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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

HECTOR SANCHEZ, an individual, on
behalf of himself and others similarly
situated,

PLAINTIFF,

v.

J.R. PIERCE PLUMBING CO., INC. OF
SACRAMENTO; and DOES 1 thru 50,
inclusive,

DEFENDANTS.

CASE NO. 34-2021-00300960

[Case Assigned for All Purposes to Hon. Judge
Jill H. Talley in Dept. 27]

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

*[Filed concurrently with Declaration of Kelsey
M. Szamet and Proposed Order]*

Date: October 13, 2023

Time: 9:00 a.m.

Dept.: 27

Reservation Number: A-300960-001

Complaint Filed: May 17, 2021

FAC Filed: July 22, 2021

SAC Filed: Jun 8, 2023

Trial Date: None Set

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

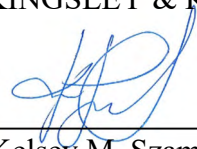
2 **PLEASE TAKE NOTICE** that on October 13, 2023 at 9:00 a.m. in Department 27 of the
3 above-entitled court, Plaintiff HECTOR SANCHEZ will move the Court for an Order Granting
4 Preliminary Approval of the Class Action and PAGA Settlement Agreement (“Agreement”), a
5 copy of which is filed concurrently 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 Kelsey M. Szamet, the Agreement and Release, all other papers
10 and records on file in this action, and on such oral and documentary evidence as may be presented
11 at the hearing on this Motion.

12
13 DATED: September 20, 2023

KINGSLEY & KINGSLEY, APC

14
15 By: 

16 Kelsey M. Szamet
17 Attorneys for Plaintiff HECTOR SANCHEZ and the
18 proposed class
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff HECTOR SANCHEZ (“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 J.R. Pierce Plumbing Co.,
6 Inc. of Sacramento (“Defendant”) (Plaintiff and Defendant together, the “Parties”).

7 By this Motion, Plaintiff requests that the Court:

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

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

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

17 **II. FACTUAL BACKGROUND**

18 A. Litigation Overview and Procedural History

19 Defendant is a plumbing company within the industrial services industry, offering various
20 services from residential to commercial companies, such as repair services, water and heating
21 services, plumbing designs and systems, and other engineering specialties.¹

22 Defendant hired Plaintiff as a plumber in or around December 2019. Plaintiff was earning
23 approximately \$22/hour up until his separation in or around April 2021. Plaintiff contends that he,
24 and other Class Members, were not paid at the proper rate of compensation, provided legally
25 compliant meal periods or meal period premium payments, reimbursed for business-related
26 expenses, provided accurate itemized wage statements, and paid all wages owed upon separation
27 from Defendant’s employ. (Declaration of Kelsey M. Szamet ¶4) (hereafter “Szamet Decl.”).

28 ¹ <https://www.onlinejrp.com/services>

1 Plaintiff filed his class action complaint in the Superior Court for the County of Sacramento
2 on May 17, 2021, entitled *HECTOR SANCHEZ v. J.R. PIERCE PLUMBING CO., INC. OF*
3 *SACRAMENTO*, Case No. 34-2021-00300960. (Szamet Decl. ¶5.) Also on May 17, 2021,
4 pursuant to Labor Code § 2699.3(a)(1), Plaintiff gave written notice to Defendant and the Labor
5 and Workforce Development Agency (“LWDA”) regarding his intent to seek civil penalties under
6 PAGA for violation of Labor Code §§ 201-203, 226(a), 510, 512, 1194, 1194.2, 1199, and 2802.
7 (Szamet Decl. ¶6.) The 65-day waiting period to commence a civil action as though the LWDA
8 has chosen not to investigate lapsed on July 22, 2021, allowing Plaintiff to commence a
9 representative action. (Szamet Decl. ¶7.)

10 On July 22, 2021, Plaintiff a First Amended Class and Representative Action Complaint,
11 adding an additional cause of action for penalties pursuant to PAGA. (Szamet Decl. ¶8.) The FAC
12 alleges causes of action for: (1) Failure to Pay Wages and/or Overtime Under Labor Code §§ 510,
13 1194, 1194.2, and 1199; (2) Failure to Reimburse Business Expenses under Labor Code § 2802;
14 (3) Failure to Provide Accurate Itemized Wage Statements Pursuant to Labor Code § 226(a); (4)
15 Waiting Time Penalties Pursuant to Labor Code § 203; (5) Violation of Business & Professions
16 Code § 17200; and (6) Penalties Pursuant to Labor Code § 2699, *et seq.* (Szamet Decl. ¶8.)

17 B. The Discovery Process and Mediation

18 After the matter was at issue and engaging in early meet and confer efforts, the Parties
19 agreed to attend early mediation. (Szamet Decl. ¶9.) To properly assess and evaluate the claims
20 at issue, Defendant informally produced relevant information including a sample of time and pay
21 data and other pertinent information. (Szamet Decl. ¶10.) Plaintiff’s Counsel worked with an
22 expert to thoroughly review and analyze the payroll records provided by Defendant. (*Id.*)

23 The Parties attended mediation with Judge Howard Broadman (Ret.) on April 12, 2023.
24 (Szamet Decl. ¶11.) With the expert assistance of the mediator, the Parties were able to come to
25 an agreement that day to resolve the Lawsuit. (Szamet Decl. ¶12.) Thereafter, the Parties
26 negotiated the terms of the Settlement Agreement through arms-length negotiations. (Szamet
27 Decl. ¶13.) As part of the Settlement reached, Plaintiff agreed to amend the complaint to add class
28 allegations for violations of Labor Code §§ 226.7 and 512 for failure to provide meal periods on

1 behalf of a proposed settlement class during the relevant class period. (Szamet Decl. ¶14.) As
2 such, Plaintiff filed a Second Amended Class and Representative Action Complaint (“SAC”),
3 defining a proposed class as: All non-exempt employees who are employed or have been employed
4 by J.R. PIERCE PLUMBING CO., INC. OF SACRAMENTO, in the State of California from May
5 17, 2017 to June 18, 2023 (Hereafter the “Action” or “Lawsuit”). (Szamet Decl. ¶15.) Plaintiff
6 now presents the Settlement Agreement to the Court for review and requests that the Court grant
7 preliminary approval. (Szamet Decl. ¶16.)

8 Defendant denies any liability or wrongdoing of any kind associated with the claims
9 alleged in the Action, disputes the damages and penalties claimed by Plaintiff, and further contends
10 that, for any purpose other than settlement, Plaintiff’s claims are not appropriate for class or
11 representative action treatment. (Szamet Decl. ¶17.) Defendant contends, among other things,
12 that, at all times, it has complied with the California Labor Code, and the Industrial Wage
13 Commission Orders. (*Id.*)

14 Based on their own independent investigation and evaluation, Class Counsel is of the
15 opinion that the proposed Settlement with Defendant is fair, reasonable and adequate, and in the
16 best interest of the settlement classes in light of all known facts and circumstances, including the
17 risk of significant delay, defenses asserted by Defendant, uncertainties regarding a class and
18 representative action trial on the merits, and numerous potential appellate issues. (Szamet Decl.
19 ¶18.) Although Defendant denies any liability, Defendant is agreeing to this Agreement solely to
20 avoid the cost of litigation. (*Id.*) Accordingly, the Parties and their counsel desire to fully, finally,
21 and forever settle, compromise and discharge all disputes and claims arising from or relating to
22 the Action on the terms set forth here. (*Id.*)

23 **III. THE PROPOSED SETTLEMENT CLASS SHOULD BE CERTIFIED FOR** 24 **SETTLEMENT PURPOSES**

25 Originally creatures of equity, class actions have been statutorily embraced by the
26 Legislature whenever “the question [in a case] is one of a common or general interest, of many
27 persons, or when the parties are numerous, and it is impracticable to bring them all before the
28 court” (Code Civ. Proc. § 382; *see, e.g., Fireside Bank v. Sup. Court* (2007) 40 Cal.4th 1069,

1 1078.) They serve an important function by “establishing a technique whereby the claims of many
2 individuals can be resolved at the same time” thereby “eliminat[ing] the possibility of repetitious
3 litigation and provid[ing] small claimants with a method of obtaining redress.” (*Richmond v. Dart*
4 *Industries, Inc.* (1981) 29 Cal.3d 462, 469.) Public policy supports the use of class actions to
5 enforce wage and overtime laws for the benefit of workers. (*See Sav-on Drug Stores, Inc. v. Sup.*
6 *Court* (2004) 34 Cal.4th 319, 340.)

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

13 The California Supreme Court has identified three certification requirements: (1) “the
14 existence of an ascertainable and sufficiently numerous class”; (2) “a well-defined community of
15 interest”; and, (3) “substantial benefits from certification that render proceeding as a class superior
16 to the alternatives.” (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.)
17 The “community of interest” requirement includes three additional requirements: (1) common
18 questions of law or fact predominant over individual questions; (2) the class representatives have
19 claims or defenses typical of the class; and (3) the class representatives can adequately represent
20 the class. (*Ibid, citing Fireside Bank, supra*, 40 Cal.4th at 1089.)

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

24 A. Plaintiff Contends That The Proposed Class Is Ascertainable and Sufficiently
25 Numerous

26 1. Ascertainability

27 Putative class members are deemed “ascertainable” when they may be “readily identified
28 without unreasonable expense or time by reference to official records.” (*Rose v. City of Hayward*

(1981) 126 Cal.App.3d 926, 932.) In determining whether a class is ascertainable, a court scrutinizes the class definition, the size of the class and the means of identifying class members. (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.)

Here, Plaintiff maintains that the proposed Class is ascertainable for several reasons: First, Defendant has agreed in the Settlement Agreement to provide a class list to the Administrator containing the Class Member's name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods for all putative class members after issuance of the preliminary approval order. (Szamet Decl. ¶19; Ex. 1 at § 1, ¶1.8.) Second, Class Members consist of Defendant's employees and Defendant is required to keep records of its non-exempt employees' names, home addresses, and social security numbers. (*See Wage Order 4-2001*, subsection 7(c); Szamet Decl. ¶20.) Third and finally, Defendant produced a sample of Plaintiff's time and pay data and other pertinent information for Class Members containing class member contact information, which confirms that all Class Member may be readily identified based on Defendant's records. (Szamet Decl. ¶21.)

2. Numerosity

There is no set number that is required as a matter of law to maintain a class action. (*See, e.g., Rose v. City of Hayward, supra*, 126 Cal.App.3d at p. 934.) Here, the proposed settlement Class contains, based upon information and belief, approximately 2,115 non-exempt employees in the State of California. (Szamet Decl. ¶22; Ex. 1 at §4, ¶4.1.) Therefore, Plaintiff is confident he will be able to establish that the proposed settlement Class is ascertainable and sufficiently numerous. (Szamet Decl. ¶23.)

B. Plaintiff Contends That There Is a Well-Defined Community of Interest

1. There Are Predominant Questions of Law and Fact

In deciding whether questions of common or general interest predominate, a court 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; *accord, Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.) As a

1 general matter, if the defendant’s liability can be determined by facts common to all members of
2 the class, a class will be certified even if the members must individually prove their damages.”
3 (*Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 916, 107; *accord*, *Knapp v.*
4 *AT & T Wireless Services, Inc.* (2011) 195 Cal.App.4th 932, 941.)

5 Here, Plaintiff argues that there are questions of law and fact common to the proposed
6 settlement Class that predominate over any questions affecting only individual Class Members.
7 (Szamet Decl. ¶24.) These common questions include:

- 8 1) Whether Defendant failed to pay all wages and/or overtime compensation;
- 9 2) Whether Defendant failed to provide legally compliant meal periods or premium in
10 lieu thereof;
- 11 3) Whether Defendant failed to reimburse business-related expenses;
- 12 4) Whether Defendant failed to provide accurate itemized wage statements;
- 13 5) Whether Defendant failed to pay compensation due and owing upon termination
14 of employment;
- 15 6) Whether Defendant engaged in unfair competition; and,
- 16 7) Whether Defendant violated § 2699, et seq. of the Labor Code by engaging in the
17 acts previously alleged.

18 (Szamet Decl. ¶25.)

19 Plaintiff contends that Defendant maintained a company handbook containing uniform
20 meal break policies for all hourly employees. (Szamet Decl. ¶26.) Plaintiff maintains that the
21 policies in the handbook do not comply with California law and the presence of a company-wide
22 meal policy suggests that Defendant applied the same policies to all employees, which would
23 weigh in favor of class certification.

24 Plaintiff’s challenge to Defendant’s uniform policies and practices involves common
25 factual and legal issues that are amenable to class treatment. (Szamet Decl. ¶27.) As the California
26 Supreme Court has emphasized, “[c]laims alleging that a uniform policy consistently applied to a
27 group of employees is in violation of the wage and hour laws are of the sort routinely, and properly,
28 found suitable for class treatment.” (*Brinker, supra*, 53 Cal.4th at 1033; *see also Bradley v.*

1 *Networkers International, LLC* (2012) 211 Cal.App.4th 1129, 1141-1146.) Moreover, a class of
2 similarly situated employees may be certified based on common questions of fact or law, even if
3 each employee has to establish the amount of his or her damages. (*See Bell v. Farmers Ins. Exch.*
4 (2004) 115 Cal.App.4th 715, 741; *Sav-On Drug Stores, Inc. v. Superior Court*, *supra*, 34 Cal.4th
5 at 340.)

6 Plaintiff maintains that the proposed Class Members suffered the same injuries, in the same
7 manner in that Class Members were not: (1) paid all wages/overtime; (2) provided legally
8 compliant meal periods or premiums in lieu thereof (3) reimbursed for business-related expenses;
9 (4) provided accurate itemized wage statements; and (5) paid all wages owed upon
10 termination/resignation. (Szamet Decl. ¶28.) Plaintiff alleges that Class Members worked in the
11 same capacity for the same employer, were subject to the same employment policies and practices,
12 and the questions of fact and law are the same for each member of the settlement Class. (Szamet
13 Decl. ¶29.) Accordingly, for purposes of settlement, the evidence reviewed by Class Counsel
14 demonstrates that common wage policies applied to the proposed Class Members and certification
15 for settlement purposes is appropriate. (Szamet Decl. ¶30.)

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

17 A putative class representative's claim must be "typical," but not necessarily identical, to
18 the claims of other class members. The test of typicality "is whether other members have the same
19 or similar injury, whether the action is based on conduct which is not unique to the Class
20 Representatives, and whether other class members have been injured by the same course of
21 conduct." (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502.) Thus, it is sufficient
22 that the representative is similarly situated so that he or she will have the motive to litigate on
23 behalf of all class members. (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502; *and*
24 *see, e.g., Classen v. Weller* (1983) 145 Cal.App.3d 27, 45.) It is not necessary that the class
25 representative have personally incurred all of the damages suffered by each of the other class
26 members. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 238.)

27 Here, Plaintiff worked as a "non-exempt employee" for Defendant as a plumber, earning
28 \$22 per hour. (Szamet Decl. ¶31.) Plaintiff alleges that he: (1) worked without being paid all

1 wages and/or overtime; (2) worked without being provided legally compliant meal periods or
2 receiving meal period premium payments; (3) worked without being reimbursed for costs
3 associated with incurred mileage from driving personal vehicle; (4) worked without being
4 provided accurate itemized wage statements; and (5) worked without being paid all wages due
5 upon separation. He also alleges that he experienced derivative claims for unfair business
6 competition. (B&P Code §17200) and Labor Code §2699, *et seq.* (Szamet Decl. ¶32.) Plaintiff
7 contends that his claims are typical of those of the settlement Class. (Szamet Decl. ¶33.)

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

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

14 Plaintiff believes that he is capable of fairly representing and adequately protecting the
15 interests of the proposed Class Members. (Szamet Decl. ¶34.) Plaintiff’s interests in this litigation
16 are coextensive with the interests of the proposed Class Members. The members of the proposed
17 settlement Class all worked for Defendant during the relevant time period and incurred the same
18 type of alleged damages with regard to Defendant’s alleged violations of the law. (Szamet Decl.
19 ¶35.) Moreover, Plaintiff has agreed to serve as Class Representative and has retained qualified
20 Counsel who is experienced in prosecuting wage and hour class actions. (Szamet Decl. ¶36.) This
21 demonstrates he commitment to bringing about the best possible results for the benefit of the
22 proposed settlement Class. (Szamet Decl. ¶37.) Plaintiff has provided his Counsel with all
23 necessary and pertinent information. (Szamet Decl. ¶38.) He has been a very active participant in
24 the litigation including having contact with Class Members as necessary and working closely with
25 Class Counsel to develop the theories of liability. (Szamet Decl. ¶39.) Plaintiff has provided his
26 Counsel with all necessary and pertinent information. (Szamet Decl. ¶40.) He also made himself
27 available to attend the full-day mediation in this matter and was informed of and involved in all of
28 the Settlement negotiations. (Szamet Decl. ¶41.) Therefore, Plaintiff believes that he has and will

1 continue to adequately represent the proposed Class Members.

2 C. The Class Action Vehicle Is Superior to the Alternatives

3 “The ultimate question in every case of this type is whether . . . the issues which may be
4 jointly tried, when compared with those requiring separate adjudication, are so numerous or
5 substantial that the maintenance of a class action would be advantageous to the judicial process
6 and to the litigants.” (*Lockheed Martin, supra*, 29 Cal.App.4th at 1104–1105.) The California
7 Supreme Court has directed the courts to utilize the class action device to fashion “an effective
8 and inclusive group remedy.” (*Richmond v. Dart Indus., Inc.* (1981) 29 Cal.3d 462, 469.)
9 Normally, in making its class certification decision, the Court must determine that a class action
10 would be superior to alternate means for a fair and efficient adjudication. If the causes of action
11 may be adjudicated in a single proceeding, thereby saving time, reducing waste, and limiting
12 duplication of effort, class certification is superior to individual litigation. (*See, e.g., Vasquez v.*
13 *Sup. Court* (1971) 4 Cal.3d 800, 816.) Since the Parties agreed to the Settlement in principal and
14 Plaintiff now seeks Court approval of that Agreement, Plaintiff submits that there is less need than
15 there would be in an ordinary class certification context for the Court to determine that the case
16 can be manageably tried.

17 Plaintiff maintains that class treatment would be the superior method of managing this case.
18 A class action is superior to individual litigation “when numerous parties suffer injury of
19 insufficient size to warrant individual action and when denial of class relief would result in unjust
20 advantage to the wrongdoer.” (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.) In
21 cases such as this, where individual damages may be small, the class action device is the most
22 feasible method of recovery. (*See, e.g. Lockheed Martin, supra*, 29 Cal.4th at 1131.) In this regard,
23 the superiority of class treatment is evident here because individual pursuit of class members’
24 claims may not be economically viable. (Szamet Decl. ¶42.) The only alternative to certification
25 would be to force over 2,115 employees to join this action, file individual, uniform actions, or
26 abandon their legal rights altogether. (Szamet Decl. ¶43.) Plaintiff maintains that this economic
27 reality would result in a windfall for Defendant if this case were not certified. (Szamet Decl. ¶44.)

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1 **IV. THE PROPOSED SETTLEMENT**

2 A. The Settlement Class

3 The Settlement Class is defined as: “all non-exempt employees who are employed or have
4 been employed by J.R. PIERCE PLUMBING CO., INC. OF SACRAMENTO, in the State of
5 California from May 17, 2017 to June 18, 2023.” (“Class” or “Class Members”) (Szamet Decl.
6 ¶45; Agreement, Ex. 1 at § 1, ¶1.5.)

7 The Class Period is May 17, 2017 to June 18, 2018. (Szamet Decl. ¶46; Ex. 1 at § 1, ¶1.12.)
8 As of April 12, 2023 (the date of mediation) and based on documents and other information
9 produced by Defendant, there are approximately 2,115 Class Members. (Szamet Decl. ¶47; Ex. 1
10 at § 8.)

11 B. The Aggrieved Employees

12 The Aggrieved Employees are defined as: all non-exempt employees who are employed or
13 have been employed by J.R. PIERCE PLUMBING CO., INC. OF SACRAMENTO, in the State
14 of California from May 17, 2020 to June 18, 2023. (“Aggrieved Employees”) (Szamet Decl. ¶48;
15 Agreement, Ex. 1 at § 1, ¶1.4.)

16 The PAGA Period is May 17, 2020 to June 18, 2018. (Szamet Decl. ¶49; Ex. 1 at § 1,
17 ¶1.31.) As of April 12, 2023 (the date of mediation), and based on documents and other information
18 produced by Defendant, there are approximately 1,445 Aggrieved Employees. (Szamet Decl. ¶50;
19 Ex. 1 at § 8.)

20 C. Gross Settlement Amount

21 As detailed fully in the Settlement Agreement, the Settlement provides for Defendant to
22 pay a Gross Settlement Amount of \$400,000.00, which includes the sum of the Individual Class
23 Payments, the Class Representative service award, the Class Counsel Award, PAGA Payment, and
24 the Settlement Administration Costs. (Szamet Decl. ¶51; Ex. 1 at § 1, ¶1.22.)

25 The Net Settlement Amount is the Gross Settlement Amount, less Class Counsel Award,
26 Class Representative Enhancement, PAGA Payment, and Settlement Administration Costs.
27 (Szamet Decl. ¶52; Ex. 1 at § 1, ¶1.28.)

28 Plaintiff estimates the amount of the Net Settlement Amount as follows:

Gross Settlement Amount:	\$	400,000.00
Less Class Representative Enhancement:	\$	5,000.00
Less Class Counsel's Fees:	\$	133,320.00
Less Class Counsel's Costs:	\$	15,000.00
Less PAGA Payment:	\$	12,000.00
		<i>(\$9,000.00 to the LWDA and \$3,000.00 to remain in the Net Settlement Amount)</i>
<u>Less Administrator Costs:</u>	<u>\$</u>	<u>25,000.00</u>
Anticipated Net Settlement Amount	\$	212,680.00

(Ex. 1 at § 3.)

D. Individual Settlement Payments

The amount of each Participating Class Member's Individual Class Payment is an individualized amount that is calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks. (Ex. 1 at §3, ¶3.2.4; *see also* Ex. A to the Agreement at pp. 7 [Class Notice].) This individual amount shall be determined according to the settlement payment formula set forth in the Agreement. (*See* Ex. 1 at § 3, ¶3.2.4; *Id.* at Ex. A to the Agreement [Class Notice].) The Agreement provides for a specific and detailed Workweek dispute process. (*See* Ex. 1 at §7, ¶7.6.)

The amount of each Individual PAGA Payment is an individualized amount calculated by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$3,000) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. (Ex. 1 at §3, ¶3.2.5.1.)

E. Process for Administering Settlement after Preliminary Approval

The Parties have agreed to use a reputable third-party claims administrator, XPand Legal, to administer the Agreement. (Ex. 1 at § 1, ¶1.2.) The detailed Notice Procedure established by the Agreement will efficiently and accurately ensure that Notice is provided to the Class Members. (Ex. 1 at § 7, ¶7.4.)

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F. Process for Class Members to Respond to Class Notice

As detailed in the Agreement, Class Members will have an opportunity to request exclusion from the Agreement (opt-out) and to object to the Agreement at the Final Approval Hearing. (See Ex. 1 at § 7, ¶¶ 7.5; 7.7; see also Ex. A to the Agreement at pp. 2-3, 5 and 8-9 [Class Notice].) The Agreement and Class Notice contain details about the process to opt-out or object. (*Id.*)

G. The Release

The Release by Participating Class Members is defined as:

“All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from any and all claims, debts, liabilities, demands, obligations, penalties, guarantees, costs, expenses, attorney’s fees, damages, actions or causes of action of whatever kind or nature, whether known or unknown, contingent or accrued, potential or actual, that are alleged, or that reasonably could have arisen out of the same facts alleged in the Operative Complaint and the PAGA Letter during the Class Period, including: (1) Failure to Pay Wages and/or Overtime Under Labor Code §§ 510, 1194, 1194.2, and 1199; (2) Failure to Provide Meal Periods Pursuant to Labor Code §§ 226.7 and 512 and IWC Wage Orders 4-2001 and 16-2001; (3) Failure to Reimburse Business Expenses under Labor Code § 2802 and IWC Wage Orders 4-2001 and 16-2001; (4) Failure to Provide Accurate Itemized Wage Statements Pursuant to Labor Code § 226(a) and IWC Wage Orders 4-2001 and 16-2001; (5) Waiting Time Penalties Pursuant to Labor Code §§ 201-203; (6) Violation of Business & Professions Code §§ 17200-17208; and (7) Penalties Pursuant to Labor Code § 2699, et seq. Except as set forth in Section 5.1 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period.” (Ex. 1 at § 5, ¶5.2.)

The Release by Aggrieved Employees is defined as:

“All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties during the PAGA Period, whether known or unknown, contingent or accrued, potential or actual, that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint, the PAGA Notice and Amended PAGA Notice including: (1) Failure to Pay Wages and/or Overtime Under Labor Code §§ 510, 1194, 1194.2, 1198, and 1199; (2) Failure to Provide Meal Periods Pursuant to Labor Code §§ 226.7 and 512 and IWC Wage Orders 4-2001 and 16-2001; (3) Failure to Reimburse Business Expenses under Labor Code § 2802 and IWC Wage Orders 4-2001 and 16-2001; (4) Failure to Provide Accurate Itemized Wage Statements Pursuant to Labor Code § 226(a) and IWC Wage Orders 4-2001 and 16-2001; (5) Waiting Time Penalties Pursuant to Labor Code §§ 201-203; (6) Violation of Business & Professions Code §§ 17200-17208; and (7) Penalties Pursuant to Labor Code § 2699, et seq. (Ex. 1 at § 5, ¶5.3.)

1 **V. ARGUMENT**

2 A. Plaintiff Requests Approval of This Class Action Settlement

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

10 The proposed settlement satisfies each of these factors. Class Counsel conducted sufficient
11 informal discovery before entering into meaningful settlement negotiations in this matter. (*Id* at
12 Szamet Decl. ¶¶9-18.) This discovery permitted Class Counsel to fairly evaluate the strength of
13 the case and the risks associated with ongoing litigation. (Szamet Decl. ¶54.) Class Counsel is
14 experienced in handling wage and hour class actions and, after weighing all of the following
15 factors, supports this Agreement. (Szamet Decl. ¶55.)

16 1. The Strength of Plaintiff's Case

17 a. The Risks Associated with the Minimum Wage Claim

18 Labor Code §§ 510, 1194 and 1199 require an employer to compensate its employees at
19 the rate of no less than the legal minimum wage or the legal overtime compensation applicable to
20 the employee. Plaintiff contends that he and the Proposed Class were forced to work on a regular
21 and consistent basis without receiving compensation for all hours worked at the proper rate.
22 (Szamet Decl. ¶56.) Specifically, Plaintiff contends that Defendant deducted the cost of the
23 purchase of plumbing tools necessary to perform the work from Plaintiff and the Class's earned
24 wages. (*Id.*) As such, the theory of liability is Class Members are charged for tools which are
25 deducted directly from their wages. (Szamet Decl. ¶57.)² Expert analysis of Defendant's pay
26 records reveal that on average \$2.18 is deducted per workweek for tools; thus, the class members'

27
28 ² For example, Plaintiff's paystub for the period of March 15, 2021 to March 21, 2021
shows a deduction of \$447.24 for tools.

1 wages deducted per the records total \$330,973. (Szamet Decl. ¶58.)

2 Defendant denied these allegations. (Szamet Decl. ¶59.) Defendant contends that it
3 provides all necessary tools to Class Members and as such there is no liability. (Szamet Decl.
4 ¶60.) Defendant explained that the tools deductions appearing the records result from a program
5 that it offered to Class Members to allow them to purchase their own tools for work or personal
6 use and reimburse Defendant instead of having to pay out of pocket for the tools. (Szamet Decl.
7 ¶61.) Plaintiff acknowledges that some tools were provided, but that it was necessary for him to
8 purchase and/or replace tools. (Szamet Decl. ¶62.)

9 Clearly, this was a factually disputed claim. (Szamet Decl. ¶63.) If Plaintiff can establish
10 this claim on a classwide basis, there are very strong claims for minimum wage violations §221³,
11 and §203 claim that flow therefrom. (Szamet Decl. ¶64.) However, if Defendant can prove that
12 it provides all necessary tools, there would be no recover at all for this claim and the derivative
13 claims that flow therefrom. (Szamet Decl. ¶65.) Plaintiff had to acknowledge that this could be a
14 tough claim to prove. (Szamet Decl. ¶66.) Defendant would likely argue that it is an individualized
15 inquiry that requires questioning of each and every Class Member as to each tool deduction— i.e.,
16 what was it for a personal tool or a necessary tool allegedly not provided by Defendant. (Szamet
17 Decl. ¶67.) Such an inquiry, Defendant would argue, necessarily defeats class certification.
18 (Szamet Decl. ¶68.) It could likewise devolve into a battle of declarations with each party securing
19 class member declarations that supported their arguments. (Szamet Decl. ¶69.) Based on this
20 significant risk, Class Counsel contends it was appropriate to discount the full value of this claim,
21 and the derivative wage claims, for settlement purposes. (Szamet Decl. ¶70.)

22 b. The Risks Associated with the Meal Break Claim

23 Labor Code § 512 provides:

24 An employer may not employ an employee for a work period of more than
25 five hours per day without providing the employee with a meal period of
not less than 30 minutes An employer may not employ an employee
for a work period of more than 10 hours per day without providing the

26 ³ Labor Code § 221 provides: “It shall be unlawful for any employer to collect or receive
27 from an employee any part of wages theretofore paid by said employer to said employee.” Of
28 course, employers can face civil penalties and even criminal charges for taking back any wages
that have already been paid to an employee.

employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

Under this rule, “[e]mployers must afford employees uninterrupted half-hour periods in which they are relieved of any duty or employer control and are free to come and go as they please.” (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1037.) In order for a meal period to qualify as a lawful break under California law, an employer must (1) relieve its employees of all duty; (2) relinquish control over their activities; (3) permit them a reasonable opportunity to take an uninterrupted 30-minute break; and (4) not impede or discourage them from doing so. (*Id.* at p. 1040.)

Plaintiff alleges that he and the Class consistently worked shifts over five (5) hours and Defendant failed to provide Plaintiff and the Proposed Class with uninterrupted meal periods of not less than thirty (30) minutes as required by the Labor Code during the relevant time period. (Szamet Decl. ¶71.) Plaintiff contends that a review of the records shows that meal periods punches are largely taken at the exact 5th hour according to the documents. (Szamet Decl. ¶72.) Below is an example:

WEEK OF: Nov. 8, 2020 TO: Nov. 14, 2020

G = Ground ~ TD = Top-Out ~ TW = Top-Out Water ~ TG = Top-Out Gas ~ TT = Top-Out Tub/Shower

FA = FIELD ADMIN.	HOURS		MON	TUES	WEDS	THURS	FRI
TM = TIME / MATERIAL	START TIME	IN	7:00	7:00	7:00	7:00	
TR = TRENCHING	AM BREAK	☐	☒	☒	☒	☒	☐
S = SERVICE / REPAIR	LUNCH	OUT	12	12	12	12	
SA = SAFETY		IN	12:30	12:30	12:30	12:30	
QA = QUALITY ASSUR	PM BREAK	☐	☒	☒	☒	☒	☐
TG = CONDENSATE	END OF DAY	OUT	3:30	3:30	3:30	3:30	

Plaintiff contends that the records are suspicious. (Szamet Decl. ¶73.) Plaintiff would argue that nearly identical records is akin to having records rife with violations that permit him to invoke the burden shifting clearly set forth in *Donahue*⁴. (Szamet Decl. ¶74.) Such burden

⁴ In *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, the California Supreme Court held that time records depicting noncompliant (late, interrupted, or missed) meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage of litigation.⁴ *Id.* at 77. Reasoning that the “affirmative defense” of waiver goes to the merits of the

1 shifting will create a presumption of liability and thereby require Defendant to prove that in fact
2 all class members got their meal periods at exactly 12-12:30 each day throughout the entire class
3 period. (Szamet Decl. ¶75.)

4 Defendant vehemently denies the alleged meal break claim. (Szamet Decl. ¶76.) Defendant
5 maintains that it maintained a valid written meal period policy during the Class Period, had
6 compliant practices during the Class Period, and the records show that consistent meal periods
7 were consistently documented. (Szamet Decl. ¶77.) Defendant contends that Plaintiff and all Class
8 Members were provided with all required meal periods and that Defendant paid meal period
9 premiums when necessary. (Szamet Decl. ¶78.)

10 This dispute presented a significant risk on the meal period claim that Plaintiff considered
11 when evaluating this settlement. (Szamet Decl. ¶79.) As an initial matter, Defendant meets
12 *Brinker's* “provide” standard by maintaining a valid written policy and not doing anything to
13 interfere with the taking of lawful meal periods. (Szamet Decl. ¶80.) Second, Plaintiff worked
14 with an expert to analyze Defendant’s time and pay records. (Szamet Decl. ¶81.) The records
15 show that meal periods were taken in 80% of shifts at the 5th hour, 5% were taken at the 5.5 hour
16 mark, and 5% taken at the 6th hour. (Szamet Decl. ¶82.) This can be an extremely tough claim to
17 prove on a classwide basis, however, because Defendant will argue that it meets the *Brinker*
18 “provide” standard, meal breaks are consistently reflected in the records, and burden shifting is
19 not legally appropriate because *Donahue* is not applicable. (Szamet Decl. ¶83.) Defendant would
20 argue that because the records largely show complaint breaks were taken, it would become an
21 individualized inquiry that would require questioning of each and every Class Member as to each
22 and every meal period in the records as to whether in fact it was “provided” in compliance with
23 the law. (Szamet Decl. ¶84.) Such an inquiry, Defendant would argue, necessarily defeats class
24 certification. (Szamet Decl. ¶85.) Plaintiff had acknowledged there was significant risk and based
25 on this significant risk, Class Counsel contends it was appropriate to dramatically discount the full
26 value of this claim for settlement purposes. (Szamet Decl. ¶86.)

27 _____
28 case, the Court in *Donohue* held, “the presumption goes to the question of liability and applies at
the summary judgment stage, not just at the class certification stage.” *Id.* at 76.

1 c. The Risks Associated with the Reimbursement Claim

2 Under California Labor Code § 2802(a) an employer "shall indemnify his or her employee
3 for all necessary expenditures or losses incurred by the employee in direct consequence of the
4 discharge of his or her duties, or of his or her obedience to the directions of the employer." An
5 employee acts in "discharge of his duties," for purposes of this Section when the employee acts
6 within the "course and scope of employment." See *O'Hara v. Teamsters Union Local No. 856*,
7 C.A.9 (Cal.)1998, 151 F.3d 1152.

8 Plaintiff alleges that Defendant required employees to incur business expenditures for
9 which they were never reimbursed, including the costs of tools and mileage to perform their duties.
10 (Szamet Decl. ¶87.) The dispute as to tools is discussed above and will not be repeated here.
11 (Szamet Decl. ¶88.) As to mileage, Defendant argued that any mileage incurred was a normal part
12 of daily commuting and was not commuting in between work sites during the workday and if for
13 any reason mileage was incurred on personal vehicles that employees simply needed to request
14 reimbursement. (Szamet Decl. ¶89.) Defendant argued that if any class member contends that he
15 or she was required to make stops throughout the workday in personal vehicles without
16 reimbursement, that was an individualized issue that would defeat certification. (Szamet Decl.
17 ¶90.) If Defendant could establish its defenses as to liability, this claim would have little to no
18 value. (Szamet Decl. ¶91.) Based on the strength of the potential defenses, Class Counsel believes
19 was appropriate to discount this claim for settlement purposes. (Szamet Decl. ¶92.)

20 d. The Risks Associated with the Inaccurate Wage Statement Claim

21 California Labor Code § 226(a) requires employers to furnish to his or her employee, either
22 as a detachable part of the check, draft, or voucher paying the employee's wages, an accurate
23 itemized statement in writing showing, among other things, total hours worked, the number of
24 piece-rate units earned, and accurately report appropriate rates of pay and the corresponding
25 number of hours worked at each hourly rate.

26 As a result of Defendant's failure to pay minimum wages as described above, Defendant
27 has failed to include the appropriate rates of pay and the accurate hours worked and the
28 corresponding number of hours worked at each hourly rate on the itemized wage statements issued

1 to Plaintiff and the Proposed Class.

2 Labor Code § 226(a)(8) requires Defendant to furnish to his or her employee an accurate
3 itemized statement in writing showing the name and address of the legal entity that is the employer.
4 Defendant failed to include the name of the legal entity that is the employer, in violation of Labor
5 Code §§ 226(a)(8).

6 Plaintiff contends that the wage statements issued to him and Class Members are facially
7 defective in that they failed to indicate the name and address of the legal entity that is the employer
8 on the wage statements as they say J R Pierce Plumbing Co of Sac and its actually J.R. PIERCE
9 PLUMBING CO., INC. OF SACRAMENTO. (Szamet Decl. ¶93.) There is a space between J R
10 Pierce on the wage statement as well. (Szamet Decl. ¶94.) Defendant contended that this was a
11 highly technical argument that was likely to fail. (Szamet Decl. ¶95.)

12 In addition, Plaintiff alleges a derivative claim that Defendant issued wage statements that
13 allegedly violate Labor Code §§ 226(a)(2) and (9). (Szamet Decl. ¶96.) Labor Code § 226(a)
14 specifically requires that the employer shall, semimonthly or at the time of each payment of wages,
15 furnish each of his or her employees, an accurate itemized statement in writing showing all
16 applicable hourly rates in effect during the pay period and the corresponding number of hours
17 worked at each hourly rate by the employee. Plaintiff alleges that he and Class Members are issued
18 wage statements that do not accurately show the applicable overtime rate and the number of hours
19 worked at the corresponding rate based on Defendant's alleged failure to blend discussed above.
20 (Szamet Decl. ¶97.) However, Plaintiff has to recognize that this is a derivative claim. (Szamet
21 Decl. ¶98.) Plaintiff does not argue that Defendant failed to show required information on the
22 paystubs it issued to Class Members, only that the paystubs do not accurately show the
23 information. (Szamet Decl. ¶99.) While Plaintiff believes this claim is easily certifiable, Plaintiff
24 has to acknowledge that this is a more difficult argument to prevail on when it comes to assessing
25 liability and a resulting discount for settlement purposes is appropriate. (Szamet Decl. ¶100.) The
26 wage statement penalties total \$4,932,000.

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28 ///

1 e. The Risks Associated with the Waiting Time Penalty Claim

2 Labor Code section 203 provides that if an employer fails to provide wages at the time of
3 an employee's termination or within 72 hours of his/her resignation, then such employee's wages
4 shall continue as a penalty for up to thirty (30) days. "If an employer willfully fails to pay . . . any
5 wages of an employee who is discharged or who quits, the wages of the employee shall continue
6 as a penalty from the due date thereof at the same rate until paid . . . but the wages shall not continue
7 for more than 30 days." (Lab. Code, § 203, subd. (a).)

8 Here, some Class Members, including Plaintiff, are no longer employed by Defendant.
9 (Szamet Decl. ¶101.) Plaintiff contends that Defendant has failed to pay employees wages
10 immediately or within 72 hours of termination and/or resignation by not paying all meal period
11 premiums owed and wages. (Szamet Decl. ¶102.) Therefore, under California Law, Plaintiff
12 contends that "waiting time" penalties would be triggered for each former employee in the class.
13 (Szamet Decl. ¶103.) Labor Code section 203 reflects a public policy concern that favors the full
14 and prompt payment of earned wages. (See, e.g., *Barnhill v. Robert Saunders & Co.* (1981) 125
15 Cal.App.3d 1, 7; *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.)

16 Defendant maintains that it has paid all wages due to employees at the separation of
17 employment. Defendant argues that a good-faith belief applies here and that if it inadvertently did
18 not pay final wages to an individual, its actions were not willful. (Szamet Decl. ¶104.) Plaintiff
19 responds that the well-settled meaning of "willful," as used in Labor Code section 203, is that an
20 employer has intentionally failed or refused to perform an act which was required to be done.
21 (*Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201.) (Szamet Decl. ¶105.) Plaintiff
22 contends that Defendant knew wages were owed but failed to pay them. (Szamet Decl. ¶106.)
23 Therefore, Plaintiff contends that waiting time penalties apply here and each former employee
24 would be entitled to thirty (30) days of wages.

25 The risk analysis for the section 203 claim flows from the risk analysis for the underlying
26 claims discussed above. (Szamet Decl. ¶107.) If Defendant could prove, as it contends, that wages
27 were not unlawfully deduct and all meal periods were provided as it contends, there would be no
28 waiting time penalties that flow therefrom. (Szamet Decl. ¶108.) Based on the risk articulated

1 above, Class Counsel believed a discount was also appropriate here for settlement purposes.
2 (Szamet Decl. ¶109.)

3 f. The Risks Associated with the PAGA Claim

4 California’s Private Attorneys General Act (“PAGA”), Labor Code § 2698, *et seq.*, permits
5 private litigants to recover civil penalties for violations of the Labor Code. PAGA provides that
6 plaintiffs may recover previously established civil penalties (section 2699(a)) or, if none were
7 established, plaintiffs may recover default penalties provided in section 2699(f) in the amount of
8 \$100 per employee per pay period for the initial violation and \$200 for subsequent violations.

9 Plaintiff discounted the PAGA claim for settlement purposes for multiple reasons. (Szamet
10 Decl. ¶110.) First, the aggrieved employees’ PAGA claims are derivative of all the underlying
11 class claims. *Id.* Second, a court has discretion to award less than the maximum penalty. (*Id.*;
12 Labor Code § 2699(e)(2) (“a court may award a lesser amount than the maximum civil penalty
13 amount specified by this part if, based on the facts and circumstances of the particular case, to do
14 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory”). *See*
15 *e.g., Carrington v. Starbucks Corporation* (2018) 30 Cal.App.5th 504, 241 Cal.Rptr.3d 647, 669
16 (affirming award of 10% of maximum PAGA penalty). Finally, the Class is arguably compensated
17 for these violations in the proposed Agreement, and thus any PAGA recovery for these same
18 violations could be deemed to be duplicative. (*Id.*) As such, Class Counsel believes that the
19 Agreement’s contemplated PAGA payment of \$25,000.00 is appropriate. (*Id.*; *see Nordstrom*
20 *Commissions Cases*, 186 Cal.App.4th 576, 589 (2010) (affirming settlement allocating \$0 of \$6.4
21 million settlement to PAGA penalties). (Szamet Decl. ¶111.)

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

23 There is significant expense associated with the class certification process, which the
24 Parties can avoid by entering into the contemplated Agreement now. (Szamet Decl. ¶112.) If the
25 Court did eventually certify a meal or wage statement class, trial of a case involving approximately
26 2,115 Class Members would require the retention of expensive expert witnesses, the accrual of
27 extensive litigation costs, and a significant time overlay by the parties. (Szamet Decl. ¶113.)
28 Moreover, given the complexity and unsettled nature of the issues in this case it is likely that any

outcome at trial would have resulted in a lengthy and costly appeal. (Szamet Decl. ¶114.) An appeal would result in further delay for the Class Members who are awaiting resolution. (*Id.*)

3. The Risk of Maintaining Class Action Status through Trial

This case has not been certified to be tried as a class action. (Szamet Decl. ¶115.) While Plaintiff believes there is strong evidence to support certification of several possible subclasses, certification is always hard fought and subject to judicial discretion. Moreover, in class actions, decertification is always a possibility. (*Id.*) In attempting to certify a class, the parties would need to conduct multiple depositions, including of the Class Representative and of several person(s) most knowledgeable regarding Defendant's applicable policies. (*Id.*) There is a risk for both sides as to what these depositions will reveal and whether they will support class certification to the extent expected. (*Id.*)

4. The Amount Offered in Settlement

It was very difficult for the Parties to reach this Settlement of \$400,000.00. (Szamet Decl. ¶116.) This Settlement is the result of adversarial, non-collusive, and arms-length negotiations. (*Id.*) The Parties arrived at it after extensive investigation and discovery, careful evaluation of the law, risks, and all information substantiating the amount of penalties reasonably likely to be awarded to the class were the trier of fact to find Defendant liable, and the assistance of an experienced mediator. (*Id.*)

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

As set forth above, Plaintiff assessed the underpaid wage claim, based on the tools deduction argument, at approximately \$330,973. (Szamet Decl. ¶117.) This calculation is based on expert analysis of Defendant's pay records, revealing that on average \$2.18 was deducted per workweek for tools. (*Id.*)

Plaintiff assessed the full value of the meal period claim at approximately \$1,653,844. (Szamet Decl. ¶118.) This amount assumes a 10% violation rate for meal periods based on the data for the Class (showing 5% of meals were taken at the 5.5 hour mark. and 5% taken at the 6th hour.) (*Id.*) However, if Defendant was able to defeat certification of this claim based on the arguments above, this claim would be worth \$0. (*Id.*) Based on this acute risk and as set forth

1 above, Plaintiff determined that accepting a discount of the full amount was appropriate. (*Id.*)

2 With regard to the reimbursement claim analysis, Plaintiff believed that it was reasonable
3 to value the potential reimbursement at \$330,937 based on the records (on average \$2.18 was
4 deducted per workweek for tools. (Szamet Decl. ¶119.) If Defendant could establish this was just
5 a result of reimbursements as argued, this claim would be worth \$0. (*Id.*) Plaintiff did not place
6 significant value on the mileage claim due to Defendant's policy on mileage and reimbursements
7 thereof. (*Id.*)

8 Plaintiff valued the wage statement claim, without discount, at \$4,932,000. (Szamet Decl.
9 ¶120.) Plaintiff used \$50 for the initial pay period and \$100 thereafter with a \$4,000 cap on wage
10 statement penalties per employee per Labor Code §226(e)(1). (*Id.*) Due to the risk discussed
11 above that 226(a) liability would not attach at all Plaintiff determined that a steep discount of this
12 claim was fair for settlement purposes. (*Id.*)

13 Plaintiff valued the waiting time penalty claim, tied to the wage/overtime claim, at
14 \$ 1,418,050. (Szamet Decl. ¶121.) Considering the derivate nature of Labor Code §203, the legal
15 dispute over whether class members were owed any wages at all, and the risk that Plaintiff could
16 not prove "wilfullness", Plaintiff determined that accepting a discount on this claim was
17 appropriate. (*Id.*)

18 Finally, Plaintiff assessed the maximum value of the PAGA claim as \$8,493,200 which is
19 based upon 85,790 pay periods in the applicable date rage using \$100 per pay period. (Szamet
20 Decl. ¶122.) The main risk taken into account with PAGA is the discretionary nature of the penalty
21 award. (*Id.*) A judge can award the statutory maximum of \$100 for the initial violation and \$200
22 thereafter or – in theory – one cent per wage statement. (*Id.*) While there is a dearth of available
23 authority, in Class Counsel's view, were he to succeed on any of the underlying Labor Code
24 violations, it is not likely that a Judge would also award a large amount of penalties of top of any
25 damages recovered. (*Id.*)

26 Thus, per Plaintiff's assessment set forth here, the potential value of all of Plaintiff's and
27 the Class Members' claims was approximately \$16,828,031. (Szamet Decl. ¶123.) However, the
28 bulk of this exposure is in penalties attribute to the Labor Codes §203, 226(a), and 2699. (*Id.*) If

1 just the core potential claims for tools and meal periods are evaluated the exposure number drops
2 dramatically to \$1,984,781. (*Id.*) In light of this, and guided with the expert assistance of the
3 mediator, Class Counsel determined that accepting a reduced amount for settlement purposes is
4 fair and reasonable to the Class. (*Id.*) Thus, Class Counsel believes that the Gross Settlement
5 Amount of \$400,000.00 is fair and reasonable. (*Id.*)

6 5. The Experience and Views of Counsel

7 Finally, counsel's experience and success in similar class actions also weigh in favor of
8 preliminary approval. *See Wershba, supra*, 91 Cal.App.4th at 245. Kingsley & Kingsley, APC is
9 very experienced in prosecuting complex employment litigation, and the firm has focused its
10 practice since the year 2000 on complex wage, hour, and working condition violations. (Szamet
11 Decl. ¶¶124-126.) The firm is well versed in class action litigation and has diligently and
12 aggressively pursued this action. (*Id.*) Kingsley & Kingsley, APC currently serves as Class
13 Counsel for dozens of pending class action lawsuits in Northern, Central, and Southern California.
14 (*Id.*) A list of representative cases that Kingsley & Kingsley, APC has handled is included in the
15 accompanying declaration of Kelsey M. Szamet (*Id.*) After factoring in the risks explained above,
16 Class Counsel believes that the proposed settlement is fair and reasonable. (Szamet Decl. ¶127.)

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

18 Plans of allocation are subject to the same standard of review as class action settlements;
19 they must be "fair, adequate and reasonable." (*See, e.g., Officers for Justice v. Civil Service*
20 *Comm'n* (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the proposed plan of allocation
21 compensates Class Members pro rata based on the number of Workweeks worked by the Class
22 Member during the Class Period. The lump sum payment to each Class Member not excluding
23 him/ herself will be determined on an individualized basis based upon the Workweeks worked by
24 the Class Member. (Ex. 1 at § 3, ¶3.2.4.) This allocation distributes Agreement funds
25 proportionally to each class member's potential damages and should therefore be approved as fair,
26 adequate, and reasonable. (Szamet Decl. ¶128.)

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

3 Plaintiff requests that the Court approve the proposed plan and form of Class Notice. The
4 standard for determining the adequacy of notice is whether the notice has “a reasonable chance of
5 reaching a substantial percentage of the class members.” (*Cartt v. Superior Court* (1975) 50
6 Cal.App.3d 960, 974.) Pursuant to the Agreement, the Notice will be sent to the last known address
7 of all Class Members, or to an updated address if one is located in the National Change of Address
8 Database. (Ex. 1 at § 4, ¶4.4.1). If any Notices are returned as undeliverable, the Administrator
9 will undertake another reasonable address verification measure to locate a valid mailing address
10 and will promptly send the Notice to the new address. (*Id.*) As such, the Notice is likely to reach
11 most, if not all, Class Members.

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

18 Here, the Notice clearly explains the proposed Agreement and the options to opt out of the
19 Settlement or object to it at the Final Approval Hearing. (Ex. 1 at § 7, ¶ 7.5; 7.7; *see also* Ex. A
20 to the Agreement at pp. 2-3, 5 and 8-9 [Class Notice].) In short, the Court should approve the
21 proposed Class Notice because it describes the proposed settlement with enough specificity to
22 allow Class Members to make an informed choice regarding whether to participate.

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

24 The Class Representative is entitled to an enhancement for his valiant effort and time
25 expended in this matter. (Szamet Decl. ¶129.) The time spent by Hector Sanchez is significant
26 and includes researching and retaining competent counsel; providing information to Class Counsel
27 regarding the nature of the work at Defendant; compiling relevant documents; working closely
28 with Class Counsel to develop the theories of liability and martial relevant evidence; regularly

1 discussing the status of the case with Class Counsel; discussing the case via telephone with many
2 Class Members; making himself available to attend a full-day of mediation and staying in contact
3 that day as needed; and responding promptly to Class Counsel's communications regarding
4 settlement. (*Id.*) Thus, in addition to the sums paid to Class Members, Plaintiff requests a proposed
5 litigation enhancement in the amount of \$5,000.00, to be paid from the Gross Settlement Amount.
6 (Ex. 1 at § 3, ¶3.2.1.) As set forth in the Agreement, Plaintiff will also be entering into a general
7 release of liability pursuant to Civil Code Section 1542. (Szamet Decl. ¶130; Ex. 1 at §5, ¶5.1.)

8 Class Counsel considers this to be a fair and reasonable enhancement. (Szamet Decl.
9 ¶131.) The enhancement takes into consideration the time, effort, and expense incurred by Plaintiff
10 in coming forward to litigate this matter on behalf of all Class Members. (*Id.*) Plaintiff will provide
11 a detailed declaration with the Final Approval Motion detailing his participation and further
12 justification for the enhancement. (*Id.*)

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

14 As indicated on the Proof of Service, Plaintiff's Motion for Approval of Class Action
15 Settlement ("Motion") will be concurrently uploaded to the LWDA website on the date this Motion
16 is filed as required by statute. Proof of submission of Plaintiff's Motion, all related documents,
17 and copy of the email from the LWDA confirming receipt is attached to the Declaration of Kelsey
18 M. Szamet as Exhibit "2." (Szamet Decl. ¶132, 135.)

19 **VIII. CONCLUSION**

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

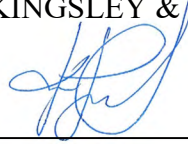
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1 DATED: September 20, 2023

KINGSLEY & KINGSLEY, APC

2
3 By:



4 Kelsey M. Szamet

5 Attorneys for Plaintiff HECTOR SANCHEZ and the
6 proposed class
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(PROOF OF SERVICE)

[CCP 1013(a)(3)]

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On September 20, 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:

COOK BROWN LLP

Carrie E. Bushman

cbushman@cookbrown.com

Linda Johnston

ljohnston@cookbrown.com

Zachary H. Rankin

zrankin@cookbrown.com

2407 J Street, Second Floor

Sacramento, CA 95816

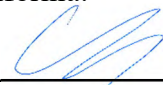
☐ **(BY MAIL)** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage fully prepaid at Encino, California in the ordinary course of business. I am aware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

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

☒ **BY ELECTRONIC MAIL TRANSMISSION:** I caused the document to be send to the persons at the e-mail address(es) listed on the attached service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. A pdf copy of which was sent via email to the below email address(es).

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

Executed on September 20, 2023, at Woodland Hills, California.


Michelle Tanzer