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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

MICHAEL ALLEN RIOS, individually, and on behalf of all others similarly situated,

Plaintiff,

v.

YOSHI, INC., a corporation, and DOES 1 through 10, inclusive,

Defendants.

ANDRE BROWN, individually, and on behalf of all others similarly situated,

Plaintiff,

v.

YOSHI, INC., and DOES 1 through 100, inclusive

Defendants.

Case Nos.: 21STCV13691 (*Rios*); 21STCV19677 (*Brown*)

CLASS ACTION

[*Assigned for all purposes to:* Hon. Elihu M. Berle, Dept. 6]

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES

[*Filed concurrently with:* Declaration of Justin F. Marquez; Declaration of Laura Van Note; Declaration of Michael Allen Rios; and [Proposed] Order]

FINAL APPROVAL HEARING
Date: July 11, 2024
Time: 10:00 a.m.
Dept: 6

Rios Complaint filed: April 9, 2021
Brown Complaint filed: May 24, 2021
Trial date: Not set

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TO THE COURT AND TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on July 11, 2024 at 10:00 a.m., in Department 6 of the Los Angeles County Superior Court, located at 312 N Spring St, Los Angeles, CA 90012, pursuant to Code of Civil Procedure § 382 and California Rules of Court 3.769 *et seq*., Plaintiffs Michael Allen Rios and Andre Brown (collectively, "Plaintiffs") will and hereby do move the Court for an Order granting final approval of the proposed class action settlement between Plaintiffs and Defendant Yoshi, Inc. ("Defendant"). Plaintiffs further move the Court for an Order:

1. Certifying a Class for settlement purposes;
2. Approving the settlement as fair and reasonable and finding that class members were given notice of the settlement, and advised of their right to participate in the settlement, object to the settlement, or exclude themselves from the settlement, in a reasonable manner;
3. Appointing Plaintiffs as Class Representatives for settlement purposes;
4. Appointing Plaintiffs' Counsel, Wilshire Law Firm, PLC and Cole & Van Note, as Class Counsel for settlement purposes;
5. Approving payment of administrative expenses to Simpluris as the Settlement Administrator in the amount of $5,000;
6. Approving payments of $7,500 to Plaintiff Brown and $15,000 to Plaintiff Rios for their service as a class representative and their agreement to release claims;
7. Approving payment of $87,500 in attorney's fees, which is 35% of the Gross Settlement Amount, and costs in the amount of $21,118.47 for litigating this action to Class Counsel;
8. Directing that the clerk of the Court enter the Court's order as a final judgment; and,
9. Without affecting the finality of the final judgment, reserving continuing jurisdiction over the parties for the purposes of implementing, enforcing and/or administering the Settlement or enforcing the terms of the judgment.

The motion will be based upon this notice, the attached memorandum of points and authorities, the Declarations of Justin F. Marquez, Laura Van Note, and Michael Allen Rios, filed concurrently herewith, the records and files in this action, and any other further evidence or argument that the Court may receive at or before the hearing.

Respectfully submitted,

Dated: May 31, 2024

By: ______________________

WILSHIRE LAW FIRM

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COLE & VAN NOTE

Scott Edward Cole
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I. INTRODUCTION

Plaintiffs Michael Allen Rios and Andre Brown (collectively, "Plaintiffs") seek final approval of a proposed $250,000 non-reversionary, wage and hour class and representative action settlement with Defendant Yoshi, Inc. ("Defendant"). The Settlement will provide substantial monetary payments to approximately 72[1] class members. And, as set forth more fully below, the proposed Settlement satisfies all the criteria for settlement approval under California law.

The proposed settlement satisfies all the criteria for settlement approval under California law. A presumption of fairness exists as the Settlement was reached through extensive, mediated arm's-length negotiations, sufficient investigation and discovery allowed Class Counsel to act intelligently, and Class Counsel is experienced in similar wage-and-hour litigation. Upon the Court's approval of the settlement, participating class members will receive **an average estimated <u>net</u> individual settlement payment of approximately $1,463.63**, which amounts to ***approximately $71.43 per workweek in gross***. (Declaration of Justin F. Marquez in Support of Motion for Final Approval of Class Action Settlement ["Marquez Decl."], ¶ 12.) As of filing this Motion, ***there are zero requests for exclusion and zero objections to the settlement***.[2] (*Id.* at ¶ 11.) Thus, the proposed Settlement is fair, reasonable, and adequate and is in the best interests of the Settlement Class Members.

Plaintiffs' request for attorneys' fees in the amount of $87,500, reimbursement of attorney costs and expenses in the amount of $21,118.47, an incentive award for Plaintiff Rios in the amount of $15,000 and Plaintiff Brown in the amount of $7,500, and Settlement Administration Costs of $5,000.

Accordingly, Plaintiffs respectfully request that the Court grant final approval of the

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[1] In Plaintiffs' Motion for Preliminary Approval of the Settlement, Plaintiff indicated that there were approximately 49 class members at that time based on the initial information provided by Defendant for the class period. In the final class mailing list provided to the Settlement Administrator by Defendant, however, there are 72 class members in the class period. (Marquez Decl., ¶ 11, **<u>Ex. 2</u>**.)

[2] The deadline to opt-out or object to the settlement is set for June 10, 2024. Plaintiffs will file a supplemental declaration from the Settlement Administrator by June 21, 2024.

Settlement.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiffs' Claims

This is a wage and hour class action. Plaintiffs and putative class members worked in California as hourly-paid or non-exempt employees for Defendant during the class period. Defendant specializes in the delivery of various vehicle care services, including, but not limited to, gas delivery, oil changes, and car washes/details. (Marquez Decl., ¶ 2.)

Plaintiffs allege that Defendant's payroll, timekeeping, and wage and hour practices resulted in Labor Code violations. Plaintiffs allege that Defendant failed to pay for all hours worked. Plaintiffs further allege that Defendant failed to provide employees with legally compliant meal and rest periods. Based on these allegations, Plaintiffs assert related claims for failure to provide accurate wage statements, failure to pay all final wages at termination, and unfair business practices. (*Id.* at ¶ 3.) Defendant denies all allegations.

On April 9, 2021, Plaintiff Rios filed a putative wage-and-hour class action complaint against Defendant for: (1) failure to pay minimum and straight time wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to timely pay final wages at termination; (6) failure to provide accurate itemized wage statements; and (7) unfair business practices (Business and Professions Code §§ 17200 et seq.). (*Id.* at ¶ 4.) On May 24, 2021, Plaintiff Brown filed a putative wage-and-hour class action alleging similar causes of action. In September 2021, Plaintiff Rios and Brown amended their respective complaints to add a claim under the Private Attorneys' General Act ("PAGA"). (*Id.*)

B. Discovery and Investigation

Following the filing of the Complaint, the parties exchanged documents and information before mediating this action. Defendant produced a sample of time and pay records for class members. Defendant also provided documents of its wage and hour policies and practices during the class period, and information regarding the total number of current and former employees in its informal discovery responses. (*Id.* at ¶ 5.)

After reviewing documents regarding Defendant's wage and hour policies and practices and analyzing Defendant's timekeeping and payroll records, Class Counsel was able to evaluate the probability of class certification, success on the merits, and Defendant's maximum monetary exposure for all claims. (*Id.* at ¶ 6.) Class Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. (*Id.*) Class Counsel reviewed these records and prepared a damage analysis prior to mediation. (*Id.*)

C. <u>Settlement Negotiations, Preliminary Approval, and Class Size.</u>

On April 4, 2022, the parties participated in private mediation with experienced class action mediator Joel Grossman, Esq. (*Id.* at ¶ 8.) The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. The parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their position through trial and appeal if a settlement had not been reached. (*Id.*)

After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiffs' claims and Defendant's defenses, the Parties reached a tentative settlement, the material terms of which are encompassed within the Settlement, as amended and fully executed in September 2023. (*Id.* at ¶ 9; **<u>Ex. 1</u>** [Yoshi, Inc. Wage and Hour Class Action Settlement Agreement and Release of Claims ("Settlement" or "Settlement Agreement")].) The Court ultimately granted preliminary approval on October 19, 2023. (*Id.* at ¶ 9.)

Class Counsel has conducted a thorough investigation into the facts of this case. Based on the foregoing discovery and their own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement is fair, reasonable, and adequate and is in the best interests of the Settlement Class Members in light of all known facts and circumstances, the risk of significant delay, the defenses that could be asserted by Defendant both to certification and on the merits, trial risk, and appellate risk. (Marquez Decl., ¶ 10.) Indeed, because of the proposed Settlement, class members will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment.

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D. <u>Key Terms of the Proposed Settlement</u>

Under the Settlement, Defendant will pay $250,000 to resolve this Litigation. This amount is all-inclusive. The Settlement's key terms include:

1. <u>Plaintiff Class</u>: comprises all current and former non-exempt employees who worked at any time for Defendant Yoshi, Inc. in California from April 9, 2017 through the date of preliminary approval, excluding any such individuals who opt out of this Settlement. (Settlement, ¶ 14.)

2. <u>Settlement Period</u>: "April 9, 2017 through the date of preliminary approval." (Settlement, ¶ 19.)

3. "Settlement Class" and/or "Settlement Class Members" refers collectively or individually to those members of the Plaintiff Class who do not timely submit a valid opt-out(s) consistent with the processes described herein. (Settlement, ¶ 18.)

4. <u>Gross Settlement Amount:</u> refers to the amount of Two Hundred and Fifty Thousand Dollars ($250,000.00), which represents the maximum amount payable in this Settlement by Defendant, including applicable payroll taxes, and, without limitation, the cash payments to the members of the Plaintiff Class, the attorneys' fees and costs, the costs of settlement administration by the Settlement Administrator, the enhancement awards to the Representative Plaintiffs, and payment to the California Labor & Workforce Development Agency ("LWDA") for release of claims under the Private Attorneys General Act ("PAGA") pursuant to California Labor Code §§ 2699, et seq., all as further described below. (Settlement, ¶ 11.) The Gross Settlement Amount also represents *additional* funds that Defendant will provide after having previously paid a portion of the class members approximately $46,000 in the aggregate. (Marquez Decl., ¶ 7.)

5. <u>Uncashed Checks</u>: Settlement checks issued to the Representative Plaintiffs and Settlement Class Members shall remain valid for one hundred and eighty (180) calendar days from the date of issuance. This expiration or cancellation date shall be clearly printed on the front of the check ("Void Date"). (Settlement, ¶ 62). If the Representative Plaintiffs or any Settlement Class Member does not cash his or her settlement payment check(s) before the Void Date, the funds will be distributed to Legal Aid at Work in San Francisco, CA. (*Id*.)

6. Release by Class Members: "All members of the Plaintiff Class who do not timely request exclusion release the Defendant Yoshi, Inc. Releasees from any and all debts, liabilities, costs, demands, obligations, claims, causes of action, or complaints arising during the Settlement Period that were pled, or which could have been pled based on the same facts as pled in the Plaintiffs' operative Complaint. The release described in this paragraph is effective as of the date full payment of the Settlement Amount is made. This includes claims relating to the alleged failure of the Defendant to provide any of the Class Members with compensation as required by law relating to wages, claims for overtime hours worked, meal periods, rest periods, business expense reimbursements, itemized wage statement/pay stub violations, civil penalties, or waiting-time penalties as required by law or regulations, the failure to pay penalties, or that are based upon, or derive from the claims asserted in the Action, including alleged violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 225.5, 226, 226.3, 226.7, 227.3, 246, 256, 450, 510-512, 516, 558, 1174, 1174.5, 1182.12, 1194, 1197, 1197.1, 1197.2, 1198, 1199, 2800, 2802, and 2698, et seq. as well as the relevant Industrial Welfare Commission Wage Order(s), California Business and Professions Code Sections 17200, et seq., as well as claims for interest, costs, attorneys' fees, compensatory damages, and all claims for restitution and other equitable relief, injunctive relief, liquidated damages, and any other remedies owed or available under the law related to the facts set forth in the Action." (Settlement, ¶ 63.)

7. Release by Aggrieved Employees: "All Aggrieved Employees, regardless if they are a Settlement Class Member or not, are deemed to release the Defendant Yoshi, Inc. Releasees from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in Plaintiffs' operative Complaint and the PAGA Notices, including, e.g., claims relating to the alleged failure of the Defendant to provide any of the Aggrieved Employees with compensation as required by law relating to wages, claims for overtime hours worked, meal periods, rest periods, business expense reimbursements, itemized wage statement/pay stub violations, civil penalties, or waiting-time penalties as required by law or regulations, the failure to pay penalties, or that are based upon, or derive from the claims asserted in the Action. The release described in this paragraph is effective only after full payment of the Settlement Amount

and the occurrence of the "Effective Date" as defined herein." (Settlement, ¶ 64.)

8. Net Settlement Fund: "shall be calculated by deducting approved Class Counsel's attorneys' fees and litigation costs, the enhancement awards to Representative Plaintiffs, the payment to the LWDA for release of claims under PAGA (California Labor Code §§ 2699, et seq.), and the fees and expenses of the Settlement Administrator from the Gross Settlement Fund." (Settlement, ¶ 12.)

9. Distribution Formula: "The Settlement Administrator will calculate (1) the number of Compensable Pay Periods worked by Settlement Class Members who signed a prior settlement agreement covering the claims at issue in this Settlement Agreement, (2) the number of Compensable Pay Periods worked by Settlement Class Members who did not sign a prior settlement agreement covering the claims at issue in this Settlement Agreement, and (3) the total number of Compensable Pay Periods worked by all Settlement Class Members. The Settlement Administrator will then calculate the Individual Settlement Shares on a pro rata basis such that Compensable Pay Periods for Settlement Class Members who did not sign a prior settlement agreement covering the claims at issue in this Settlement Agreement will be valued three times higher (i.e., multiplied by three) than the Compensable Pay Periods worked by Settlement Class Members who signed a prior settlement agreement covering the claims at issue in this Settlement Agreement." (Settlement, ¶ 36.)

10. Tax Allocation: Any settlement money paid to Settlement Class Members will be allocated as 15% wages, 85% to penalties and interest. (Settlement, ¶ 37.)

11. Class Representative Service Award: Subject to Court approval, in addition to any payment Representative Plaintiffs receive in their capacity as Class Member, the Representative Plaintiffs will also individually receive an enhancement award from the Gross Settlement Fund for their services. The Parties agree that Plaintiffs will request enhancement awards in an amount up to Seven Thousand, Five Hundred Dollars ($7,500) to Plaintiff Brown and up to Fifteen Thousand Dollars ($15,000) to Plaintiff Rios. If the Court does not approve the full amount sought for the enhancement awards, the difference between this amount and the actual amount approved shall be returned to the Net Settlement Fund to be distributed to the Settlement Class Members according

to the formula set forth below. (Settlement, ¶ 33.)

12. Attorneys' Fees and Costs: The Settlement provides that Defendant will not oppose a fee application of up to 35% ($87,500) of the Gross Settlement Amount, plus out-of-pocket costs not to exceed $25,000. (Settlement, ¶ 34.) When factoring in the money previously paid out by Defendant (i.e., $46,000), the requested attorneys' fees is approximately 29.5% of the *total* recovery related to Defendant's payments to release the claims in this case. (Marquez Decl., ¶ 18.) Class Counsel have also executed a fee-split agreement with 65% of the fees awarded to Wilshire Law Firm PLC and 35% of the fees awarded to Cole & Van Note. (*Id.*)

13. Notice of Proposed Class Action Settlement: The Notice set forth in plain terms, a statement of the case, the terms of the Settlement Agreement, the approximate amount of attorneys' fees, costs, and service award being sought, and an explanation of how the settlement allocations are calculated. The Notice, which was previously approved by the Court, allowed class members to opt-out from the settlement or request to be excluded from the Settlement. Class Members were notified by first-class mail of the settlement. (Settlement, ¶ 47.) Simpluris will also provide a declaration by June 21, 2024 explaining its efforts related to the Class Notice.

E. Class Notice and Settlement Administration.

This Court granted preliminary approval on October 19, 2023. (Marquez Decl., ¶ 9.) Notices explaining class member rights were mailed out to all 72 class members in the mailing list provided by Defendant. To date, 4 notice packets remain undeliverable after remailing attempts were made. (*Id.* at ¶ 11, **Ex. 2**.) To date, ***there are zero written request for exclusion and zero objections to the settlement.*** (*Id.*)

III. THE SETTLEMENT MERITS FINAL APPROVAL

The law favors the settlement of lawsuits, particularly in class actions and other complex cases. (*See e.g., Neary v. Regents of Univ. of California* (1992) 3 Cal.4th 272, 277-81.) Factors to be considered in evaluating a class action settlement include "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through proceedings, the experience and views of counsel, the presence of a government participant, and the reaction of the class members to the proposed settlement." (*Kullar* *v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.) A presumption that a settlement is fair and reasonable exists where, as here, the following four factors are present: "(l) the settlement is reached through arm's length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." (*Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 245.)

Whether a class action settlement should be approved is a question committed to the trial court's broad discretion. (*Id.* at pp. 234-35.) In exercising its discretion, the Court should give "[d]ue regard ...to what is otherwise a private consensual agreement between the parties." (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) "The inquiry 'must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." (*Id*. [internal citations omitted].)

A. <u>The Settlement Reflects a Reasonable Compromise.</u>

A settlement is not judged against what the plaintiff might recover had she prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair and reasonable. (*Wershba, supra,* 91 Cal.App.4th at pp. 246, 250 ["Compromise is inherent and necessary in the settlement process…even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation."].)

The settlement obviates the significant risk that this Court may deny certification of all or some of Plaintiff's claims. (Marquez Decl., ¶ 10.) While Plaintiffs are confident in the merits of his claims, a legitimate controversy exists as to each cause of action. (*Id.*) Plaintiffs also recognizes that proving the amount of wages due to each class member would be an expensive, time-consuming, and uncertain proposition. (*Id.*) Furthermore, even if Plaintiffs obtained certification of all or some of the claims, continued litigation would be expensive, involving a trial and possible appeals, and would substantially delay and reduce any recovery by the class. (*Id.*)

Because of the proposed Settlement, class members will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment. When considering the risks of litigation, the uncertainties involved in achieving class certification, the burdens of proof necessary to establish liability, the probability of appeal of a favorable judgment, it is clear that the settlement amount of $250,000 is within the "ballpark" of reasonableness, and preliminary settlement approval is appropriate. (*Id.*) Indeed, **each Settlement Class Member is eligible to receive an estimated average <u>net</u> individual settlement payment of approximately $1,463.63**, which amounts to **approximately $71.43 per workweek in gross**. (*Id.*, ¶ 12.)

B. <u>The Settlement was Reached After Arms-Length Negotiations Following Informal Discovery.</u>

The Settlement was reached over the course of a full-day mediation with experienced employment mediator, Joel Grossman, Esq. (Marquez Decl. ¶ 7.) The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. (*Id.*) The parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their or its position through trial and appeal if a settlement had not been reached. (*Id.*)

Prior to reaching this settlement, Class Counsel conducted informal discovery concerning the claims set forth in the Litigation, such as a sample of class member timekeeping and payroll records, Defendant's policies and procedures concerning the payment of wages, the provision of meal and rest breaks, issuance of wage statements, and providing all wages at separation, as well as information regarding the number of putative class members and the mix of current versus former employees, the wage rates in effect, and the amount of meal and rest period premium wages paid to class members. (*Id.* at ¶¶ 5-6.) In conjunction with their extensive factual investigation, Class Counsel investigated the applicable law regarding the claims and defenses asserted in the Litigation. (*Id.*) Thus, Plaintiffs and their counsel were able to act intelligently and effectively in negotiating the proposed Settlement. (*Id.*)

C. <u>Plaintiffs' Counsel Has Substantial Class Action Experience.</u>

Class Counsel also has considerable experience and has demonstrated competence with litigating wage and hour class actions. (Marquez Decl. at ¶¶ 28-42; Van Note Decl. ¶¶ 2-6.) Class Counsel has substantial experience in all facets of litigation in state and federal court, including discovery, law and motion, trial, appeals, arbitration and mediation. Class Counsel has litigated numerous class actions on behalf of plaintiffs and have been lead counsel or otherwise exercised significant case handling responsibilities in numerous cases resulting in millions of dollars in class action settlements. (*Id*.)

Based on Class Counsel's experience as employment and class action attorneys, Class Counsel is eminently qualified to evaluate the strength of Plaintiffs' claims, the strength of Defendant's defenses against certification, the strength of Defendant's defenses on the merits, and the fairness of the Settlement. Their opinion that final approval of the Settlement would be in the best interests of class members in light of the significant risks of litigation is entitled to great weight. (*See Kullar, supra,* 168 Cal.App.4th at 129 ["The court undoubtedly should give considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in assuring itself that a settlement agreement represents an arms' length transaction entered without self-dealing or other potential misconduct"].)

D. <u>There Are No Objections to the Settlement to Date.</u>

To date, no class member has objected to the Settlement, and no class members have requested exclusion from the Settlement. (Marquez Decl., ¶ 11, **<u>Ex. 2</u>**.) The overwhelmingly positive response of the class strongly supports final approval of the Settlement. (*See, e.g., In re Lifelock, Inc. Marketing and Sales Practices Litigation* (D. Ariz. 2010) 2010 WL 3715138, *6 [relatively few objections and requests for exclusion support approval].)

Factors to be considered in evaluating a class action settlement include "the reaction of the class members to the proposed settlement." (*Kullar, supra,* 168 Cal.App.4th at p. 128.) The reaction here has been overwhelmingly positive. Courts have approved class action settlements in lesser circumstances. (*See, e.g., Hughes v. Microsoft Corp.* (W.D.Wash. 2001) 2001 U.S. Dist. LEXIS 5976, 2001 WL 34089697, *8 [court found that the "class members overwhelmingly support[ed] the settlement" where there were over 37,000 notices sent out, 2,745 class members participated in the settlement, "only nine objections were submitted", and there were 86 timely opt-outs and over 20 additional defective or untimely opt-outs, "these indicia of the approval of the class of the terms of the settlement support a finding of fairness under Rule 23"], *citing Hanlon v. Chrysler Corp.* (9th Cir.1998) 150 F.3d 1011, 1027 [despite vigorous objections and appeal by objectors, the "fact that the overwhelming majority of the class willingly approved the offer and stayed in the class presents at least some objective positive commentary as to its fairness," and the court did not abuse its discretion in approving settlement].)

IV. THE COURT SHOULD AWARD PLAINTIFFS THE REQUESTED AMOUNTS OF FEES, COSTS AND AN ENHANCEMENT PAYMENT.

Under the Settlement, subject to the Court's approval, Defendant has agreed to pay Class Counsel reasonable attorneys' fees in the amount of $87,500, which is 35% of the Gross Settlement Amount, and costs up to $25,000 for litigating this Action. However, when including the $46,000 already paid by Defendant to some class members, Class Counsel's attorneys' fees amount to **approximately 29.5% of the *total* recovery**. Class Counsel have executed a fee-split agreement with 65% of the fees awarded to Wilshire Law Firm PLC and 35% of the fees awarded to Cole & Van Note. (Marquez Decl., ¶ 18.) In addition, Defendant will not oppose an application for the payment of Settlement Administration Costs and Class Representative Enhancement Awards. Settlement Administration Costs are $5,000, and Plaintiffs will apply for Enhancement Awards in the amount of $15,000 to Plaintiff Rios and $7,500 to Plaintiff Brown. The proposed attorneys' fees and expenses, as well as the requested Enhancement Award, were disclosed to the Class Members in the proposed Class Notice.

"In general, questions whether a settlement was fair and reasonable, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court's broad discretion." (*Wershba, supra,* 91 Cal.App.4th at pp. 234-235.) "Courts recognize two methods for calculating attorney fees in civil class actions: the lodestar/multiplier method and the percentage of recovery method." (*Id.* at p. 254; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.)

A. Counsel Requests an Award of Fees Based on the "Common Fund" Method.

California courts have long awarded attorneys' fees as a percentage of the benefit created by counsel in pursuing claims on behalf of a class. The California Supreme Court held that "when a number of persons is entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorneys' fees out of the fund." (*Serrano v. Priest* (1977) 20 Cal.3d 25, 34 [*quoting D'Amico v. Board of Medical Examiners* (1974) 11 Cal. 3d 1].)

Class Counsel intends to seek an award of attorneys' fees on the "percentage of recovery/ common fund" theory. The purpose of the common fund/percentage approach is to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." [*Vincent, supra, (9th Cir. 1977) at p. 769*.] In *Quinn v. State of California* (1995) 15 Cal. 3d 162, 167, the California Supreme Court stated: "[O]ne who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs." Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110, the California Supreme Court recognized that the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share."

The California Supreme Court affirmed in *Laffitte v. Robert Half Int'l Inc*. (2016), 1 Cal.5th 480, that, "when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created." (*Id*. at p. 503.) The court explained: "The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation—convince us the percentage method is a valuable tool that should not be denied our trial courts." (*Id*. [internal citations omitted].)

Several courts have expressed frustration with the alternative "lodestar" approach for deciding fee awards, which usually involves wading through voluminous and often indecipherable time records. Commenting on the lodestar approach, Chief Judge Marilyn Hall Patel wrote: "This court is compelled to ask, 'Is this process necessary?' Under a cost-benefit analysis, the answer would be a resounding, 'No!'" (*In re Activision Securities Litigation* (N.D. Cal 1989) 723 F. Supp. 1373, 1375.) The percentage approach is preferable to the lodestar because: (1) it aligns the interests of class counsel and absent class members; (2) it encourages efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the demands on judicial resources. (*Id*. at pp. 1378-79.) The Ninth Circuit now routinely uses the percentage of the common fund approach to determine the award of attorney's fees. (*See*, *e.g.In re Pacific Enterprises Securities City and County of San Francisco Litigation* (9th Cir. 1994) 47 F.3d 373, 378-79 [approving attorney's fee of 33 1/3%].)

1. The Standard Fee Award in Class Actions Has Resolved Itself As One-Third Of The Recovery In Common Fund Cases.

According to a leading treatise on class actions, "No general rule can be articulated on what is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented." (*See* Conte & Newberg, Newberg on Class Actions (3rd Ed.) § 14.03.) Attorneys' fees that are fifty percent of the fund are typically considered the upper limit, with ***thirty to forty percent commonly awarded in cases where the settlement is relatively small***. (*See Id.*; *see also, Van Vranken v. Atlantic Richfield Company* (N.D. Cal. 1995) 901 F. Supp. 294 [stating that most cases where 30-50 percent was awarded involved "smaller" settlement funds of under $10 million].)

The settled-for 35% fee award (or 29.5% fee award when considering the total recovery) is consistent with the average fee award in class actions. Indeed, the custom and practice in class actions is to award approximately one-third of a fund as a fee award. (*See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 ["Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."].) Thus, Plaintiffs' fee request is in line with the prevailing guidelines established in California case law and academic literature and is consistent with awards in

California. Accordingly, Plaintiffs request that the Court approve the attorneys' fees requested herein.

2. This Matter Involves A "Fee-Shifting" Provision of the Labor Code.

Class Counsel is entitled to recover fees under Labor Code § 1194, which provides, in part:

> [A]ny employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

(Cal. Lab. Code § 1194.)

As this litigation culminated in a settlement that provided for a recovery of unpaid wages, including unpaid minimum wages and overtime compensation, Plaintiffs are entitled to recover reasonable attorneys' fees and costs under the California Labor Code.

Class Counsel is also entitled to a fee award under California's private attorney general statute, Code of Civil Procedure § 1021.5. "The award of attorneys' fees is proper under Section 1021.5 if '(1) plaintiffs' action 'has resulted in the enforcement of an important right affecting the public interest,' (2) 'a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons' and (3) 'the necessity and financial burden of private enforcement are such as to make the award appropriate.'" (*Press v. Lucky Stores* (1983) 34 Cal.3d 311, 317-318.) The fundamental objective of the statute is "to encourage suits enforcing public policies by providing substantial attorneys' fees to successful litigants in such cases." (*Graham v. DaimlerChrysler Corp*. (2004) 34 Cal.4th 553, 565.)

This action resulted in the enforcement of an important right affecting the public interest, as Plaintiffs sought to enforce Settlement Class Members' rights to recover statutory wages arising from Defendant's failure to pay all wages and failure to provide meal and rest breaks. (*See Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1113 [noting that "health and safety concerns" are what motivated the Industrial Wage Commission to adopt mandatory meal and rest periods].)

This action also conferred a significant benefit on a large class of persons. Notice was sent to 72 Settlement Class Members, and no Settlement Class Member has, to date, requested exclusion or otherwise provided an objection. The Settlement provides a significant monetary benefit, in that it permits all persons who worked for Defendant during the applicable class period to obtain compensation for unpaid wages and missed meal and rest periods.

Finally, the necessity and financial burden of private enforcement render an award appropriate. Without the incentive of an attorneys' fee award, Plaintiffs could not have afforded to hire counsel to pursue this case, as the cost of litigating this matter far outweighed Plaintiff's potential recovery. (*See Ryan v. California Interscholastic Federation* (2001) 94 Cal.App.4th 1033, 1044 ["As to the necessity and financial burden of private enforcement, an award is appropriate where the cost of the legal victory transcends the claimants' personal interest; in other words, where the burden of pursuing the litigation is out of proportion to the plaintiff's individual stake in the matter."].)

3. The Experience, Reputation and Ability of Class Counsel Support the Fee Award.

As demonstrated by their past experience in pursuing class actions on behalf of consumers and employees, Class Counsel possesses considerable expertise in litigating class action matters. Class Counsel has been involved as lead counsel or co-counsel in dozens of class actions resulting in a multitude of beneficial results to class members in California. Because it is reasonable to compensate class counsel commensurate with their skill, reputation and experience, a fee award of 35% of the Gross Settlement Amount (which is considered within the norm in class action practice) or 29.5% of the total recovery (which is below the norm in class action practice) is certainly justified here.

Class Counsel's experience in wage and hour class actions was integral in evaluating the strengths and weaknesses of the case against Defendant and the reasonableness of the settlement. Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive law (state and federal), as well as the procedural law of class action litigation. Based on these and other factors, Class Counsel has frequently received fee awards amounting to approximately 35% of the recovery for the class. Therefore, the requested fee award is reasonable and fair.

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B. <u>While the Lodestar Method is Not Necessary in Common Fund Cases, Courts May Perform a Cross-Check to Award Fees.</u>

Although California supports the common fund doctrine, the lodestar method can be used to cross-check fee awards. "It may be appropriate in some cases, assuming the class benefit can be monetized with a reasonable degree of certainty, to "cross-check" or adjust the lodestar in comparison to a percentage of the common fund to ensure that the fee awarded is reasonable and within the range of fees freely negotiated in the legal marketplace in comparable litigation." (*In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557.)

Applying the lodestar method requires a two-step process. The first step is to multiply the number of hours reasonably expended by a reasonable hourly rate. The second step is to apply a multiplier to the lodestar to take into account various factors. "The purpose of such adjustment is to fix a fee at the fair market value for the particular action. In effect, the court determines, retrospectively, whether the litigation involved a contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate the fair market rate for such services." (*Id.* at pp. 556-57.) "Under certain circumstances, a lodestar calculation may be enhanced on the basis of a percentage-of-the-benefit analysis." (*Id.* at p. 557.)

Class Counsel's lodestar is at least $83,575 based on at least 135 hours of work performed thus far. (Marquez Decl., ¶¶ 19-21 [showing a lodestar of 135 for Wilshire Law Firm].) Accordingly, the requested fee of $87,500 is reasonable and fair as it is based on an approximate multiplier of 1.05. To be sure, trial courts have substantial discretion in adjusting the lodestar to account for various factors. (*See Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 26, 39-45; *see also Serrano*, *supra,* 20 Cal.3d at p. 49.) In addition, it has been held that "[m]ultipliers can range from 2 to 4 or even higher." (*See Wershba*, 91 Cal.App.4th at p. 255; *see also Van Vranken*, *supra,* 901 F. Supp. At p. 298 ["[m]ultipliers in the 3-4 range are common in lodestar awards for lengthy and complex class action litigation"].)

1. Class Counsel's Rates Have Been Approved by Several Courts.

Class Counsel provides a declaration to support their lodestar hourly rates. "Affidavits of the plaintiffs' attorney and other attorneys regarding prevailing fees in the community, and rate determinations in other cases, particularly those setting a rate for the plaintiffs' attorney, are satisfactory evidence of the prevailing market rate." (*United Steelworkers of America v. Phelps Dodge Corp.* (9th Cir. 1990) 896 F.2d 403, 407.) Class Counsel has received final approval of their hourly rates in other wage and hour class action settlements. These rates are not opposed or challenged.

2. The Lawsuit Provided a Public Benefit.

Class Counsel's choice to litigate this matter provided a public benefit to 72 California employees. Moreover, the California Supreme Court stated that "Labor Code section 1194 confirms "a clear public policy ... that is specifically directed at the enforcement of California's minimum wage and overtime laws for the benefit of workers." [citation omitted]." (*Sav-on Drug Stores, Inc. v. Super. Ct*. (2004) 34 Cal.4th 319, 340.) Given the financial risks and numerous attorney hours attendant to the litigation of Plaintiffs' claims, this factor supports Class Counsel's fee request and encourages the private enforcement of legal rights for the general good.

3. Applying a Positive Multiplier Is Appropriate.

Once this lodestar figure has been determined, the Court may take into account other "enhancement" factors to adjust the lodestar award. While Plaintiffs seek a modest multiplier of 1.05 here, the overall reasonableness of Plaintiffs' request is underscored by the fact that a significantly higher multiplier would be justified under applicable law.

Contingency fees should be higher than fees for the same legal services paid concurrently with the provision of the services. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-33.) "A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases." (*Id.* at p. 1133.) Application of that rule is particularly appropriate where the case is brought to redress important rights of vulnerable persons. (*Id.*) A risk enhancement is "earned compensation; unlike a windfall, it is neither unexpected nor fortuitous. Rather it is intended to approximate market-level compensation for such services which typically pay a premium for the risk of nonpayment or delay in payment of attorney's fees." (*Id*. at p. 1138.)

"Multipliers can range from 2 to 4 or even higher." (*Wershba*, *supra,* 91 Cal.App.4th at p. 255; *see also Sutter Health Uninsured Pricing Cases* (2009) 171 Cal. App. 4th 495, 512 [applying a 2.52 multiplier on a cross-check in an antitrust class action]; *Chavez, supra,* 162 Cal. App. 4th at p. 60 [applying a 2.5 multiplier on a lodestar cross-check]; *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051 n.6 ["most" common fund cases apply a multiplier of 1.0-4.0]; *Been v. O.K. Industries Inc.* (E.D. Okla. 2011) 2011 WL 4478766, *11 [citing a study "reporting [an] average multiplier of 3.89 in survey of 1,120 class action cases" and finding that a multiplier of 2.43 would be "per se reasonable"].) The intermediate court in *Laffitte*, after finding that "2 to 4" is a reasonable range for multipliers on a cross-check, affirmed a 2.13 multiplier. (*Laffitte v. Robert Half Int'l* (2014) 231 Cal. App. 4th 860, 881-82.) The intermediate court opinion was affirmed in full by the California Supreme Court in its new decision guiding lower courts on assessing fees.

Factors considered in determining whether a lodestar multiplier is appropriate generally include: (1) the risks presented by the contingent nature of the case; (2) the novelty and difficulty of the questions involved and the skill requisite to perform the legal service properly; (3) the nature of the opposition; (4) the preclusion of other employment by the attorney due to acceptance of the case; and (5) the result obtained and the importance of the lawsuit to the public. (*Serrano, supra,* 20 Cal. 3d at pp. 48-49.) All of these factors favor approval of a multiplier along the lines of those approved in the cases above.

The major consideration in determining the necessity of a multiplier is the contingent nature of the award. (*Ketchum, supra,* 24 Cal.4th at pp. 1132-33.) Further, the possibility of no recovery is only one of the uncertainties involved in taking on such a case. Other uncertainties are the amount that will be recovered, uncertainty as to the cost, both in effort and expenses, and uncertainty about how much time will pass before the recovery is obtained. (*Id.* at pp. 1132-1133, 1138.) Here, Class Counsel have been the only counsel to represent Class Members in this matter and have borne the entire risk and costs of litigation purely on a contingency basis. Class Counsel's outlay of time and money in this case has been significant.

The other factors are also present here. Class Counsel are skilled attorneys who have had success in wage-and-hour class actions. This case required experienced and competent lawyers and expertise in the issues presented herein. Defendant's contentions underscore the risk of prevailing at class certification and trial, and any of these obstacles could have prevented recovery completely. Further, proceeding to trial would have added years to the resolution of this case because of the difficult legal and factual issues raised and the likelihood of appeals. Despite these risks, Class Counsel took this case on a contingency basis. Yet, there are only so many cases that Class Counsel can take at any one time. Consequently, there were other meritorious cases presented to Class Counsel that would have generated substantial fees, but were declined, during the pendency of this action in order to devote the attention necessary to achieve favorable results. (Marquez Decl., ¶ 23.) Considered against the risks of continued litigation, and the importance of the employment rights and a speedy recovery, the relief provided under the Settlement represents a very strong result for the Class.

C. Costs Are Reasonable.

As of the date of filing this Motion, Class Counsel has incurred around $20,818.47 in costs, and they anticipate incurring at least $300 in additional costs up to the time the Court enters a judgment in this action and schedules a hearing on distribution. (Marquez Decl., ¶ 27 [showing $13,019.47 in actual costs, plus $300 in anticipated future costs]; Van Note Decl. ¶ 8 [showing $7,799.00 in actual costs].) Accordingly, Class Counsel respectfully requests reimbursement of up to $21,118.47 in costs. Notably, Defendant has agreed that it will not oppose any cost award request up to $25,000.00. The categories of costs are set forth in the accompanying Declarations of Justin Marquez and Laura Van Note, and these costs are easily seen to be both reasonable and necessary.

D. The Enhancement Payment to the Plaintiffs Are Reasonable.

Named plaintiffs in class action lawsuits "are eligible for reasonable incentive payments to compensate them for the expense or risk they have incurred in conferring a benefit on other members of the class." (*Munoz, supra,* 86 Cal.App.4th at p. 412.) Courts routinely grant approval of class action settlement agreements containing enhancements for the class representatives, which are necessary to provide incentive to represent the class, and are appropriate given the benefit the class representatives help to bring about for the class. (*See Rodriguez v. W. Publ'g Corp*. (9th Cir. 2009) 563 F.3d 948, 958-59.) The California Supreme Court has also noted that "retaliation against employees for asserting statutory rights under the Labor Code is widespread," despite anti-retaliation statutes designed to protect employees. (*Gentry v. Super. Ct.* (2007) 42 Cal.4th 443, 460-61.) Plaintiffs should therefore be rewarded for assuming the risk of retaliation for the sake of class members. (*See Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

Under the settlement agreement, subject to the Court's approval, Defendant agreed to pay a Service Award in the amount of $15,000.00 to Plaintiff Rios and $7,500 to Plaintiff Brown. (Settlement, ¶ 33.) In its Order granting preliminary approval, this Court preliminarily approved Service Awards in the amount of $15,000 to Plaintiff Rios and $7,500 to Plaintiff Brown. This amount is also in exchange for Plaintiffs' general release of all claims against Defendant. Plaintiffs have submitted declarations demonstrating that Plaintiffs Rios and Brown have devoted significant time and efforts with assisting counsel in this case, reviewing discovery, preparing for mediation, and reviewing case-related documents. (*See, generally,* Declarations of Plaintiff Michael Allen Rios and Andre Brown.) Plaintiff Rios is also receiving an increased Service Award as a result of his role as the lead Class Representative, his additional time and efforts dedicated to the case (which includes more than 75 hours of time), and his agreement not to settle any other claims with Defendant outside of this Settlement. (*See, generally,* Supplemental Declaration of Plaintiff Michael Allen Rios.)

When compared with the amounts awarded in typical class action cases, the amount requested here is particularly reasonable. Indeed, a **2006** study examining the average incentive award given to class action plaintiffs from **1993 to 2002** found that the "average award per class representative was $15,992 and the median award per class representative was $4,357." (Theodore Eisenberg & Jeffrey P. Miller, "Incentive Awards to Class Action Plaintiffs: An Empirical Study", 53 UCLA L. Rev. 1303, 1308 (2006).)

E. Administration Expenses Should be Approved.

Simpluris, the Settlement Administrator, estimates that it will incur a total of $5,000 in costs associated with the administration of this Settlement.[3] These expenses are reasonable, based upon the size of the class, claim and exclusion tracking, and Class Member payment processing.

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant final approval of the proposed settlement.

Respectfully submitted,

Dated: May 31, 2024

By: ______________________________

WILSHIRE LAW FIRM

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Maxim Gorbunov

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COLE & VAN NOTE

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[3] Plaintiffs will provide a declaration from the Settlement Administrator, which will include a final costs breakdown, by June 21, 2024 once the opt-out deadline has expired.

PROOF OF SERVICE

Rios v. Yoshi, Inc., et al.
21STCV13691

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I, Rebecca Padilla, am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to this action. My business address is 3055 Wilshire Blvd., 12th Fl., Los Angeles, California 90010. My electronic service address rpadilla@wilshirelawfirm.com.

On **May 31, 2024**, I served the foregoing **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES,** on the interested parties by placing a true copy thereof, enclosed in a sealed envelope by following one of the methods of service as follows:

Scott Edward Cole (SBN 160744)
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Laura Grace Van Note (SBN 310160)
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Cody Alexander Bolce (SBN 322725)
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Attorneys for Defendant Yoshi, Inc.

(X) **BY UPLOAD:** I hereby certify that the documents were uploaded by my office to the State of California Labor and Workforce Development Agency Online Filing Site.

(X) **BY ELECTRONIC SERVICE**: Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed above via third-party cloud service **CASEANYWHERE.**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this **May 31, 2024** at Los Angeles, California.

Rebecca Padilla