

KINGSLEY & KINGSLEY, APC

ERIC B. KINGSLEY, Esq. (SBN 185123)

eric@kingsleykingsley.com

LIANE KATZENSTEIN LY, Esq., (SBN 259230)

liane@kingsleykingsley.com

JESSICA BULAON, Esq. (SBN 340749)

jessi@kingsleykingsley.com

16133 Ventura Blvd., Suite 1200

Encino, CA 91436

Tel: (818) 990-8300, Fax (818) 990-2903

Attorneys for Plaintiff and the proposed class

(Additional Counsel listed on next page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

EMMANUEL WRIGHT, individually and on
behalf of all others similarly situated,

PLAINTIFF,

v.

HOME BOX OFFICE, INC.; PLANE
MEETS PAPER PRODUCTIONS, LLC; and
DOES 1 through 50, inclusive,

DEFENDANTS.

CASE NO. 21STCV19636

[Case Assigned for All Purposes to Hon. Maren
E. Nelson in Dept. 17]

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

*[Filed concurrently with Declarations of Liane
Katzenstein Ly and Emmanuel Wright and
[Proposed] Order Thereon]*

Date: January 8, 2024

Time: 9:00 a.m.

Dept.: 17

Complaint Filed: May 24, 2021

Trial Date: None Set

1 FRANK H. KIM, State Bar No. 264609
fkim@kim-legal.com
2 KIM LEGAL, APC
3435 Wilshire Blvd, Suite 2700
Los Angeles, CA 90010
3 Telephone: (323) 482-3300
4 Facsimile: (866) 652-7819

5 HELEN U. KIM, State Bar No. 260195
helen@helenkimlaw.com
HELEN KIM LAW, APC
6 3435 Wilshire Blvd, Suite 2700
Los Angeles, CA 90010
7 Telephone: (323) 487-9151
8 Facsimile: (866) 652-7819

9 Attorneys for Plaintiff and the Proposed Class
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

2 **PLEASE TAKE NOTICE** that on January 8, 2024, at 9:00 a.m. in Department 17 of the
3 above-entitled court, Plaintiff EMMANUEL WRIGHT will move the Court for an Order of
4 Preliminary Approval of the Class Action and PAGA Settlement Agreement (“Agreement”), a
5 copy of which is filed concurrently herewith.

6 The Motion will be made on the grounds that the proposed Agreement is fair, adequate,
7 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 Agreement and Release, all other
10 papers and records on file in this action, and on such oral and documentary evidence as may be
11 presented at the hearing on this Motion.

12
13 DATED: September 11, 2023

KINGSLEY & KINGSLEY, APC

14
15 By: 

16 Liane Katzenstein Ly
17 Attorneys for Plaintiff EMMANUEL WRIGHT and
18 the proposed class
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	FACTUAL BACKGROUND.....	1
A.	Litigation Overview and Procedural History	1
B.	The Discovery Process.....	3
III.	THE PROPOSED SETTLEMENT CLASS SHOULD BE CERTIFIED FOR SETTLEMENT PURPOSES	5
A.	The Proposed Classes Are Ascertainable and Sufficiently Numerous	6
1.	Ascertainability	6
2.	Numerosity.....	6
B.	There Is a Well-Defined Community of Interest	6
1.	There Are Predominant Questions of Law and Fact.....	6
2.	The Class Representative Has Claims Typical of the Proposed Class	8
3.	Plaintiff Contends That As The Class Representative He Has and Will Fairly Represent the Interests of the Settlement Class Members	9
C.	The Class Action Vehicle Is Superior to the Alternatives	10
IV.	THE PROPOSED SETTLEMENT.....	11
A.	The Settlement Class.....	11
B.	The Aggrieved Employees.....	11
C.	Gross Settlement Amount	12
D.	Individual Settlement Payments	12
E.	Process for Administering Settlement after Preliminary Approval	13
F.	Process for Settlement Class Members to Respond to Class Notice	13
G.	The Release	14
V.	ARGUMENT	15
A.	Plaintiff Requests Approval of This Class Action Settlement.....	15
1.	The Strength of Plaintiff's Case.....	16
a)	The Risks Associated with Minimum Wage/Overtime Claim	16

1	i.	Plaintiff and Class Members Were Essentially on	
2		“Standby” For Each of the Five Days in Quarantine.....	16
3	ii.	Defendants also Failed to Pay Overtime/Minimum Wages	
4		for the Time Plaintiff and Class Members were in	
5		Quarantine.....	18
6	b)	The Risks Associated with the Meal Break Claim	19
7	c)	The Risks Associated with the Rest Break Claim	21
8	d)	The Risks Associated with the Inaccurate Wage Statement Claim	
9			23
10	e)	The Risks Associated with the Waiting Time Penalty Claim.....	24
11	f)	The Risks Associated with the PAGA Claim	24
12	2.	The Risk, Expense, Complexity, and Likely Duration of Further Litigation	
13			26
14	3.	The Risk of Maintaining Class Action Status through Trial.....	26
15	4.	The Amount Offered in Settlement.....	26
16	a)	Plaintiff’s Assessment of Defendant’s Wage Claims Exposure ...	27
17	5.	The Experience and Views of Counsel.....	28
18	6.	The Proposed Plan of Allocation Is Fair and Reasonable.....	28
19	7.	The Proposed Notice Fairly Apprises the Settlement Class Members of the	
20		Terms of the Settlement and of the Class Members’ Rights under the	
21		Settlement	29
22	VI.	THE SERVICE AWARD TO THE NAMED PLAINTIFF	30
23	VII.	SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY.	30
24	VIII.	CONCLUSION.....	31

TABLE OF AUTHORITIES

Federal Cases

Gonzalez v. Core Civic of Tennessee, LLC,

(E.D. Cal., Sept. 13, 2018, No. 116CV01891DADJLT) 2018 WL 4388425 25

Gibbs v. TWC Administration, LLC,

(S.D. Cal., Jan. 3, 2020, No. 17CV01513DMSAGS) 2020 WL 42768..... 16

Officers for Justice v. Civil Service Comm’n,

(9th Cir. 1982) 688 F.2d 615 28

Oliver v. Mercy Medical Center, Inc.,

695 F.2d 379 (9th Cir. 1982) 17

State Cases

Amaral v. Cintas Corp. No. 2,

(2008) 163 Cal.App.4th 1157 24

Augustus v. ABM Security Services, Inc.,

(2016) 2 Cal.5th 257 20, 22

Barnhill v. Robert Saunders & Co.,

(1981) 125 Cal.App.3d 1 24

Bell v. Farmers Ins. Exch.,

(2004) 115 Cal.App.4th 715 8

Blue Chip Stamps v. Superior Court,

(1976) 18 Cal.3d 381 10

Bradley v. Networkers International, LLC,

(2012) 211 Cal.App.4th 1129 8

Brinker Restaurant Corp. v. Superior Court,

(2012) 53 Cal.4th 1004 passim

Bufile v. Dollar Fin. Grp., Inc.,

(2008) 162 Cal.App.4th 1193 22

Carrington v. Starbucks Corporation,

1	(2018) 30 Cal.App.5th 504, 241 Cal.Rptr.3d 647.....	25
2	<u>Cartt v. Superior Court,</u>	
3	(1975) 50 Cal.App.3d 960	29
4	<u>Classen v. Weller,</u>	
5	(1983) 145 Cal.App.3d 27	9
6	<u>Collins v. Rocha,</u>	
7	(1972) 7 Cal.3d 232	5, 7
8	<u>Diaz v. Grill Concepts Services, Inc.,</u>	
9	(2018) 23 Cal.App.5th 859	24
10	<u>Dunk v. Foot Locker Retail, Inc.,</u>	
11	(1996) 48 Cal.App.4th 1794	4
12	<u>Fireside Bank v. Sup. Court,</u>	
13	(2007) 40 Cal.4th 1069	5
14	<u>Frlekin v. Apple Inc.,</u>	
15	(2020) 8 Cal.5th 1038	16
16	<u>Gomez v. Lincare, Inc.,</u>	
17	173 Cal.App.4th 508 (2009)	17
18	<u>Hicks v. Kaufman & Broad Home Corp.,</u>	
19	(2001) 89 Cal.App.4th 908	7
20	<u>Knapp v. AT & T Wireless Services, Inc.,</u>	
21	(2011) 195 Cal.App.4th 932	7
22	<u>Kullar v. Foot Locker Retail, Inc.,</u>	
23	(2008) 168 Cal.App.4th 116 (“Dunk/Kullar”).....	4, 15
24	<u>Linder v. Thrifty Oil Co.,</u>	
25	(2000) 23 Cal.4th 429	5
26	<u>Lockheed Martin Corp. v. Superior Court,</u>	
27	(2003) 29 Cal.App.4th 1096	9, 10
28	<u>Lockheed Martin,</u>	

1	<i>supra</i> , 29 Cal.4th	11
2	<u><i>Mamika v. Barca</i>,</u>	
3	(1998) 68 Cal.App.4th 487	24
4	<u><i>Mendiola v. CPS Security Solutions, Inc.</i>,</u>	
5	60 Cal.4th 833 (2015)	16, 17
6	<u><i>Seymore v. Metson, Inc.</i>,</u>	
7	194 Cal.App.4th 361 (2011)	17
8	<u><i>Miller v. Woods</i>,</u>	
9	(1983) 148 Cal.App.3d 862	6
10	<u><i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i>,</u>	
11	(2010) 186 Cal. App. 4th 399	15
12	<u><i>Nordstrom Commissions Cases</i>,</u>	
13	186 Cal.App.4th 576 (2010)	26
14	<u><i>Richmond v. Dart Industries, Inc.</i>,</u>	
15	(1981) 29 Cal.3d 462	5, 10
16	<u><i>Rose v. City of Hayward</i>,</u>	
17	(1981) 126 Cal.App.3d 926	6
18	<u><i>Sav-on Drug Stores, Inc. v. Sup. Court</i>,</u>	
19	(2004) 34 Cal.4th 319	5, 7, 8
20	<u><i>Seastrom v. Neways, Inc.</i>,</u>	
21	(2007) 149 Cal.App.4th 1496	8, 9
22	<u><i>Simons v. Horowitz</i>,</u>	
23	(1984) 151 Cal.App.3d 834	9
24	<u><i>Troester v. Starbucks Corp.</i>,</u>	
25	(2018) 5 Cal.5th 829	16
26	<u><i>Trotsky v. L.A. Fed. Sav. & Loan Ass'n</i>,</u>	
27	(1975) 48 Cal.App.3d 134	29
28	<u><i>Vasquez v. Superior Court</i>,</u>	

1	(1971) 4 Cal.3d 800	10
2	<i>Wershba v. Apple Computer, Inc.</i> ,	
3	(2001) 91 Cal.App.4th 224	9, 28
4	<u>State Statutes</u>	
5	Business & Professions Code § 17200	3, 9
6	Civil Code § 1542	30
7	Code of Civil Procedure § 382.....	5
8	Labor Code § 1194.....	3
9	Labor Code § 1197.1.....	3, 18
10	Labor Code § 1199.....	3
11	Labor Code § 201.....	2, 25
12	Labor Code § 202.....	2, 25
13	Labor Code § 203.....	3, 24, 27
14	Labor Code § 226(a)	3, 23
15	Labor Code § 226.7.....	3, 20, 23
16	Labor Code § 2698.....	24
17	Labor Code § 2699.....	3, 7, 9
18	Labor Code § 2699(f).....	25
19	Labor Code § 2699(g)(1)	25
20	Labor Code § 2699.3(a)(1)	2
21	Labor Code § 2699.3(a)(2)(A).....	3
22	Labor Code § 2699.5.....	25
23	Labor Code § 2802.....	3
24	Labor Code § 510.....	3
25	Labor Code § 510(a)	18
26	Labor Code § 512.....	3, 19, 20, 23
27	<u>State Regulations</u>	
28	Code of Regulations, Title 8, § 11040(11)(A).....	21

Code of Regulations, Title 8, § 11050(2)(K).....	16
--	----

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff EMMANUEL WRIGHT (“Plaintiff”) submits this Memorandum of Points and
4 Authorities in support of Plaintiff’s Motion for Preliminary Approval of the Class Action and
5 PAGA Settlement Agreement reached between Plaintiff and Defendant HOME BOX OFFICE,
6 INC.; PLANE MEETS PAPER PRODUCTIONS, LLC (“Defendant”) (Plaintiff and Defendant
7 together, the “Parties”).

8 By this Motion, Plaintiff requests that the Court:

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

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

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

18 **II. FACTUAL BACKGROUND**

19 A. Litigation Overview and Procedural History

20 Defendant HOME BOX OFFICE, INC., a parent company of various production company,
21 including PLANE MEETS PAPER PRODUCTIONS, LLC, is a widely known cable television
22 company, offering various entertainment services such as, but not limited to, movie, concert, and
23 sports broadcasting. Defendant Plane Meets Paper is also a part of the motion picture and video
24 entertainment industry. Defendant Plane Meets Paper employed Plaintiff as background talent to
25 appear in the show *Insecure*. Plaintiff alleges that he, and other Class Members, were jointly
26 employed by HBO and Plane Meets Paper.

27 Plaintiff contends, and Defendants dispute, that that during the COVID-19 pandemic, HBO
28 implemented a policy (the “HBO Quarantine Policy”) that required its affiliated production

1 company, Plane Meets Paper Productions, and the employees of Plane Meets Paper Productions,
2 including Plaintiff, to quarantine at designated hotels prior to working on the production set. (Ly
3 Decl. ¶4.) Plaintiff contends, and Defendants dispute, that in order to ensure compliance with the
4 HBO Quarantine Policy, HBO employed COVID teams to monitor Plaintiff and the other
5 background talent around the clock at the quarantine location. (Ly Decl. ¶5.) Plaintiff alleges, and
6 Defendant disputes, that the HBO COVID teams informed the background talent that anyone who
7 would failed to comply with the HBO Quarantine Policy would be prohibited from working on the
8 production set. (*Id.*)

9 Pursuant to what Plaintiff alleges is to be the HBO Quarantine Policy, Plaintiff was
10 required to quarantine at the Burbank Marriott Hotel for five consecutive days prior to the shoot
11 and could only order food from a designated restaurant, which was delivered directly to his room
12 and could only be consumed within it. In the few instances where Plaintiff was allowed to leave
13 his room, he could only do so with prior approval from what Plaintiff alleges to be HBO's COVID
14 team with an assigned chaperone (who was one of the quarantine staff) or only during designated
15 "out-of-room time." (Ly Decl. ¶6.) Plaintiff alleges, and Defendants dispute that, the HBO
16 Quarantine Policy also required Plaintiff to proceed directly to the *Insecure* set to perform his work
17 duties immediately after the conclusion of the quarantine period. (*Id.*)

18 On April 4, 2021, Plaintiff reported to the Burbank Marriott Hotel to start his mandatory
19 quarantine. (Ly Decl. ¶7.) Plaintiff was promised \$300 for each day in quarantine. (*Id.*) Plaintiff
20 remained on the hotel premises for the entire quarantine period at the Burbank Marriott Hotel until
21 he was dismissed on the morning of April 9, 2021 and was ordered to drive directly to the set of
22 the *Insecure* shoot to complete his job duties. (Ly Decl. ¶8.) At the *Insecure* set, Plaintiff contends
23 that he worked over twelve hours at the promised rate of \$120 a day. (Ly Decl. ¶9.) Defendants
24 maintain that Plaintiff was paid premium rates for all overtime hours worked on April 9, 2021.

25 On May 20, 2021, and in compliance with Labor Code § 2699.3(a)(1), Plaintiff gave
26 written notice to Defendants and the Labor and Workforce Development Agency ("LWDA")
27 regarding his intent to seek civil penalties under PAGA for violation of Labor Code §§ 201, 202,
28 203, 226(a), 226.7, 510, 558, 512, 1194, 1197, 1197.1, 1199, and 2802. (Ly Decl. ¶10.) Pursuant

1 to Labor Code § 2699.3(a)(2)(A), the sixty-five-day waiting period to commence a civil action as
2 though the LWDA has chosen not to investigate lapsed on July 26, 2021, allowing Plaintiff to
3 commence a civil action. Plaintiff filed his Complaint for damages in the Superior Court for the
4 County of Los Angeles on May 24, 2021, entitled *Emmanuel Wright v. Home Box Office, Inc.;*
5 *Warner Media, LLC; 3 Arts Entertainment, LLC; Plane Meets Paper Productions, LLC*, Case No.
6 21STCV19636. (Ly Decl. ¶11.)

7 On October 12, 2021, Plaintiff a First Amended Complaint, adding an additional cause of
8 action for penalties pursuant to PAGA. (Ly Decl. ¶12.) Plaintiff filed another a Second Amended
9 Complaint naming only Defendants HOME BOX OFFICE, INC. (“HBO”) and PLANE MEETS
10 PAPER PRODUCTIONS, LLC (“Plane Meets Paper”) (Ly Decl. ¶13.)

11 Plaintiff’s Third Amended Complaint was filed on April 1, 2022, and alleges causes of
12 action for: (1) Failure to Pay Wages and/or Overtime Under Labor Code §§ 510, 1194, 1197.1,
13 and 1199; (2) Failure to Provide Meal Breaks Pursuant to Labor Code §§ 226.7 and 512; (3) Failure
14 to Provide Rest Breaks Pursuant to Labor Code § 226.7; (4) Failure to Reimburse Business
15 Expenses under Labor Code § 2802; (5) Failure to Provide Accurate Itemized Wage Statements
16 Pursuant to Labor Code § 226(a); (6) Waiting Time Penalties Pursuant to Labor Code § 203;
17 (7) Violation of Business & Professions Code § 17200; and (8) Penalties Pursuant to Labor Code
18 § 2699, *et seq.* (Ly Decl. ¶14.)

19 Plaintiff’s Fourth Amended Complaint, filed on April 17, 2023, is the operative complaint.
20 (Hereafter, the “Action” or “Lawsuit”.) (Ly Decl. ¶15.) The Action strikes any allegations alleging
21 that Plaintiff and the putative class members worked off-the-clock; that Defendants failed to
22 reimburse them for necessary business expenses; and narrowing the class definitions to exclude
23 any union employees from the class and subclasses. (Ly Decl. ¶16.)

24 B. The Discovery Process

25 The Parties have engaged in early stages of discovery and settlement negotiations but have
26 primarily focused their efforts on resolving this case through early mediation. (Ly Decl. ¶17.) The
27 Parties scheduled a private mediation with Lisa Klerman, Esq. on February 23, 2023. (Ly Decl.
28 ¶18.) In preparation for mediation, Defendants informally produced multiple documents and

provided other information necessary to evaluate settlement. (Ly Decl. ¶19.) This included all pay records regarding the employees who quarantined and all applicable policy documents. (*Id.*) Discovery confirmed that there were only two pre-production quarantines in California which took place from April 4, 2021 through April 9, 2021 and from May 19, 2021 through May 24, 2021. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").

Defendants deny any liability or wrongdoing of any kind associated with the claims alleged in the Action, disputes the damages and penalties claimed by Plaintiff, and further contends that, for any purpose other than settlement, Plaintiff's claims are not appropriate for class or representative action treatment. (Ly Decl. ¶20.) Defendants contend, among other things, that, at all times, they have complied with the California Labor Code, and the Industrial Wage Commission Orders. (*Id.*)

Based on their own independent investigation and evaluation, Class Counsel is of the opinion that the Agreement with Defendants are fair, reasonable and adequate, and in the best interest of the settlement classes in light of all known facts and circumstances, including the risk of significant delay, defenses asserted by Defendants, uncertainties regarding a class and representative action trial on the merits, and numerous potential appellate issues. (Ly Decl. ¶21.) Although Defendants deny any liability, Defendants are entering into this 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.*)

The Class only includes employees who did not sign a Release of their claims. (Ly Decl. ¶22.) There were 49 individuals who quarantined in California, but 32 of them signed a full Release of their claims and will not be included in this Class Settlement. (Ly Decl. ¶23.) The PAGA Group does include all 49 individuals. (Ly Decl. ¶24.)

///

///

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 “eliminat[ing] the possibility of repetitious litigation and provid[ing] 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 the class. (*Ibid, citing Fireside Bank, supra*, 40 Cal.4th at 1089.)

Class certification for settlement purposes is proper in this case as the proposed Settlement Class satisfies each of the requirements under Code of Civil Procedure § 382. Accordingly, this

1 Court should certify the putative settlement class.

2 A. The Proposed Classes Are Ascertainable and Sufficiently Numerous

3 1. Ascertainability

4 Putative class members are deemed “ascertainable” when they may be “readily identified
5 without unreasonable expense or time by reference to official records.” (*Rose v. City of Hayward*
6 (1981) 126 Cal.App.3d 926, 932.) In determining whether a class is ascertainable, a court
7 scrutinizes the class definition, the size of the class and the means of identifying class members.
8 (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.)

9 Here, Plaintiff maintains that the proposed Settlement Class is ascertainable for several
10 reasons: First, Defendants have agreed in the Agreement to provide a class list to the Administrator
11 containing the name, last known mailing address, Social Security number, and number of Class
12 Settlement Period Workweeks and PAGA Pay Periods for all putative class members after issuance
13 of the preliminary approval order. (Ly Decl. ¶25; Ex. 1 at ¶1.8.) Second, Settlement Class Member
14 consist of Defendants’ hourly non-union employees, who participated in hotel quarantines in April
15 or May 2021 and Defendants are required to keep records of its hourly employees’ names, home
16 addresses, and social security numbers. (Ly Decl. ¶26.) Third and finally, Defendants informally
17 produced documents indicating each and every employee who quarantined. (Ly Decl. ¶27.)

18 2. Numerosity

19 There is no set number that is required as a matter of law to maintain a class action. (*See,*
20 *e.g., Rose v. City of Hayward, supra*, 126 Cal.App.3d at p. 934.) Here, the proposed Settlement
21 Class contains, based upon information and belief, approximately 17 hourly non-exempt
22 employees in the State of California. (Ex. 1 at ¶4.1.) Therefore, Plaintiff is confident he will be
23 able to establish that the proposed Settlement Class is ascertainable and sufficiently numerous. (Ly
24 Decl. ¶28.)

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

26 1. There Are Predominant Questions of Law and Fact

27 In deciding whether questions of common or general interest predominate, a court must
28 determine whether “the issues which may be jointly tried, when compared with those requiring

1 separate adjudication, are so numerous or substantial that the maintenance of a class action would
2 be advantageous to the judicial process and to the litigants.” (*Collins v. Rocha* (1972) 7 Cal.3d
3 232, 238; *accord, Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.) As a
4 general matter, if the defendant’s liability can be determined by facts common to all members of
5 the class, a class will be certified even if the members must individually prove their damages.”
6 (*Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 916, 107; *accord, Knapp v.*
7 *AT & T Wireless Services, Inc.* (2011) 195 Cal.App.4th 932, 941.)

8 Here, Plaintiff argues that there are questions of law and fact common to the proposed
9 Settlement Class that predominate over any questions affecting only individual Class Members.
10 (Ly Decl. ¶29.) These common questions include:

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

23 (Ly Decl. ¶30.)

24 Defendants maintained common quarantine policies for all Class Members and the amount
25 paid and hours quarantined were the same for everyone. (Ly Decl. ¶31.) Plaintiff maintains that
26 the policies do not comply with California law and the presence of a company-wide policy suggests
27 that Defendants applied the same policies to all Class Members, which would weigh in favor of
28 class certification.

1 Plaintiff's challenge to Defendants uniform policies and practices involves common factual
2 and legal issues that are amenable to class treatment. (Ly Decl. ¶32.) As the California Supreme
3 Court has emphasized, "[c]laims alleging that a uniform policy consistently applied to a group of
4 employees is in violation of the wage and hour laws are of the sort routinely, and properly, found
5 suitable for class treatment." (*Brinker, supra*, 53 Cal.4th at 1033; *see also Bradley v. Networkers*
6 *International, LLC* (2012) 211 Cal.App.4th 1129, 1141-1146.) Moreover, a class of similarly
7 situated employees may be certified based on common questions of fact or law, even if each
8 employee has to establish the amount of his or her damages. (*See Bell v. Farmers Ins. Exch.* (2004)
9 115 Cal.App.4th 715, 741; *Sav-On Drug Stores, Inc. v. Superior Court, supra*, 34 Cal.4th at 340.)

10 Here, Plaintiff maintains that the proposed Settlement Class Members suffered the same
11 injuries, in the same manner: (1) Settlement Class Members were not properly paid minimum
12 wages; (2) Settlement Class Members were not properly paid all wages/overtime; (3) Settlement
13 Class Members did not receive their meal and rest periods as required; (3) Settlement Class
14 Members were not provided accurate itemized wage statements; (4) Settlement Class Members
15 did not receive timely wages; and (5) Settlement Class Members were not paid all wages owed
16 upon termination/resignation. (Ly Decl. ¶33.) Plaintiff alleges that Settlement Class Members
17 worked in the same capacity for the same employer and were subject to the same employment
18 policies and practices, the questions of fact and claims regarding the status of these employees are
19 the same for each member of the Settlement Class. Accordingly, for purposes of settlement, the
20 evidence reviewed by Class Counsel demonstrates that common meal and rest policies and wage
21 policies applied to the proposed Settlement Class Members and certification for settlement
22 purposes is appropriate. (Ly Decl. ¶34.)

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

24 A putative class representative's claim must be "typical," but not necessarily identical, to
25 the claims of other class members. The test of typicality "is whether other members have the same
26 or similar injury, whether the action is based on conduct which is not unique to the Class
27 Representatives, and whether other class members have been injured by the same course of
28 conduct." (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502.) Thus, it is sufficient

1 that the representative is similarly situated so that he or she will have the motive to litigate on
2 behalf of all class members. (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502.) Thus,
3 it is sufficient that the representative is similarly situated so that he or she will have the motive to
4 litigate on behalf of all class members. (*See, e.g., Classen v. Weller* (1983) 145 Cal.App.3d 27,
5 45.) It is not necessary that the class representative have personally incurred all of the damages
6 suffered by each of the other class members. (*Wershba v. Apple Computer, Inc.* (2001) 91
7 Cal.App.4th 224, 238.)

8 Plaintiff worked as an hourly background talent for Defendants for the show *Insecure*. (Ly
9 Decl. ¶35.) Plaintiff alleges that he: (1) worked without being paid all wages and/or overtime,
10 including minimum wages; (2) worked without being provided meal/rest periods as required by
11 law; (3) worked without being provided accurate itemized wage statements; and (4) worked
12 without being paid all wages due upon separation. Plaintiff also alleges that he experienced
13 derivative claims for unfair business competition (B&P Code §17200) and Labor Code §2699, et
14 seq. (Ly Decl. ¶36.) Plaintiff also contends that his claims are typical of those of the Settlement
15 Class. (Ly Decl. ¶37.)

16 3. Plaintiff Contends That As The Class Representative He Has and Will
17 Fairly Represent the Interests of the Settlement Class Members

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

22 Plaintiff believes that he is capable of fairly representing and adequately protecting the
23 interests of the proposed Settlement Class Members. (Ly Decl. ¶38.) Plaintiff’s interests in this
24 litigation are coextensive with the interests of the proposed Settlement Class Members. The
25 members of the proposed Settlement Class all worked for Defendants during the relevant time
26 period and incurred the same type of alleged damages with regard to Defendants’ alleged violations
27 of the law. (Ly Decl. ¶39.) Moreover, Plaintiff has agreed to serve as Class Representative and
28 has retained qualified Counsel who is experienced in prosecuting wage and hour class actions. (Ly

Decl. ¶40.) This demonstrates his commitment to bringing about the best possible results for the benefit of the proposed Settlement Class. (Ly Decl. ¶41.) Plaintiff has provided his Counsel with all necessary and pertinent information. (Ly Decl. ¶42.) He has been a very active participant in the litigation including having frequent contact with Settlement Class Members and working closely with Class Counsel to develop the theories of liability. (Ly Decl. ¶43.) He also made himself available for the full-day mediation in this matter and was informed of and involved in all of the Settlement negotiations. Therefore, Plaintiff believes that he has and will continue to adequately represent the proposed Settlement Class Members. (Ly Decl. ¶44.)

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. ¶45.) The only alternative to certification would be to force over 17 employees to join this action, file individual, uniform actions, or abandon their legal rights altogether. (Ly Decl. ¶46.) Plaintiff maintains that this economic reality would result in a windfall for Defendants if this case were not certified. (Ly Decl. ¶47.)

IV. THE PROPOSED SETTLEMENT

A. The Settlement Class

For purposes of Agreement, the settlement class is defined as: "all non-exempt and non-union employees of Plane Meets Paper Productions and/or HBO who quarantined in California for the show *Insecure* from April 4, 2021 through April 9, 2021 or from May 19, 2021 through May 24, 2021, or both, and who did not enter into a release of their claims with Defendants for compensation. ("Settlement Class Members" or "Class".) The "Settlement Class Members" shall not include any person who submits a timely and valid Request for Exclusion as provided in this Agreement, or any person who previously released the Released Claims under a separate agreement. (Ly Decl. ¶48; Agreement, Ex. 1 at ¶8.5.)

The Class Settlement Period is from April 4, 2021 through April 9, 2021 and from May 19, 2021 through May 24, 2021. (Ly Decl. ¶49; Ex. 1 at ¶1.12.) Based on documents and other information produced by Defendants, there are 17 Settlement Class Members. (Ly Decl. ¶50; Ex. 1 at ¶4.1.)

B. The Aggrieved Employees

For purposes of the Agreement, the Aggrieved Employees are defined as: "all non-exempt and non-union employees of Plane Meets Paper Productions and/or HBO who quarantined in California for the show *Insecure* from April 4, 2021 through April 9, 2021 or from May 19, 2021 through May 24, 2021, or both." ("Aggrieved Employees" or "PAGA Members".) (Ly Decl. ¶51; Settlement, Ex. 1 at ¶1.4.)

The PAGA Settlement Period is from April 4, 2021 to April 9, 2021 and from May 19, 2021 through May 24, 2021 (Ly Decl. ¶52; Ex. 1 at ¶1.31.) Based on documents and other

information produced by Defendants, there are approximately 49 PAGA Members. (Ly Decl. ¶53, Ex. 1 at ¶4.1)

D. Gross Settlement Amount

As detailed fully in the Agreement, the Settlement provides for Defendants to pay a Gross Settlement Amount of \$100,000.00, which includes the sum of the Individual Class Payments, the Class Representative service award, the Class Counsel Award, PAGA Payment, and the Settlement Administration Costs. (Ly Decl. ¶54; Ex. 1 at ¶1.22.)

The Net Settlement Amount is the Gross Settlement Amount, less Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and Administration Expenses Payment. (Ly Decl. ¶55; Ex. 1 at ¶1.28.)

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

Gross Settlement Amount:	\$	100,000.00
Less Class Representative Enhancement:	\$	5,000.00
Less Class Counsel's Fees:	\$	33,333.33
Less Class Counsel's Litigation Expenses:	\$	22,000.00
Less PAGA Payment:	\$	10,000.00
		<i>(\$7,500.00 to the LWDA and \$2,500.00 to be distributed to the aggrieved employees)</i>
<u>Less Administrator Costs:</u>	<u>\$</u>	<u>3,500.00</u>
Anticipated Net Settlement Amount	\$	26,166.67

(Ex. 1 at ¶3.)

D. Individual Settlement Payments

The Individual Class Payment amount of each Participating Class Member is an individualized amount that is based on the number of compensable Workweeks worked by the Participating Class Member during the Class Settlement Period. (Ex. 1 at ¶3.2.4; *see also* Ex. A to the Agreement [Class Notice].) Specifically, Individual Class Payments will be paid from the Net Settlement Amount and shall be paid pursuant to the settlement formula as follows: (1) First, using the Class Information, the Administrator will compute the total number of eligible workweeks of all Participating Class Members collectively during the Class Settlement Period; this sum shall be known as the Workweek total; (2) Second, the Administrator will divide the Net Settlement

Amount by the Workweek total to determine the settlement value for each eligible workweek (the “Workweek Value”); and (3) Third, the Administrator will multiply the number of eligible workweeks of a Participating Class Member during the Class Settlement Period by the Workweek Value to determine that Settlement Class Member’s Individual Class Payment. (*Id.*)

One-third (33.3%) of the Gross 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 Administrator. (Ex. 1 at ¶3.2.4.1.) Two-thirds (66.6%) of the Gross Settlement Amount to each Participating Class Member shall be deemed payment for settlement of claims for penalties and interest and other non-wage payments not subject to withholdings. (*Id.*)

The Agreement provides for a specific and detailed dispute process regarding Individual Class Payments. (*See* Ex. 1 at ¶8.6.)

The Individual PAGA Payment will be calculated as follows; (1) twenty-five percent (25%) of the PAGA Penalties (\$2,500.00) divided by the total number of PAGA Settlement Period Pay Periods worked by all aggrieved employees during the PAGA Settlement Period and (2) multiplying the result by each aggrieved employee’s PAGA Settlement Pay Periods. (*See* Ex. 1 at ¶3.2.5.1.)

E. Process for Administering Settlement after Preliminary Approval

The detailed Notice Procedure established by the Agreement will efficiently and accurately ensure that Notice is provided to the Settlement Class Members. (Ex. 1 at, ¶8.4.) The Parties have agreed to use a reputable third-party claims administrator, Xpand Legal, to administer the Agreement (Ex. 1 at ¶8.1.)

F. Process for Settlement Class Members to Respond to Class Notice

Settlement Class Members will have an opportunity to request exclusion from the Settlement Class (i.e. opt out) and to object to the Settlement at the Final Approval Hearing. (Ex. 1 at ¶8.5; ¶8.7.)

Settlement Class Members who do not opt out of the Settlement Class may object to the Agreement by mailing written objections to the Administrator no later than sixty (60) calendar

1 days after the mailing of the Notice Packet. (Ex. 1 at ¶8.7.2.) This deadline applies notwithstanding
2 any argument regarding alleged late receipt or non-receipt of the Notice Packet. (Ex. 1 at ¶8.7.)
3 Any Settlement Class Member who fails to timely mail written objections in this manner shall be
4 deemed to have waived any objections and shall be foreclosed from making any objection to the
5 Agreement and from filing any appeal from any order granting final approval issued by the Court.
6 (*Ibid.*)

7 Settlement Class Members who timely and validly return a Request for Exclusion from the
8 Agreement shall have no right to object and shall be foreclosed from making any objection to the
9 Agreement. (*Ibid.*) The Administrator shall promptly provide any such objections to Class Counsel
10 and Defendants' Counsel, who in turn shall file them with the Court in connection with the final
11 approval motion. (*Ibid.*)

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

16 G. The Release

17 The Released Claims by Participating Class Members are defined as: "all claims, demands,
18 liabilities, damages, attorney's fees, costs, and penalties, relating to any and all facts and claims
19 asserted in the Fourth Amended Complaint or any other claims that could have been asserted in
20 the Fourth Amended Complaint based on the facts alleged, including but not limited to claims
21 arising from alleged unpaid wages, minimum wages, regular wages, overtime wages, meal and
22 rest period violations, wage statement violations and separation pay violations (collectively, the
23 "Released Class Claims") during the Class Settlement Period. Except as set forth in Section 6.3 of
24 this Agreement, Participating Class Members do not release any other claims, including claims for
25 vested benefits, wrongful termination, violation of the Fair Employment and Housing Act,
26 unemployment insurance, disability, social security, workers' compensation, or claims based on
27 facts occurring outside the Class Settlement Period." (Ex. 1 at ¶6.1.)

28 The Released Claims by All Aggrieved Employees are defined as: "all claims for PAGA

penalties that were alleged, or reasonably could have been alleged, based on the PAGA Settlement Period facts stated in the Fourth Amended Complaint and the PAGA Notice and ascertained in the course of the Action including, any and all claims involving any alleged failure to pay unpaid wages, minimum wages, regular wages, overtime wages, meal and rest period violations, wage statement violations, separation pay violations; and PAGA penalties (collectively, the “Released PAGA Claims”) during the PAGA Settlement Period.” (Ex. 1 at ¶6.2.)

V. ARGUMENT

A. Plaintiff Requests Approval of This Class Action Settlement

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

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

The proposed settlement satisfies each of these factors. Class Counsel conducted extensive informal discovery before entering into meaningful settlement negotiations in this matter. (*Id* at Ly Decl. ¶¶17-24.) This discovery permitted Class Counsel to fairly evaluate the strength of the case and the risks associated with ongoing litigation. (Ly Decl. ¶56.) Class Counsel is experienced in handling wage and hour class actions and, after weighing all of the following factors, supports this Agreement. (Ly Decl. ¶57.)

///

1 1. The Strength of Plaintiff's Case

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

3 California employees are entitled to compensation for all hours worked, which means “the
4 time during which an employee is subject to the control of an employer, and includes all the time
5 the employee is suffered or permitted to work, whether or not required to do so.” (Title 8 Cal. Code
6 of Regs., § 11050(2)(K); See *Troester v. Starbucks Corp.* (2018) 5 Cal.5th 829, 845, as modified
7 on denial of reh’g (Aug. 29, 2018).) Time is compensable if an employee is “subject to the control
8 of an employer” even if not working, or if an employee “is suffered or permitted to work” even if
9 not “under the employer’s control, provided the employer has or should have knowledge of the
10 employee’s work.” (*Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038, 1046, reh'g denied (May 13, 2020)
11 (citations omitted.) An employer controls an employee if the employer directs an employee and
12 the employee is unable to use their time how they wish. (*Id.* at p. 1047.) Other factors courts may
13 consider include whether the activity is required, “the location of the activity, the degree of the
14 employer’s control, whether the activity primarily benefits the employee or employer, and whether
15 the activity is enforced through disciplinary measures.” (*Id.* at p. 1056; *Cf. Gibbs v. TWC*
16 *Administration, LLC* (S.D. Cal., Jan. 3, 2020, No. 17CV01513DMSAGS) 2020 WL 42768, at
17 *9(denying Defendant’s motion for summary judgment when plaintiff-employees conducted off-
18 the-clock pre-shift activity in preparation to start work right when they clocked in).)

19 Defendants argued that this was not compensable time and that the hours worked were
20 “pre-employment” hours, and therefore, were uncompensated. (Ly Decl. ¶58.)

21 i. Plaintiff and Class Members Were Essentially on
22 “Standby” For Each of the Five Days in Quarantine

23 On-call time, otherwise known as “standby,” also constitutes hours worked and must be
24 compensated if it characterized as “controlled” rather than “uncontrolled” time. Whether or not
25 standby time is “controlled” depends on the facts of each case. *Mendiola v. CPS Security Solutions,*
26 *Inc.* 60 Cal.4th 833, 840 (2015) [the level of the employer’s control over its employees is
27 determinative of whether on-call or standby time must be compensated as hours worked].)
28 “Controlled” standby occurs when an employee is required to remain on call such that he cannot

1 use the time effectively for his own purposes, and all such time is considered hours worked. (See
2 *Oliver v. Mercy Medical Center, Inc.*, 695 F.2d 379, 380 (9th Cir. 1982); see also *Seymore v.*
3 *Metson, Inc.*, 194 Cal.App.4th 361 (2011).) In *Gomez v. Lincare, Inc.*, 173 Cal.App.4th 508 (2009),
4 the Court of Appeal adopted the Ninth Circuit’s non-exclusive list of factors, none of which is
5 dispositive, to determine whether the employee was free to use time for his or her own purposes:
6 “(1) whether there was an on-premises living requirement; (2) whether there were excessive
7 geographical restrictions on employee's movements; (3) whether the frequency of calls was unduly
8 restrictive; (4) whether a fixed time limit for response was unduly restrictive; (5) whether the on-
9 call employee could easily trade on-call responsibilities; (6) whether use of a pager could ease
10 restrictions; and (7) whether the employee had actually engaged in personal activities during call-
11 in time.” (*Id.* at 523-524.)

12 In *Mendiola*, the California Supreme Court ruled that security guards who resided on site
13 were entitled to compensation for on-call hours, including sleep time as they were required to sleep
14 on the premises. They could not leave the work site and when they were relieved, they had to
15 report where they were going, how long they would be away for, were subject to recall, and could
16 not be more than 30 minutes away. Moreover, the guards could only be relieved if a reliever was
17 available. Additionally, there were also restrictions placed on nonemployee visitors, pets, and
18 alcohol use. The court further noted that whether the “on-call waiting time...is spent primarily for
19 the benefit of the employer and its business.” (*Mendiola*, 60 Cal.4th at p. 841.)

20 Here, Plaintiff and Class Members were under “controlled” standby during the entire
21 quarantine period and were not free to use their time for his or her own purposes. (Ly Decl. ¶59.)
22 While Defendants argue that they did not restrict or control what Plaintiff and Class Members did
23 inside their hotel rooms, the mere requirement of having to stay in a hotel room for five (5)
24 consecutive days as a term and condition of employment is equal to having an “on-premises living
25 requirement” for the job and were required to sleep on the premises, as the security guards did in
26 *Mediola*. (*Gomez*, supra, 173 Cal.App.4th at p. 523; *Mendiola*, supra, 60 Cal.4th at p. 841.) (Ly
27 Decl. ¶60.) Similarly, Defendants geographically restricted Plaintiff’s and Class Members’
28 movements by requiring them to stay either in their hotel rooms for the entire quarantine period or

1 seek permission to leave their hotel rooms. (*Id.*) Furthermore, like the security guards in *Mediola*
2 who could only be relieved if there was a reliever, Plaintiff and Class Members were only
3 permitted to leave their rooms if there was an available escort to accompany them. (Ly Decl. ¶61.)
4 Plaintiff and Class Members were not free to leave the hotel premises, or even their hotel rooms,
5 and were under Defendants’ complete control the entire quarantine period. (*Id.*) Ultimately, the 5-
6 day quarantine period was not only for the primary benefit of Defendants, but it was solely for
7 their benefit, because Plaintiff and Class Members could have quarantined in their residences or
8 elsewhere free from Defendants’ control.

9 Defendants argued that this was not compensable time and that the hours worked were
10 “pre-employment” hours, and therefore, were uncompensated. (Ly Decl. ¶62.) Additionally,
11 Defendants argued that the time spent sleeping, should not be compensated time. (Ly Decl. ¶63.)

12 ii. Defendants also Failed to Pay Overtime/Minimum Wages
13 for the Time Plaintiff and Class Members were in
14 Quarantine

15 Additionally, California workers are statutorily entitled to overtime compensation, unless
16 they are properly classified as falling within one of the narrow exemption categories. Under
17 California law, “[a]ny work in excess of eight hours in one workday and any work in excess of 40
18 hours in any one workweek...shall be compensated at the rate of no less than one and one-half
19 times the regular rate of pay for an employee.” (Lab. Code, § 510, subd. (a).) Furthermore, “[a]ny
20 work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the
21 regular rate of pay for an employee.” (Lab. Code, § 510, subd. (a).)

22 Labor Code §1197.1. provides that: (a) Any employer or other person acting either
23 individually or as an officer, agent, or employee of another person, who pays or causes to be paid
24 to any employee a wage less than the minimum fixed by an applicable state or local law, or by an
25 order of the commission, shall be subject to a civil penalty, restitution of wages, liquidated
26 damages payable to the employee, and waiting time penalties.

27 Defendants failed to maintain a policy that compensates non-exempt employees for all
28 hours worked, including overtime and minimum wages. Defendants required Plaintiff and Class

1 Members to self-quarantine for multiple consecutive days in exchange for \$300 per day without
2 overtime pay. (Ly Decl. ¶64.) The entire time spent by Plaintiff and the Class Members during
3 quarantine is compensable. (*Id.*) Further, all hours must be paid at the statutory agreed rate and no
4 part of this rate may be used as a credit against a minimum wage obligation. Defendants failed to
5 compensate Plaintiff and the Class Members for each hour they were in days-long quarantine. (Ly
6 Decl. ¶65.)

7 As such, Defendants' payment to Plaintiff and the Class Members at a daily salary of \$300
8 falls below the legally required minimum wage. (Ly Decl. ¶66.) As a direct and proximate cause
9 of the aforementioned violation, Defendants failed to pay Plaintiff and the Class Members the
10 minimum wage for each hour worked. (Ly Decl. ¶67.) Plaintiff is informed and believes and
11 thereon alleges that Defendants' failure to pay the minimum wage for each hour worked, as
12 described herein, was done willfully.

13 During the Class Period, Defendants failed to compensate Plaintiff and the Class Members
14 for any overtime hours worked as required under the foregoing provisions of the California Labor
15 Code and the applicable IWC Wage Order by, among other things, failing to pay overtime at one
16 and one-half (1½) times or double the regular rate of pay. (Ly Decl. ¶68.) Additionally, Defendants
17 failed to maintain a policy that compensates non-exempt employees an amount equal to or greater
18 than the minimum wage for all hours worked. (Ly Decl. ¶69.) All hours must be paid at the
19 statutory agreed rate and no part of this rate may be used as a credit against a minimum wage
20 obligation. (*Id.*)

21 Defendants argued that this was not compensable time and that the hours worked were
22 "pre-employment" hours, and therefore, were uncompensated. (Ly Decl. ¶70.) Additionally,
23 Defendants argued that the time spent sleeping, should not be compensated time. (Ly Decl. ¶71.)

24 b) The Risks Associated with the Meal Break Claim

25 California law requires employers to provide employees a duty-free, uninterrupted thirty
26 (30) minute meal period when an employee works more than five (5) hours in a workday, and it
27 must be provided within the first five (5) hours the employee works. Lab. Code 512; IWC Wage
28 Order 16-2001, §11(A) and (C); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th

1 1004. Employers must also provide employees with a second duty-free, uninterru0pted thirty (30)
2 minute meal period when an employee works more than (10) hours in a workday, and it must be
3 provided before the end of the 10th hour of work. *Ibid.* Meal periods can be waived, but only under
4 the following circumstances: (1) if an employee’s total work period in a day is over five (5) hours
5 but no more than six (6) hours, the required meal period may be waived by mutual consent of the
6 employer and employee, and (2) if an employee’s total work period in a day is over ten (10) hours
7 but no more than twelve (12) hours, the required second meal period may be waived by mutual
8 consent of the employer and employee, but only if the first meal period was not waived. *Ibid.*

9 Under this rule, “[e]mployers must afford employees uninterrupted half-hour periods in
10 which they are relieved of any duty or employer control and are free to come and go as they
11 please.” (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1037.) In order for a meal
12 period to qualify as a lawful break under California law, an employer must (1) relieve its
13 employees of all duty; (2) relinquish control over their activities; (3) permit them a reasonable
14 opportunity to take an uninterrupted 30-minute break; and (4) not impede or discourage them from
15 doing so. (*Id.* At p. 1040.) Lastly, employees must be free to leave the premises during breaks.
16 (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 269 [an employer that limits where
17 an employee can take a meal or rest break does not “relinquish control over how employees spend
18 their time”].)

19 Employers must pay employees an additional hour of wages at the employees’ regular rate
20 of pay for each missed or improper (e.g., less than 30 minutes, interrupted meal period, first meal
21 period provided after 5 hours, second meal period provided after 10 hours) meal period. Lab. Code
22 §226.7; IWC Wage Order 16-2001, §11(B) (“If an employer fails to provide an employee a meal
23 period in accordance with the applicable provisions of this order, the employer shall pay the
24 employee one (1) hour of pay at the employee’s regular rate of compensation for each workday
25 that the meal period is not provided”); *Brinker*, supra, 53 Cal.4th 1004.

26 Defendants violated California’s meal break laws by not allowing Plaintiff and Class
27 Members to take actual daily meal breaks. (Ly Decl. ¶72.) Because Plaintiff and Class Members
28 were required to remain inside their hotel rooms during the entire quarantine period, including

1 during their meal and rest breaks, they were not able to take lawful uninterrupted meal periods.
2 (Ly Decl. ¶73.) Plaintiff and Class Members needed to abide by Defendants’ Quarantine Policies
3 in order to avoid the possibility of disciplinary measures. (*Id.*) Plaintiff maintains that Defendants
4 limited where he and Class Members can take a break and Defendants maintained a consistent
5 policy and practice of failing to relinquish control over how he and Class Members can spend their
6 time for breaks. (Ly Decl. ¶74.)

7 Defendants thus failed to maintain a company meal period policy compliant with California
8 law and failed to provide Plaintiff and Class Members with proper meal periods. Liability for a
9 group of similarly situated employees can be established by evidence that an employer adopted a
10 uniform corporate break policy that failed to give full effect to California law and the applicable
11 wage orders requirements. The fact that employees may legally waive meal breaks does not affect
12 this result. *Brinker*, supra, 53 Cal.4th 1004.

13 Defendants argued that this was not compensable time and that the hours worked were
14 “pre-employment” hours, and therefore, were uncompensated. (Ly Decl. ¶75.) Additionally,
15 Defendants argued that the Class Members were free to do whatever they wanted at all times,
16 including take breaks. (Ly Decl. ¶76.)

17 c) The Risks Associated with the Rest Break Claim

18 Under IWC Wage Order No. 4, every employer shall authorize and permit all employees
19 to take rest periods. Employees are entitled to a paid ten-minute rest break for every four hours
20 worked, or major fraction thereof. (Cal. Code Regs., tit. 8, § 11040, subd. 11(A).)

21 The *Brinker* court clarified what steps an employer must take to make rest breaks available
22 to its employees:

23 An employer is required to authorize and permit the amount of rest break
24 time called for under the wage order for its industry. If it does not—if, for
25 example, it adopts a uniform policy authorizing and permitting only one rest
26 break for employees working a seven-hour shift when two are required—it
has violated the wage order and is liable. No issue of waiver ever arises for
a rest break that was required by law but never authorized; if a break is not
authorized, an employee has no opportunity to decline to take it.

27 (*Ibid.*)

28 The California Supreme Court further refined requirements for rest periods, holding that

1 employees must be relieved of all duty and employer control and free to leave the premises during
2 rest breaks. (*Augustus v. ABM Sec. Servs., Inc.*, 2 Cal. 5th 257, 270 (2016) [“[A] rest period means
3 an interval of time free from labor, work, or any other employment-related duties. And employees
4 must not only be relieved of work duties, but also be freed from employer control over how they
5 spend their time.”].)

6 The 10-minute rest break must be a net 10-minutes in a suitable rest area. None of the time
7 allotted for rest breaks can be consumed by the time it takes to get to a suitable rest area. See
8 *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257, 267-268 (2016) (relying on 1/3/86 and
9 2/22/02 DLSE Letters wherein the DLSE ruled that the net ten-minute language for rest breaks
10 means 10-minutes of time in a rest area and cannot include time it takes to get to and from the rest
11 area). The employer must show that it clearly articulates the right to rest periods and rest periods
12 of net ten minutes, which means it must clearly communicate “net” ten minutes means and that,
13 regardless of what happens along the way to or from the rest area, employees are entitled to a full
14 ten-minutes in the rest area. See *Bufile v. Dollar Fin. Grp., Inc.* (2008) 162 Cal.App.4th 1193, 1199
15 (the “onus is on the employer to clearly communicate the authorization and permission [to take
16 meal and rest breaks] to its employees.”)

17 Here, just as with meal periods, Defendants maintained a consistent policy of failing to
18 provide Plaintiff and the Class Members with rest breaks of not less than ten (10) minutes per four
19 (4) hour work period or major fraction thereof. (Ly Decl. ¶77.) Plaintiff and Class Members were
20 unable to take compliant rest breaks due to the strict Quarantine Policy enforced by Defendants,
21 requiring Plaintiff and Class Members to remain in their hotel rooms during their breaks. (Ly Decl.
22 ¶78.)

23 Just as with meal periods, even when Plaintiff and Class Members were able to take a rest
24 break, they were subject to the control of Defendants’ management. The same general rule cited
25 above as to Plaintiffs’ and Class Members’ meal periods also applied to rest periods. (Ly Decl.
26 ¶79.) Plaintiff and other Class Members were not permitted to leave Defendants’ premises without
27 the management’s approval and an escort. (*Id.*) Plaintiff maintains that Defendants also limited
28 where he and Class Members can take a break and Defendants maintained a consistent policy and

1 practice of failing to relinquish control over how he and Class Members can spend their time for
2 breaks. (Ly Decl. ¶80.)

3 Plaintiff and the Class Members were not compensated with one (1) hour of wages at the
4 regular rate of compensation for each missed rest period as required by Labor Code § 226.7. (Ly
5 Decl. ¶81.) *Ferra v. Loews Hollywood Hotel, LLC* requires the rest period premium payments must
6 include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses),
7 and cannot simply be paid at an employee's base hourly rate. (*Id.*)

8 Defendants argued that this was not compensable time and that the hours worked were
9 "pre-employment" hours, and therefore, were uncompensated. (Ly Decl. ¶82.) Additionally,
10 Defendants argued that the Class Members were free to do whatever they wanted at all times,
11 including take breaks. (Ly Decl. ¶83.)

12 d) The Risks Associated with the Inaccurate Wage Statement Claim

13 California Labor Code § 226(a) requires that employers furnish to his or her employee,
14 either as a detachable part of the check, draft, or voucher paying the employee's wages, or
15 separately if wages are paid by personal check or cash, an accurate itemized statement in writing
16 showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece
17 rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
18 deductions, provided that all deductions made on written orders of the employee may be
19 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for
20 which the employee is paid, (7) the name of the employee and only the last four digits of his or her
21 social security number or an employee identification number other than a social security number,
22 (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates
23 in effect during the pay period and the corresponding number of hours worked at each hourly rate
24 by the employee. (Labor Code §§ 226(a).)

25 Here, Defendants failed to issue Plaintiff and the Class Members accurate itemized wage
26 statements showing all gross wages, total hours worked, deductions made, net wages, the legal
27 name and address of the entity that is the employer, and applicable hourly rates in effect during
28 the pay period and the corresponding number of hours worked at each hourly rate by the employee.

1 (Ly Decl. ¶84.)

2 As this is a derivative claim, the same risks present for the above claims were present for
3 this claim. (Ly Decl. ¶85.)

4 e) The Risks Associated with the Waiting Time Penalty Claim

5 Under Labor Code section 203, if an employer fails to provide wages at the time of an
6 employee's termination or within seventy-two (72) hours of resignation, then the employee's
7 wages shall continue as a penalty for up to thirty (30) days. (Labor Code § 203.) Section 203
8 reflects a public policy that favors the full and prompt payment of earned wages. (See, e.g.,
9 *Barnhill v. Robert Saunders & Co.* (1981) 125 Cal.App.3d 1, 7; *Mamika v. Barca* (1998) 68
10 Cal.App.4th 487, 492.)

11 Here, Plaintiff and numerous Class Members are no longer employed by Defendants. (Ly
12 Decl. ¶86.) Due to Defendants' failure to pay all wages, including minimum wages, and meal and
13 rest period premiums as detailed above, Defendants failed to pay all wages owed and due upon
14 their termination and/or resignation. (Ly Decl. ¶87.) Defendants' actions were willful, as they have
15 intentionally failed or refused to perform an act which was required to be done. (Ly Decl. ¶88.)
16 (See *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201.) "The failure to pay is
17 willful if the employer 'knows what [it] is doing [and] intends to do what [it] is doing', and does
18 not also require proof that the employer acted with "a deliberate evil purpose to defraud work[ers]
19 of wages which the employer knows to be due.'" (*Diaz v. Grill Concepts Services, Inc.* (2018) 23
20 Cal.App.5th 859, 868.) Defendants was fully aware of its payment policies and practices and
21 intended to carry out said policies and practices. Therefore, Defendants are liable for damages.

22 Defendants filed a Motion for Summary Adjudication on this very issue. (Ly Decl. ¶89.)
23 These penalties made up the bulk of the damages. (Ly Decl. ¶90.) If the failure to pay wages was
24 not willful, the value of the case was far less. (Ly Decl. ¶91.)

25 f) The Risks Associated with the PAGA Claim

26 California's Private Attorneys General Act ("PAGA"), Labor Code § 2698, *et seq.*, permits
27 private litigants to recover civil penalties for violations of the Labor Code. PAGA provides that
28 plaintiffs may recover previously established civil penalties (section 2699(a)) or, if none were

1 established, plaintiffs may recover default penalties provided in section 2699(f) in the amount of
2 \$100 per employee per pay period for the initial violation and \$200 for subsequent violations.

3 PAGA's statutory penalties are available for violations of Labor Code sections 201-203,
4 226(a), 510, 512, 1194, and 1199, as stated in Labor Code section 2699.5. Labor Code section
5 2699(f) provides, in relevant part, "[f]or all provisions of this code except those for which a civil
6 penalty is specifically provided, there is established a civil penalty for a violation of these
7 provisions, as follows: one hundred dollars (\$100) for each aggrieved employee per pay period for
8 the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period
9 for each subsequent violation." In addition, the statute provides that "[a]ny employee who prevails
10 in any action shall be entitled to an award of reasonable attorney's fees and costs." (Labor Code §
11 2699(g)(1).)

12 As each penalty corresponds to an independent Labor Code violation, the penalties are
13 aggregated consistent with PAGA's purpose. (See *Gonzalez v. Core Civic of Tennessee, LLC* (E.D.
14 Cal., Sept. 13, 2018, No. 116CV01891DADJLT) 2018 WL 4388425, at *8 [PAGA penalties may
15 be "stacked" when multiple violations are at issue, and "there is no obvious reason to use
16 'unstacked' calculations to estimate the value of the case" when determining whether to approve
17 a PAGA settlement.].) As such, Defendants is liable for PAGA penalties for each Labor Code
18 violation per pay period.

19 The Parties discounted the PAGA claim for multiple reasons. (Ly Decl. ¶92.) First, the
20 aggrieved employees' PAGA claims are derivative of all the foregoing class claims. (Ly Decl.
21 ¶93.) Second, a court has discretion to award less than the maximum penalty. (Ly Decl. ¶94.)
22 Labor Code § 2699(e)(2) ("a court may award a lesser amount than the maximum civil penalty
23 amount specified by this part if, based on the facts and circumstances of the particular case, to do
24 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory"). See
25 e.g., *Carrington v. Starbucks Corporation* (2018) 30 Cal.Ap⁵th 504, 241 Cal.Rptr.3d 647, 669
26 (affirming award of 10% of maximum PAGA penalty). Finally, the Settlement Class is
27 compensated for these violations in the proposed Agreement, and thus any PAGA recovery for
28 these same violations would be duplicative. As such, the Agreement's contemplated PAGA

1 payment of \$10,000.00 is appropriate. (Ly Decl. ¶95.) *See Nordstrom Commissions Cases*, 186
2 Cal.App⁴th 576, 589 (2010) (affirming settlement allocating \$0 of \$6.4 million settlement to
3 PAGA penalties).

4 Additionally, most of the aggrieved employees signed a full release of their claims and
5 received compensation. (Ly Decl. ¶96.)

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

7 There is significant expense associated with the class certification process, which the
8 Parties can avoid by entering into the contemplated Agreement now. (Ly Decl. ¶97.) If the Court
9 did eventually certify a class, trial of a case involving approximately 17 Settlement Class Members
10 would require the retention of expensive expert witnesses, the accrual of extensive litigation costs,
11 and a significant time overlay by the parties. (Ly Decl. ¶98.) Moreover, given the complexity and
12 unsettled nature of the issues in this case it is likely that any outcome at trial would have resulted
13 in a lengthy and costly appeal. (Ly Decl. ¶99.) An appeal would result in further delay for the
14 Settlement Class Members who are waiting for a resolution in this matter. (*Id.*)

15 3. The Risk of Maintaining Class Action Status through Trial

16 This case has not been certified to be tried as a class action. (Ly Decl. ¶100.) While
17 Plaintiff believes there is strong evidence to support certification of several possible subclasses,
18 certification is always hard fought and subject to judicial discretion. Moreover, in class actions,
19 decertification is always a possibility. (*Id.*) In attempting to certify a class, the parties would need
20 to conduct multiple depositions, including of the Class Representative and of several person(s)
21 most knowledgeable regarding Defendants' wage and hour policies. (*Id.*) There is a risk for both
22 sides as to what these depositions will reveal and whether they will support class certification to
23 the extent expected. (*Id.*)

24 4. The Amount Offered in Settlement

25 It was very difficult for the Parties to reach this Settlement of \$100,000.00. (Ly Decl.
26 ¶101.) This Settlement is the result of adversarial, non-collusive, and arms-length negotiations.
27 (Ly Decl. ¶102.) The Parties arrived at it after extensive investigation and discovery, careful
28 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, and the assistance of an experienced mediator, Lisa Klerman, Esq. (*Id.*)

a) Plaintiff's Assessment of Defendant's Wage Claims Exposure

Plaintiff assessed full value of the Minimum Wage/Overtime claim, without any discount, at approximately \$55,000.00. (Ly Decl. ¶103.) This calculation assumed that Settlement Class Members were owed wages for 8 additional hours (4 hours of overtime pay and 4 hours of doubletime pay) for the five day quarantine period. (Ly Decl. ¶104.) Plaintiff used an hourly average rate of \$37.50 per hour. (Ly Decl. ¶105.)

The full value of the Meal Period claim, without any discount, was approximately \$5,000.00 for approximately 95 days of quarantine for the 17 Class Members. (Ly Decl. ¶106.) For the reasons above, Plaintiff determined that accepting a discount of the full amount was appropriate. (Ly Decl. ¶107.)

The full value of the Rest Period claim, without any discount, was approximately \$5,000.00. (Ly Decl. ¶108.) For the reasons above, Plaintiff determined that accepting a discount of the full amount was appropriate. (Ly Decl. ¶109.)

Plaintiff valued the Wage Statement Claim, without discount, at approximately \$2,000. (Ly Decl. ¶110.) Plaintiff used \$100 for each wage statement issued (pay period). Due to the risk discussed above that 226(a) liability wouldn't attach under *Naranjo* and *Maldonado*, Plaintiff determined that a steep discount of this claim was fair for settlement purposes. (Ly Decl. ¶111.)

Plaintiff valued the Waiting Time Claim at approximately \$400,000.00. (Ly Decl. ¶112.) Considering the derivative nature of Labor Code §203, the dispute over whether class members were owed any wages, and the disagreement as to whether this was a willful failure to pay or a mistake, Plaintiff determined that accepting a discount on this claim was appropriate. (Ly Decl. ¶113.)

Finally, Plaintiff calculated the value of the PAGA claim at between \$4,900 (if no penalties were stacked) and \$19,600 (if penalties are stacked) (using \$100 per pay period). (Ly Decl. ¶114.) The main risk taken into account with PAGA is the discretionary nature of the penalty award and the fact that most of the aggrieved employees entered into full releases of their claims. (Ly Decl. ¶115.) A judge can award the statutory maximum of \$100 for the initial violation and \$200

thereafter or – in theory – one cent per wage statement. (Ly Decl. ¶116.) While there is a dearth of available authority, in Plaintiff’s view, were he to succeed on any of the underlying Labor Code violations, it is not likely that a Judge would also award a large amount of penalties of top of any damages recovered. (Ly Decl. ¶117.)

Per Plaintiff’s assessment, the maximum potential value of all of Plaintiff’s and the Settlement Class Members’ claims was approximately \$486,000.00. (Ly Decl. ¶118.) However, as a result of the forgoing risks on the merits, Class Counsel believes the Gross Settlement Amount of \$100,000.00 is fair and reasonable. (Ly Decl. ¶119.)

5. The Experience and Views of Counsel

Finally, counsel’s experience and success in similar class actions also weigh in favor of preliminary approval. *See Wershba, supra*, 91 Cal.Ap⁴th at 245. Kingsley & Kingsley, APC is very experienced in prosecuting complex employment litigation, and the firm has focused its practice since the year 2000 on complex wage, hour, and working condition violations. (Ly Decl. ¶¶120-122.) The firm is well versed in class action litigation and has diligently and aggressively pursued this action. (*Id.*) Kingsley & Kingsley, APC currently serves as Class Counsel for dozens of pending class action lawsuits in Northern, Central, and Southern California. (*Id.*) A list of representative cases that Kingsley & Kingsley, APC has handled is included in the accompanying declaration of Liane Katzenstein Ly. (*Id.*) After factoring in the risks explained above, Class Counsel believes that the proposed settlement is fair and reasonable. (Ly Decl. ¶123.)

6. The Proposed Plan of Allocation Is Fair and Reasonable

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

number of Eligible Workweeks by the individual class member as determined by the Administrator. This allocation distributes Settlement funds proportionally to each class member's damages, and should therefore be approved as fair, adequate, and reasonable. (Ex. 1 at ¶3.2.4.)

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

Plaintiff requests that the Court approve the proposed plan and form of Class Notice. The standard for determining the adequacy of notice is whether the notice has "a reasonable chance of reaching a substantial percentage of the class members." (*Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974.) Pursuant to the Agreement, the Notice will be sent to the last known address of all Settlement Class Members, or to an updated address if one is located in the National Change of Address Database. (Ex. 1 at ¶4.4.1). If any Notices are returned as undeliverable, the Administrator will undertake another reasonable address verification measure to locate a valid mailing address and will promptly send the Notice to the new address. (*Id.*) As such, the Notice is likely to reach most, if not all, Settlement Class Members.

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

Here, the Notice clearly explains the proposed Agreement and the options to opt out of the Settlement or object to it at the Final Approval Hearing. (Ex. 1 at ¶8.5; ¶8.7; *see also* Ex. A to the Agreement at pp. 2-3, 5-6 [Class Notice].) In short, the Court should approve the proposed Class Notice because it describes the proposed settlement with enough specificity to allow Settlement Class Members to make an informed choice regarding whether to participate.

///

///

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

2 The Class Representative is entitled to an enhancement for his valiant effort and time
3 expended in this matter. (Ly Decl. ¶124.) The time spent by Emmanuel Wright is significant and
4 includes researching and retaining competent counsel; providing information to Class Counsel
5 regarding the nature of the work at Defendants; compiling relevant documents; working closely
6 with Class Counsel to develop the theories of liability and martial relevant evidence; regularly
7 discussing the status of the case with Class Counsel; discussing the case via telephone with many
8 Settlement Class Members; making himself available for a full-day of mediation; and responding
9 promptly to Class Counsel’s communications regarding settlement. (*Id.*) Thus, in addition to the
10 sums paid to Settlement Class Members, Plaintiff requests a proposed litigation enhancement in
11 the amount of \$5,000.00, to be paid from the Gross Settlement Amount. (Ex. 1 at ¶3.2.1.) As set
12 forth in the Agreement, Plaintiff also entered into a second settlement with Defendants for
13 \$5,000.00 that includes a general release of liability pursuant to Civil Code Section 1542. (Ly
14 Decl. ¶125; Ex. 1 at ¶3.2.1.)

15 Class Counsel considers this to be a fair and reasonable enhancement. (Ly Decl. ¶126.)
16 The enhancement takes into consideration the time, effort, and expense incurred by Plaintiff in
17 coming forward to litigate this matter on behalf of all Settlement Class Members. (*Id.*) It takes
18 into account the fact that most of the other employees entered into a Release and accepted payment
19 to release their claims. (Ly Decl. ¶127.) Plaintiff will provide a detailed declaration with the Final
20 Approval Motion detailing his participation and further justification for the enhancement. (*Id.*)

21 **VII. SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY**

22 As indicated on the Proof of Service, Plaintiff’s Motion for Approval of Class Action
23 Settlement (“Motion”) will be concurrently uploaded to the Labor and Workforce Development
24 Agency’s (“LWDA”) website on the date this Motion is filed as required by statute. Proof of
25 submission of Plaintiff’s Motion, all related documents, and copy of the email from the LWDA
26 confirming receipt is attached to the Declaration of Liane Katzenstein Ly as Exhibit “2.” (Ly Decl.
27 ¶120.)

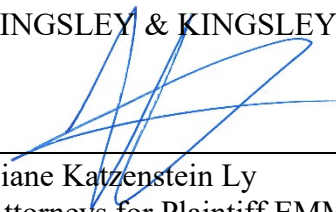
28 ///

1 **VIII. CONCLUSION**

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

9
10 DATED: September 11, 2023

KINGSLEY & KINGSLEY, APC

11
12 By: 

13 Liane Katzenstein Ly
14 Attorneys for Plaintiff EMMANUEL WRIGHT and
15 the proposed class
16
17
18
19
20
21
22
23
24
25
26
27
28

(PROOF OF SERVICE)

[CCP 1013(a)(3)]

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On September 11, 2023, 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:

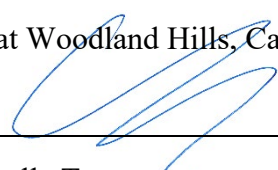
Maria C. Rodriguez mcrodriguez@mwe.com Chris Braham cbraham@mwe.com Ariel Beverly abevery@mwe.com Yvonne Rivera yrivera@mwe.com Cindy Liu cliu@mwe.com McDermott Will & Emery LLP 2049 Century Park East, Suite 3200 Los Angeles, CA 90067-3206 <i>Attorneys for Defendants</i>	Frank H. Kim fkim@kim-legal.com KIMLEGAL, APC 3435 Wilshire Blvd, Suite 2700 Los Angeles, CA 90010 Helen U. Kim helen@helenkimlaw.com HELEN KIM LAW, APC 3435 Wilshire Blvd, Suite 2700 Los Angeles, CA 90010 <i>Attorneys for Plaintiff</i>
--	--

[XX] BY ELECTRONIC SERVICE: I caused a true and correct copy thereof to be electronically filed using the Labor and Workforce Development Agency Electronic Filing ("EF") System (<https://dir.tfaforms.net/315>) and service was completed by electronic means by transmittal of the documents referenced herein on the EF System.

[XX] (BY ELECTRONIC MAIL THROUGH CASE ANYWHERE): On interested Parties set forth on the service list.

[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 September 11, 2023, at Woodland Hills, California.



Michelle Tanzer