp v.*
12 *AT & T Wireless Services, Inc.* (2011) 195 Cal.App.4th 932, 941.)

13 Here, Plaintiff argues that there are questions of law and fact common to the proposed
14 Settlement Class that predominate over any questions affecting only individual Class Members.
15 (Ly Decl. ¶17.) These common questions include:

- 16 1) Whether Defendant failed to pay all wages and/or overtime compensation;
- 17 2) Whether Defendant failed to provide lawfully required meal periods and/or failed
- 18 to compensate employees one (1) hour’s wages in lieu thereof;
- 19 3) Whether Defendant failed to provide accurate itemized wage statements;
- 20 4) Whether Defendant failed to pay compensation due and owing upon termination
- 21 of employment;
- 22 5) Whether Defendant engaged in unfair competition; and,
- 23 6) Whether Defendant violated § 2699, et seq. of the Labor Code by engaging in the
- 24 acts previously alleged.

25 (Ly Decl. ¶18.)

26 Plaintiff’s challenge to Defendant’s uniform policies and practices involves common
27 factual and legal issues that are amenable to class treatment. (Ly Decl. ¶19.) As the California
28 Supreme Court has emphasized, “[c]laims alleging that a uniform policy consistently applied to a

1 group of employees is in violation of the wage and hour laws are of the sort routinely, and properly,
2 found suitable for class treatment.” (*Brinker, supra*, 53 Cal.4th at 1033; *see also Bradley v.*
3 *Networkers International, LLC* (2012) 211 Cal.App.4th 1129, 1141-1146.) Moreover, a class of
4 similarly situated employees may be certified based on common questions of fact or law, even if
5 each employee has to establish the amount of his or her damages. (*See Bell v. Farmers Ins. Exch.*
6 (2004) 115 Cal.App.4th 715, 741; *Sav-On Drug Stores, Inc. v. Superior Court, supra*, 34 Cal.4th
7 at 340.)

8 Here, Plaintiff maintains that the proposed Class Members suffered the same injuries, in
9 the same manner: (1) Class Members were not properly paid all wages/overtime for all hours
10 worked; (2) Class Members did not receive their meal periods as required; (3) Class Members
11 were not provided accurate itemized wage statements; and (4) Class Members were not paid all
12 wages owed upon termination/resignation. (Ly Decl. ¶20.) Plaintiff alleges that Class Members
13 worked in the same capacity for the same employer and were subject to the same employment
14 policies and practices, the questions of fact and claims regarding the status of these employees are
15 the same for each member of the Settlement Class. Accordingly, for purposes of settlement,
16 certification for settlement purposes is appropriate. (Ly Decl. ¶21.)

17 2. The Class Representative Has Claims Typical of the Proposed Class

18 A putative class representative’s claim must be “typical,” but not necessarily identical, to
19 the claims of other class members. The test of typicality “is whether other members have the same
20 or similar injury, whether the action is based on conduct which is not unique to the Class
21 Representatives, and whether other class members have been injured by the same course of
22 conduct.” (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502.) Thus, it is sufficient
23 that the representative is similarly situated so that he or she will have the motive to litigate on
24 behalf of all class members. (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502.) Thus,
25 it is sufficient that the representative is similarly situated so that he or she will have the motive to
26 litigate on behalf of all class members. (*See, e.g., Classen v. Weller* (1983) 145 Cal.App.3d 27,
27 45.) It is not necessary that the class representative have personally incurred all of the damages
28 suffered by each of the other class members. (*Wershba v. Apple Computer, Inc.* (2001) 91

1 Cal.App.4th 224, 238.)

2 Plaintiff worked as an “hourly employee” for Defendant. (Ly Decl. ¶22.) Plaintiff alleges
3 that he: (1) worked without being paid all wages and/or overtime for all hours worked; (2) worked
4 without being provided meal periods as required by law; (3) worked without being provided
5 accurate itemized wage statements; and (4) worked without being paid all wages due upon
6 separation. He also alleges that he experienced derivative claims for unfair business competition
7 (B&P Code §17200) and Labor Code §2699, *et seq.* (Ly Decl. ¶23.) Plaintiff also contends that
8 his claims are typical of those of the Settlement Class. (Ly Decl. ¶24.)

9 3. Plaintiff Contends That As The Class Representative He Has and Will
10 Fairly Represent the Interests of the Class Members

11 A putative class representative must show that he can adequately represent the class.
12 (*Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.App.4th 1096, 1104.) The representative,
13 through qualified counsel, must be capable of “vigorously and tenaciously” protecting the interests
14 of the class members. (*Simons v. Horowitz* (1984) 151 Cal.App.3d 834, 846.)

15 Plaintiff believes that he is capable of fairly representing and adequately protecting the
16 interests of the proposed Class Members. (Ly Decl. ¶25.) Plaintiff’s interests in this litigation are
17 coextensive with the interests of the proposed Class Members. The members of the proposed
18 Settlement Class all worked for Defendant during the relevant time period and incurred the same
19 type of alleged damages with regard to Defendant’s alleged violations of the law. (Ly Decl. ¶26.)
20 Moreover, Plaintiff has agreed to serve as Class Representative and has retained qualified Counsel
21 who is experienced in prosecuting wage and hour class actions. (Ly Decl. ¶27.) This demonstrates
22 his commitment to bringing about the best possible results for the benefit of the proposed
23 Settlement Class. (Ly Decl. ¶28.) Plaintiff has provided his Counsel with all necessary and
24 pertinent information. (Ly Decl. ¶29.) He has been a very active participant in the litigation
25 including having frequent contact with Class Members and working closely with Class Counsel to
26 develop the theories of liability. (Ly Decl. ¶30.) Plaintiff has provided his Counsel with all
27 necessary and pertinent information. (Ly Decl. ¶31.) Therefore, Plaintiff believes that he has and
28 will continue to adequately represent the proposed Class Members. (Ly Decl. ¶32.) Plaintiff has

provided his Counsel with all necessary and pertinent information. (Ly Decl. ¶33.)

C. The Class Action Vehicle Is Superior to the Alternatives

“The ultimate question in every case of this type is whether . . . the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants.” (*Lockheed Martin, supra*, 29 Cal.App.4th at 1104–1105.) The California Supreme Court has directed the courts to utilize the class action device to fashion “an effective and inclusive group remedy.” (*Richmond v. Dart Indus., Inc.* (1981) 29 Cal.3d 462, 469.) Normally, in making its class certification decision, the Court must determine that a class action would be superior to alternate means for a fair and efficient adjudication. If the causes of action may be adjudicated in a single proceeding, thereby saving time, reducing waste, and limiting duplication of effort, class certification is superior to individual litigation. (*See, e.g., Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 816.) Since the Parties agreed to a settlement in principal and now seek Court approval of that Settlement, Plaintiff submits that there is not as much need as there would be in an ordinary motion for class certification for the Court to determine that the case can be manageably tried.

Plaintiff maintains that class treatment would be the superior method of managing this case. A class action is superior to individual litigation “when numerous parties suffer injury of insufficient size to warrant individual action and when denial of class relief would result in unjust advantage to the wrongdoer.” (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.) In cases such as this, where individual damages may be small, the class action device is the most feasible method of recovery. (*See, e.g. Lockheed Martin, supra*, 29 Cal.4th at 1131.) In this regard, the superiority of class treatment is evident here because individual pursuit of class members’ claims may not be economically viable. (Ly Decl. ¶34.) The only alternative to certification would be to force over 73 employees to join this action, file individual, uniform actions, or abandon their legal rights altogether. (Ly Decl. ¶35.) Plaintiff maintains that this economic reality would result in a windfall for Defendant if this case were not certified. (Ly Decl. ¶36.)

///

1 **IV. THE PROPOSED SETTLEMENT**

2 A. The Settlement Class

3 For purposes of Settlement, the settlement class is defined as: “all non-exempt, hourly-paid
4 California employees employed by CLMP and who were assigned to work at Adame Landscape,
5 Inc., during the Class Period.” (“Class”) Members of the Class are referred to herein individually
6 as a “Class Member” and collectively as “Class Members.” CLMP represents that the Class
7 includes approximately 73 individuals as of the date of this Settlement Agreement. (Ly Decl. ¶37;
8 Settlement Agreement, Ex. A at § II, ¶3.)

9 The “Temperature Check Sub-Class” means all Class Members who were subjected to a
10 temperature prior to entering the Adame Landscape, Inc., facility, beginning on March 19, 2020.
11 Members of the Temperature Check Sub-Class are referred to herein individually as a
12 “Temperature Check Sub-Class Member” and collectively as “Temperature Check Sub-Class
13 Members.” CLMP represents that the Temperature Check Sub-Class includes approximately 23
14 individuals as of the date of the Settlement Agreement. (Ly Decl. ¶38; Settlement Agreement, Ex.
15 A at § II, ¶15.)

16 The Class Period is April 29, 2017 through June 7, 2022. (Ly Decl. ¶39; Ex. A at § II,
17 ¶15.) Based on documents and other information produced by Defendant, there are approximately
18 73 Class Members. (Ly Decl. ¶40; Ex. A at §V., ¶11g.)

19 B. Aggrieved Employees

20 For purposes of Settlement, the Aggrieved Employees are defined as: “all non-exempt,
21 hourly-paid California employees employed by CLMP and who were assigned to work at Adame
22 Landscape, Inc., during the PAGA Period.” (“Aggrieved Employees” or “PAGA Members”). (Ly
23 Decl. ¶41; Settlement, Ex. A at § II, ¶2.)

24 The PAGA Period is April 29, 2020 through June 7, 2022. (Ly Decl. ¶42; Ex. A at § II,
25 ¶17.) Based on documents and other information produced by Defendant, there are approximately
26 23 Aggrieved Employees. (Ly Decl. ¶43.)

27 C. Maximum Settlement Amount

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

1 pay a Maximum Settlement Amount of \$42,500.00, which includes the sum of the Individual
2 Settlement Payments, the Class Representative service award, the Class Counsel Award, PAGA
3 Payment, and the Settlement Administration Costs. (Ly Decl. ¶44; Ex. A at § II, ¶11.)

4 The Net Settlement Amount is the Maximum Settlement Amount, less Class Counsel
5 Award, Class Representative Enhancement, PAGA Payment, and Settlement Administration
6 Costs. (Ly Decl. ¶45; Ex. A at § II, ¶12.)

7 The Parties estimate the amount of the Net Settlement Amount as follows:

8	Maximum Settlement Amount:	\$	42,500.00
9	Less Class Representative Enhancement:	\$	5,000.00
10	Less Class Counsel's Fees:	\$	14,166.66
11	Less Class Counsel's Costs:	\$	5,000.00
12	Less PAGA Payment:	\$	2,500.00
13			<i>(\$1,875.00 to the LWDA and \$625.00</i>
14			<i>to remain in the Net Settlement</i>
15			<i>Amount)</i>
16	<u>Less Settlement Administrator Costs:</u>	<u>\$</u>	<u>5,000.00</u>
17	Anticipated Net Settlement Amount	\$	11,458.34

18 D. Individual Settlement Payments

19 The Individual Settlement Payment amount of each Participating Class Member is an
20 individualized amount that is based on the number of compensable Workweeks worked by the
21 Participating Class Member during the Class Period. (Ex. A at § VI, ¶16; *see also* Ex. 1 to the
22 Settlement Agreement Class Notice].) Specifically, Individual Settlement Payments will be paid
23 from the Net Settlement Amount and shall be paid pursuant to the settlement formula as follows:
24 the combination of that Participating Class Member's (1) Class Settlement Payment plus, (2) if the
25 Participating Class Member is also a Participating Temperature Check Sub-Class Member, his or
26 her Temperature Check Settlement Payment. If the Participating Class Member is not also a
27 Participating Temperature Check Sub-Class Member, then the Participating Class Member's
28 Individual Settlement Payment is equal to his or her Class Settlement Payment. (*Ibid.*)

Thirty-three percent and one-third (33.33%) of the Maximum Settlement Amount to each
Participating Class Member shall be deemed payment for settlement of claims for wages and
expenses and will be subject to appropriate deductions and withholdings calculated and made by
the Settlement Administrator. (Ex. A at § VI, ¶17.) Sixty-six percent and two-thirds (66.66%) of

1 the Maximum Settlement Amount to each Participating Class Member shall be deemed payment
2 for settlement of claims for penalties and interest and other non-wage payments not subject to
3 withholdings. (*Id.*)

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

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

9 E. Process for Administering Settlement after Preliminary Approval

10 The Parties have agreed to use a reputable third-party claims administrator, ILYM Group,
11 Inc., to administer the Settlement Agreement. (Ex. A at § II, ¶22.) The detailed Notice Procedure
12 established by the Settlement Agreement will efficiently and accurately ensure that Notice is
13 provided to the Class Members. (Ex. A at § II, ¶10-15.)

14 F. Respond to Class Notice

15 Class Members will have an opportunity to request exclusion from the Settlement Class
16 (i.e. opt out) and to object to the Settlement at the Final Approval Hearing. (Ex. A at § VI., ¶11-
17 12.)

18 Class Members who do not opt out of the Settlement Class may object to the Settlement
19 Agreement by mailing written objections to the Settlement Administrator no later than sixty (60)
20 calendar days after the mailing of the Notice Packet. (Ex. A at § VI., ¶11a.) This deadline applies
21 notwithstanding any argument regarding alleged late receipt or non-receipt of the Notice Packet.
22 (*Ibid.*) Any Class Member who fails to timely mail written objections in this manner shall be
23 deemed to have waived any objections and shall be foreclosed from making any objection to the
24 Settlement Agreement and from filing any appeal from any order granting final approval issued
25 by the Court. (*Ibid.*)

26 Class Member who timely and validly return a Request for Exclusion from the Settlement
27 Agreement shall have no right to object and shall be foreclosed from making any objection to the
28 Settlement Agreement. (*Ibid.*) The Settlement Administrator shall promptly provide any such

1 objections to Class Counsel and Defendant’s Counsel, who in turn shall file them with the Court
2 in connection with the final approval motion. (*Ibid.*)

3 Any Class Member wishing to appear at the final approval hearing to object to the
4 Settlement Agreement shall expressly indicate this in his or her written objections. (*Ibid.*) The
5 making of an objection to this Settlement Agreement does not affect the Class Members’ ability
6 to return a valid Claim Form and become a Qualified Claimant if the Settlement Agreement is
7 finally approved. (*Ibid.*)

8 Aggrieved Employees will not be provided with the opportunity to opt out of the PAGA
9 Settlement. If the Court approves the PAGA Payment, the Claims Administrator will mail out
10 checks and the PAGA Letter, which shall explain the PAGA Payment, to the Aggrieved
11 Employees at the same time the Class Members are mailed their Individual Settlement Payments

12 G. The Release

13 The Released Class Claims are defined as: “any and all claims, damages or causes of action
14 alleged in, or arising out of, the allegations in the Complaint, FAC and SAC, filed in this Action,
15 which were alleged or that could have been alleged by WESTBROOK and/or any Participating
16 Class Member in such complaints and/or the PAGA Notice based on any of the factual allegations
17 contained in such complaints and/or the PAGA Notice, including, but not limited to, claims under
18 state or local law, including, but not limited to claims for unpaid wages, and claims for the failure
19 to pay minimum wages, claims for the failure to pay overtime wages, claims related to missed
20 meal breaks or periods and nonpayment of premium pay for such, failure to comply with itemized
21 employee wage statement provisions, failure to pay wages due at separation, the payment of any
22 penalties, all claims arising under the California Labor Code (including, but not limited to, sections
23 201, 202, 203, 226a, 226.7, 510, 512, 1194 and 1199,), the Wage Orders of the California Industrial
24 Welfare Commission, California Business and Profession Code 17200, et seq., and California
25 common law of contract, interest and claims for attorney’s fees relating in any way to those claims
26 alleged and mentioned in the complaint(s) which occurred during the Class Period while a
27 Participating Class Member was employed by CLMP or which arose out of a Participating Class
28 Member’s employment during the Class Period.” (Ex. A at § V., ¶21a.)

1 The Aggrieved Employees will release and discharge all Released Parties, finally, forever
2 and with prejudice from the Released PAGA claims which are defined as: “all claims for PAGA
3 penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period
4 facts stated in the Operative Complaint, the PAGA Notice and ascertained in the course of the
5 Action including, violations of Labor Code sections 201, 202, 203, 226a, 226.7, 510, 512, 1194,
6 and 1199.” (Ex. A at § V, ¶21b.)

7 **V. ARGUMENT**

8 **A. Plaintiff Requests Approval of This Class Action Settlement**

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

16 In *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal. App. 4th 399,
17 409, the court clarified that a *Kullar* showing does not require the parties to submit the outer
18 reaches of maximum possible recovery without taking into account the actual risks of certification,
19 decertification, dispositive motions, and trial, so long as there is a record which allows “an
20 understanding of the amount that is in controversy and the realistic range of outcomes of the
21 litigation.” *Munoz*, 186 Cal. App. 4th at 409.

22 The proposed settlement satisfies each of these factors. Class Counsel conducted extensive
23 formal and informal discovery before entering into meaningful settlement negotiations in this
24 matter. (*Id.* at Ly Decl. ¶¶7-12.) This discovery permitted Class Counsel to fairly evaluate the
25 strength of the case and the risks associated with ongoing litigation. (Ly Decl. ¶46.) Class Counsel
26 is experienced in handling wage and hour class actions and, after weighing all of the following
27 factors, supports this Settlement Agreement. (Ly Decl. ¶47.)

28 **1. The Strength of Plaintiff’s Case**

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

2 California Labor Code §§ 1194 and 1199 require an employer to pay its employees the
3 legal minimum wage and the legal overtime compensation applicable. Labor Code § 510(a) states
4 that eight hours of labor constitutes a day's work and any work in excess of eight hours in one
5 workday and any work in excess of 40 hours in any one workweek must be compensated at the
6 rate of no less than one and one-half times the regular rate of pay for an employee. Any work in
7 excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate
8 of pay. California law also requires that any compensation, including non-discretionary bonuses,
9 must be included in the regular rate of pay.

10 Plaintiff maintains that Defendant violated these statutes by failing to pay all required
11 overtime when employees worked shifts of over eight (8) hours. During the COVID-19 pandemic,
12 Defendant allegedly required Plaintiff and class members to wait and receive a temperature check
13 when entering Defendant's facility. (Ly Decl. ¶48.) This time spent waiting was "clocked out" and
14 as such, Plaintiff and the Proposed Class were not compensated at the applicable rate of pay. (*Id.*)
15 According to Defendant, there are 23 employees who worked shifts of over 8 hours during the
16 relevant time period and further estimates that there are approximately 269.71 workweeks at issue.
17 As such, Plaintiff and the Proposed Class were paid at a regular rate less than the rate required
18 under California law for all work in excess of eight (8) hours in a workday and/or forty (40) hours
19 in a workweek.

20 Defendant contests that the employees actually spent any time waiting for temperature
21 checks. (Ly Decl. 49.) Defendant also argues that the time spent "off the clock," if any, is de
22 minimis and not compensable. (Ly Decl. ¶50.) While Plaintiff disagrees that the amount
23 worked off the clock could ever be de minimis such that it is not compensable, Plaintiff
24 acknowledges that the damages owed are very small. (Ly Decl. ¶51.)

25 b) The Risks Associated with the Meal Break Claim

26 Plaintiff alleges that Defendant failed to provide lawful meal periods to Plaintiff and all
27 other employees when they worked shifts of over five (5) hours. Plaintiff and Class Members were
28 required to stay on the premises when taking their meal breaks, resulting in an on-duty meal break

1 where they were not free from the employer’s control under *Brinker Restaurant Corp. v. Superior*
2 *Court* (2012) 53 Cal.4th 1004.

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

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

14 In the present case, Plaintiff alleges that CLMP maintained a policy and uniform practice
15 of not providing lawful, duty-free meal periods where Plaintiff and class members were free from
16 CLMP’s control and were free to come and go as they pleased. (*Brinker, supra*, 53 Cal.4th at p.
17 1040.) (Ly Decl. ¶52.) CLMP maintained a uniform policy that Plaintiff and class members were
18 required to stay on the premises during their 30-minute meal periods of shifts over five (5) hours,
19 which failed to relieve them of all duties for the entire 30-minute period. (*Id.* at 1035.) Therefore,
20 CLMP is required to show that, because it failed to provide lawful meal periods, CLMP paid meal
21 period premiums for these on-duty meal periods. (Ly Decl. ¶53.)

22 Defendant disagrees, maintaining that employees were free to leave the premises and many
23 did. (Ly Decl. ¶54.) This is an issue that will have to be litigated heavily and will likely result in
24 conflicting testimony. (Ly Decl. ¶55.) There is a risk that the Court will find Defendant’s position
25 more credible. If that happened, the claim is worth nothing. (Ly Decl. ¶56.)

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

27 Labor Code § 226(a) states, in relevant part:
28

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

- 4 (1) gross wages earned,
5 (2) total hours worked by the employee...
6 ...

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

10 Plaintiff contends that Defendant issued wage statements that undeniably violate these
11 provisions. Defendant's itemized wage statements do not properly indicate gross wages earned or
12 all applicable hourly rates in effect during the pay period and the corresponding number of hours
13 worked at each hourly rate by the employee because the wage statements fail to include the
14 applicable regular and overtime rates and the number of hours worked at the corresponding rate.
15 (Ly Decl. ¶57.) Defendant required Plaintiff and class members to wait in line for temperature
16 checks while "off the clock" and failed to pay meal premiums for "on duty" meal periods. (Ly
17 Decl. ¶58.) Additionally, Defendant's wage statements are deficient because they do not show all
18 deductions from pay or accurately report total hours worked. (Ly Decl. ¶59.) This is a derivative
19 claim stemming from the allegations above. As such, it suffers from the same risks as the overtime
20 claim and the meal period claim.

21 d) The Risks Associated with the Waiting Time Penalty Claim

22 Plaintiff contends that Defendant has failed to pay each employee wages at the time of
23 termination and/or resignation by not paying all wages and overtime, and not providing premium
24 payments to all former employees who missed meal periods. (Ly Decl. ¶60.) Labor Code § 203
25 provides that if an employer fails to provide wages at the time of an employee's termination or
26 within 72 hours of resignation, then the employee's wages shall continue as a penalty for up to
27 thirty (30) days. For purposes of section 203, wages include premium payments for missed meal
28 periods. (*Murphy v. Kenneth Cole Productions, Inc.* (2002) 40 Cal.4th 1094.) Section 203 reflects
a public policy that favors the full and prompt payment of earned wages. (*See, e.g., Barnhill v.*
Robert Saunders & Co. (1981) 125 Cal.App.3d 1, 7; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487,

492.)

Here, since Defendant failed to provide all overtime wages and premium payments to Plaintiff and others immediately or within 72 hours of termination during the liability period, Defendant has violated section 203. Therefore, under California Law, so called “waiting time” penalties would be triggered for each former employee in the Class.

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

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

e) The Risks Associated with the PAGA Claim

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

The Parties discounted the PAGA claim for multiple reasons. First, the aggrieved employees’ PAGA claims are derivative of all the foregoing class claims. Second, a court has discretion to award less than the maximum penalty. 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. As such, the Settlement Agreement’s contemplated PAGA payment of \$2,500.00 is

appropriate. (Ly Decl. ¶61.) *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. ¶62.) 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. ¶63.) 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. ¶64.) 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 been certified to be tried as a class action. (Ly Decl. ¶65.) While Plaintiff believes there is strong evidence to support certification of several possible subclasses, certification is always hard fought and subject to judicial discretion. Moreover, in class actions, decertification is always a possibility. (*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. ¶66.) This Settlement is the result of adversarial, non-collusive, and arms-length negotiations. (Ly Decl. ¶67.) 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,

1 at approximately \$15,373.47. (Ly Decl. ¶68.) This calculation assumed that Class Members
2 worked 30 minutes a day off the clock for the temperature check. (Ly Decl. ¶69.) Plaintiff used
3 an hourly average rate of \$15.20 and 269.71 total work weeks for 23 Class Members. (Ly Decl.
4 ¶70.)

5 The full value of the Meal Period claim, without any discount, was approximately
6 \$28,760.20. (Ly Decl. ¶71.) This amount is based on an hourly rate of \$12.93 for 69 Class
7 Members for 444.86 work weeks and it assumes 5 on duty meal periods a week. (Ly Decl. ¶72.)

8 Plaintiff valued the Wage Statement Claim, without discount, at \$25,821.00. (Ly Decl.
9 ¶73.) Plaintiff used \$100 for each wage statement issued (pay period). (Ly Decl. ¶74.) This figure
10 is overstated because Labor Code §226(e)(1) uses \$50 for the initial pay period (not \$100) and
11 puts a \$4,000 cap on wage statement penalties per employee. (Ly Decl. ¶75.)

12 Plaintiff valued the Waiting Time Claim, tied to the Wage/Overtime claim, at \$214,120.80.
13 (Ly Decl. ¶76.) Considering the derivative nature of Labor Code §203 and the dispute over whether
14 class members were owed any wages, Plaintiff determined that accepting a discount on this claim
15 was appropriate. (Ly Decl. ¶77.)

16 Finally, Plaintiff calculated the value of the PAGA claim at \$80,913.00 for Class Members
17 (using \$100 per pay period). (Ly Decl. ¶78.)

18 Per Plaintiff's assessment, the maximum potential value of all of Plaintiff's and the Class
19 Members' claims was approximately \$364,988.47. (Ly Decl. ¶79.) The value of the core overtime
20 claim and meal period claim is \$44,133.20. If you strip away the penalties and focus on the value
21 of the core claims, this Settlement is very reasonable. Given the risks outlined above, Class
22 Counsel believes this is a fair and reasonable Settlement. (Ly Decl. ¶80.)

23 5. The Experience and Views of Counsel

24 Finally, counsel's experience and success in similar class actions also weigh in favor of
25 preliminary approval. *See Wershba, supra*, 91 Cal.App.4th at 245. Kingsley & Kingsley, APC is
26 very experienced in prosecuting complex employment litigation, and the firm has focused its
27 practice since the year 2000 on complex wage, hour, and working condition violations. (Ly Decl.
28 ¶¶81-83.) The firm is well versed in class action litigation and has diligently and aggressively

1 pursued this action. (*Id.*) Kingsley & Kingsley, APC currently serves as Class Counsel for dozens
2 of pending class action lawsuits in Northern, Central, and Southern California. (*Id.*) A list of
3 representative cases that Kingsley & Kingsley, APC has handled is included in the accompanying
4 declaration of Liane Katzenstein Ly. (*Id.*) After factoring in the risks explained above, Class
5 Counsel believes that the proposed settlement is fair and reasonable. (Ly Decl. ¶84.)

6 6. The Proposed Plan of Allocation Is Fair and Reasonable

7 Plans of allocation are subject to the same standard of review as class action settlements;
8 they must be “fair, adequate and reasonable.” (*See, e.g., Officers for Justice v. Civil Service*
9 *Comm’n* (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the proposed plan of allocation
10 compensates Class Members pro rata based on the number of Workweeks worked by the Class
11 Member during the Class Period. The lump sum payment to each member of the Settlement Class
12 not excluding him/ herself will be determined by dividing eighty percent (80%) of Net Settlement
13 Amount based on the number of qualifying Workweeks in a non-exempt, hourly paid position with
14 CLMP worked by a Participating Class Member during the Class Period. (Ex. A at § VI, ¶16a.)
15 The Temperature Check Settlement Payments shall be calculated and apportioned from twenty
16 percent (20%) of Net Settlement Amount based on the number of qualifying Workweeks in a non-
17 exempt, hourly paid position with CLMP worked by a Participating Temperature Check Sub-Class
18 Member during the Class Period (Ex. A at § VI, ¶16b.)

19 7. The Proposed Notice Fairly Apprises the Class Members of the Terms of
20 the Settlement and of the Class Members’ Rights under the Settlement

21 Plaintiff requests that the Court approve the proposed plan and form of Class Notice. The
22 standard for determining the adequacy of notice is whether the notice has “a reasonable chance of
23 reaching a substantial percentage of the class members.” (*Cartt v. Superior Court* (1975) 50
24 Cal.App.3d 960, 974.) Pursuant to the Settlement Agreement, the Notice will be sent to the last
25 known address of all Class Members, or to an updated address if one is located in the National
26 Change of Address Database. (Ex. A at § VI, ¶10). If any Notices are returned as undeliverable,
27 the Settlement Administrator will undertake another reasonable address verification measure to
28 locate a valid mailing address and will promptly send the Notice to the new address. (*Ibid.*) As

1 such, the Notice is likely to reach most, if not all, Class Members.

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

8 Here, the Notice clearly explains the proposed Settlement Agreement and the options to
9 opt out of the Settlement or object to it at the Final Approval Hearing. (Ex. A at § VI, ¶11-12;
10 *see also* Ex. 1 to the Settlement Agreement at pp. 3-6, 8-10 Class Notice[.]) In short, the Court
11 should approve the proposed Class Notice because it describes the proposed settlement with
12 enough specificity to allow Class Members to make an informed choice regarding whether to
13 participate.

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

15 The Class Representative is entitled to an enhancement for his valiant effort and time
16 expended in this matter. (Ly Decl. ¶85.) The time spent by Grant Westbrook is significant and
17 includes researching and retaining competent counsel; providing information to Class Counsel
18 regarding the nature of the work at Defendant; compiling relevant documents; working closely
19 with Class Counsel to develop the theories of liability and martial relevant evidence; regularly
20 discussing the status of the case with Class Counsel; discussing the case via telephone with many
21 Class Members and responding promptly to Class Counsel’s communications regarding
22 settlement. (*Id.*) Thus, in addition to the sums paid to Class Members, Plaintiff requests a proposed
23 litigation enhancement in the amount of \$5,000.00, to be paid from the Maximum Settlement
24 Amount. (Ex. A at § VI, ¶5.) As set forth in the Settlement Agreement, Plaintiff will also be
25 entering into a general release of liability pursuant to Civil Code Section 1542. (Ly Decl. ¶86; Ex.
26 A at § VI, ¶5.)

27 Class Counsel considers this to be a fair and reasonable enhancement. (Ly Decl. ¶87.) The
28 enhancement takes into consideration the time, effort, and expense incurred by Plaintiff in coming

forward to litigate this matter on behalf of all Class Members. (*Id.*) Plaintiff will provide a detailed declaration with the Final Approval Motion detailing his participation and further justification for the enhancement. (*Id.*)

VII. SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY

As indicated on the Proof of Service, Plaintiff's Motion for Approval of Class Action Settlement ("Motion") will be concurrently uploaded to the LWDA website on the date this Motion is filed as required by statute. Proof of submission of Plaintiff's Motion, all related documents, and copy of the email from the LWDA confirming receipt is attached to the Declaration of Liane Katzenstein Ly as Exhibit "B." (Ly Decl. ¶88.)

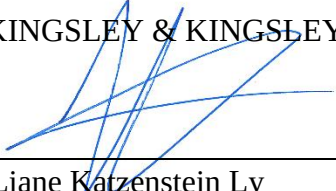
VIII. CONCLUSION

Plaintiff respectfully submits that the proposed Settlement Agreement is fair, adequate, reasonable, and in the best interest of the Class Members. Therefore, the Parties respectfully request that the Court (1) grant preliminary approval of the Joint Stipulation Re: Class and Representative Action Settlement Agreement, and all of its terms; (2) approve the proposed form of notice, and direct that the Notice be sent to Class Members in the manner set forth in the Joint Stipulation Re: Class and Representative Action Settlement Agreement; and (3) schedule a hearing on final approval of the Settlement Agreement and Class Counsel's application for an award of attorney's fees and litigation costs.

DATED: October 31, 2022

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 October 31, 2022, I served all interested parties in this action the following documents described as: **NOTICE OF MOTION AND MOTION FOR PRELIMINARY 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

[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/308>) 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 October 31, 2022, at Woodland Hills, California.



Michelle Tanzer