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

RONALD ALLEN MILES, an individual, on
behalf of himself and others similarly
situated,

PLAINTIFF,

v.

CHICO PRODUCE INC. DBA
PROPACIFIC FRESH; and DOES 1 thru 50,
inclusive,

DEFENDANTS.

CASE NO. 34-2021-00301881-CU-OE-GDS

[Case Assigned for All Purposes to Hon. Lauri
A. Damrell to Dept. 28]

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

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

Date: January 19, 2024

Time: 9:00 A.M.

Dept.: 28

Reservation Number: A-301881-001

Complaint Filed: June 3, 2021

Trial Date: None Set

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

2 **PLEASE TAKE NOTICE** that on January 19, 2024 at 9:00 A.M. in Department 28 of the
3 above-entitled court, Plaintiff RONALD ALLEN MILES 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 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: December 22, 2023

KINGSLEY & KINGSLEY, APC

14
15 By: 

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

2 **I. INTRODUCTION**

3 Plaintiff RONALD ALLEN MILES (“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 Chico Produce Inc. dba
6 ProPacific Fresh (“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” or “Agreement”). A true and correct copy of the Agreement
10 is attached hereto as Exhibit “1”;

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

14 (4) 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 On June 3, 2021, Plaintiff RONALD ALLEN MILES filed a Class Action Complaint
20 seeking recovery for: (1) failure to pay wages and/or overtime under Labor Code sections 510,
21 1194, and 1199; (2) failure to provide meal breaks pursuant to Labor Code sections 226.7 and 512;
22 (3) failure to provide rest breaks pursuant to Labor Code section 226.7; (4) penalties under Labor
23 Code section 203; and (5) violation of Business & Professions Code section 17200. (Declaration
24 of Kelsey M. Szamet (“Szamet Decl.”) ¶4.) Also on June 3, 2021, Plaintiff sent a notice letter,
25 pursuant to Labor PAGA, to the Labor Workforce Development Agency (“LWDA”) regarding his
26 intent to seek civil penalties for the same Labor Code violations above, under Labor Code section
27 2699, et seq. (Szamet Decl. ¶5.)

28 On August 9, 2021, Plaintiff filed a First Amended Class and Representative Action

1 Complaint adding an additional cause of action for penalties pursuant to Labor Code § 2699, et
2 seq., the Private Attorneys General Act (“PAGA”) based on the underlying Labor Code violations
3 already pled. (Hereafter, the “Action”). (Szamet Decl. ¶6.)

4 B. The Discovery Process

5 The Parties have yet to engage in formal discovery, instead focusing their efforts on
6 resolving this case through early mediation. Defendant informally produced a sampling of time
7 and pay data for mediation. (Szamet Decl. ¶7.) Plaintiff worked with a damage expert to analyze
8 and evaluate the time and pay data, extrapolated to the full Class, to determine maximum potential
9 exposure and a realistic range for potential settlement. (Szamet Decl. ¶8.)

10 On September 5, 2023, the Parties met for mediation with experience mediator with Steven
11 Serratore, Esq. He is very experienced in wage and hour class action mediation and helped the
12 Parties reached a resolution of the matter now presented to the Court for preliminary approval.
13 (Szamet Decl. ¶9.)

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

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

1 **III. THE PROPOSED SETTLEMENT**

2 A. The Settlement Class

3 For purposes of the Agreement, the settlement Class is defined as:

4 “All non-exempt employees in the Operations-Night-Ops Department who are employed
5 or have been employed by Chico Produce, Inc. dba ProPacific Fresh in the State of
6 California who worked one or more pay periods from June 3, 2017 to November 4, 2023.”
7 (“Class Members” or “Settlement Class Members” or “Class”)

8 (Szamet Decl. ¶12; Agreement, Ex. 1 at § 1, ¶1.5.)

9 The Class Period is June 3, 2017 through November 4, 2023. (Szamet Decl. ¶13; Ex. 1 at
10 §1, ¶1.12.) As of September 5, 2023 (the date of mediation) and based on documents and other
11 information produced by Defendant, there are approximately 133 Class Members. (Szamet Decl.
12 ¶14; Ex. 1 at § 4, ¶4.1.)

13 B. The Aggrieved Employees

14 For purposes of the Agreement, the Aggrieved Employees are defined as:

15 “All non-exempt employees who are employed or have been employed by Chico Produce,
16 Inc. dba ProPacific Fresh, in the State of California who worked one or more pay periods
17 since June 3, 2020 to November 4, 2023.” (“Aggrieved Employees”)

18 (Szamet Decl. ¶15; Agreement, Ex. 1 at § 1, ¶1.4.)

19 The PAGA Period is June 3, 2020 to November 4, 2023. (Szamet Decl. ¶16; Ex. 1 at § 1,
20 ¶1.31.) As of September 5, 2023 (the date of mediation) and based on documents and other
21 information produced by Defendant, there are approximately 53 Aggrieved Employees. (Szamet
22 Decl. ¶17; Ex. 1 at § 4, ¶4.1.)

23 C. Gross Settlement Amount

24 As detailed fully in the Agreement, the Settlement provides for Defendant to pay a Gross
25 Settlement Amount of \$285,000.00, which includes the sum of the Individual Class Payments,
26 Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel
27 Expenses, Class Representative Service Payment and the Administrator’s Expenses (Szamet Decl.
28 ¶18; Ex. 1 at § 1, ¶22.)

The Net Settlement Amount is the Gross Settlement Amount, less payments in the amounts
approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class

Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments. (Szamet Decl. ¶19; Ex. 1 at § 1, ¶28.)

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

Gross Settlement Amount:	\$	285,000.00
Less Class Representative Enhancement:	\$	5,000.00
Less Class Counsel's Fees:	\$	95,000.00
Less Class Counsel's Costs:	\$	20,000.00
Less PAGA Payment:	\$	10,000.00
		<i>(\$7,500.00 to the LWDA and \$2,500.00 to remain in the Net Settlement Amount)</i>
<u>Less Administrator Costs:</u>	<u>\$</u>	<u>10,000.00</u>

Anticipated Net Settlement Amount \$ 147,500.00

(Ex. 1 at § 3.)

D. Individual Settlement Payments

The amount of each Participating Class Member's Individual Class Payment is an individualized amount that calculated according to the number of Workweeks worked during the Class Period. (Ex. 1 at § 1, ¶1.23; *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 § 8, ¶8.6.)

The individual PAGA settlement amount of each Aggrieved Employee will be paid from the Aggrieved Employee's pro rate share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period. (Ex. 1 at § 1, ¶1.24.) This individual amount shall be determined according to the settlement payment formula set forth in the Agreement. (*See* Ex. 1 at § 3, ¶3.2.5.)

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 Class Members. (Ex. 1 at §8, ¶8.4.) The Parties have agreed to use a reputable third-party claims administrator, ILYM Group, Inc., to administer the Agreement. (Ex. 1 at § 1, ¶1.2.)

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

2 As detailed in the Agreement, Class Members will have an opportunity to request exclusion
3 from the Agreement (i.e. opt out) and to object to the Agreement at the Final Approval Hearing.
4 (See Ex. 1 at § 8, ¶¶8.5; 8.7; see also Ex. A to the Agreement at pp. 2-3, 5, and 8-9 [Class Notice].)
5 The Agreement and Class Notice contain details about the process to request exclusion or object.
6 (*Id* at Ex. 1.)

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

11 G. The Release

12 The Release by Participating Class Members is defined as: “All Participating Class
13 Members, on behalf of themselves and their respective former and present representatives, agents,
14 attorneys, heirs, administrators, successors, and assigns, release Released Parties from wage and
15 hour claims, including but not limited to alleged unpaid overtime and/or minimum wage under
16 Labor Code sections 510, 1194, 1194.2, 1197, 1197.1, 1198, failure to provide meal and rest
17 periods pursuant to Labor Code sections 226.7, 512, and 1198, alleged waiting time penalties under
18 Labor Code sections 201, 202, and 203, alleged payroll stub violations under Labor Code 226(a),
19 alleged PAGA penalties under Labor Code 2698 et seq. and other associated penalties from June
20 3, 2017 to November 4, 2023. Except as set forth in Section 6.3 of this Agreement, Participating
21 Class Members do not release any other claims, including claims for vested benefits, wrongful
22 termination, violation of the Fair Employment and Housing Act, unemployment.” (Ex. 1 at § 6,
23 ¶6.2.)

24 The Release by Non-participating Class Members Who Are Aggrieved Employees is
25 defined as: “All Non-Participating Class Members who are Aggrieved Employees are deemed to
26 release, on behalf of themselves and their respective former and present representatives, agents,
27 attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for
28 PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA

1 Period facts stated in the Operative Complaint for wage and hour claims, including but not limited
2 to alleged unpaid overtime and/or minimum wage under Labor Code sections 510, 1194, 1194.2,
3 1197, 1197.1, 1198, failure to provide meal and rest periods pursuant to Labor Code sections 226.7,
4 512, and 1198, alleged waiting time penalties under Labor Code sections 201, 202, and 203,
5 alleged payroll stub violations under Labor Code 226(a), alleged PAGA penalties under Labor
6 Code 2698 et seq. and other associated penalties from June 3, 2020 to November 4, 2023.” (Ex. 1
7 at § 6, ¶6.3.)

8 **IV. THE PROPOSED SETTLEMENT CLASS SHOULD BE CERTIFIED FOR** 9 **SETTLEMENT PURPOSES**

10 Originally creatures of equity, class actions have been statutorily embraced by the
11 Legislature whenever “the question [in a case] is one of a common or general interest, of many
12 persons, or when the parties are numerous, and it is impracticable to bring them all before the
13 court” (Code Civ. Proc. § 382; *see, e.g., Fireside Bank v. Sup. Court* (2007) 40 Cal.4th 1069,
14 1078.) They serve an important function by “establishing a technique whereby the claims of many
15 individuals can be resolved at the same time” thereby “eliminat[ing] the possibility of repetitious
16 litigation and provid[ing] small claimants with a method of obtaining redress.” (*Richmond v. Dart*
17 *Industries, Inc.* (1981) 29 Cal.3d 462, 469.) Public policy supports the use of class actions to
18 enforce wage and overtime laws for the benefit of workers. (*See Sav-on Drug Stores, Inc. v. Sup.*
19 *Court* (2004) 34 Cal.4th 319, 340.)

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

26 The California Supreme Court has identified three certification requirements: (1) “the
27 existence of an ascertainable and sufficiently numerous class”; (2) “a well-defined community of
28 interest”; and, (3) “substantial benefits from certification that render proceeding as a class superior

1 to the alternatives.” (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.)
2 The “community of interest” requirement includes three additional requirements: (1) common
3 questions of law or fact predominant over individual questions; (2) the class representatives have
4 claims or defenses typical of the class; and (3) the class representatives can adequately represent
5 the class. (*Ibid*, citing *Fireside Bank*, *supra*, 40 Cal.4th at 1089.)

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

9 A. Plaintiff Contends That The Proposed Class Is Ascertainable and Sufficiently
10 Numerous

11 1. Ascertainability

12 Putative class members are deemed “ascertainable” when they may be “readily identified
13 without unreasonable expense or time by reference to official records.” (*Rose v. City of Hayward*
14 (1981) 126 Cal.App.3d 926, 932.) In determining whether a class is ascertainable, a court
15 scrutinizes the class definition, the size of the class and the means of identifying class members.
16 (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.)

17 Here, Plaintiff maintains that the proposed settlement Class is ascertainable for several
18 reasons: First, Defendant has agreed in the Agreement to provide a class list to the Administrator
19 containing the Class Member’s name, last known mailing address, Social Security number, and
20 number of Class Period Workweeks and PAGA Pay Periods for all putative class members after
21 issuance of the preliminary approval order. (Szamet Decl. ¶20; Ex. 1 at § 1, ¶1.8.) Second, Class
22 Member consist of Defendant’s non-exempt employees, and Defendant is required to keep records
23 of its non-exempt employees’ names, home addresses, and social security numbers. (*See Wage*
24 *Order 9-2001*, subsection 7(c); Szamet Decl. ¶21.) Third and finally, Defendant informally
25 produced Plaintiff’s personnel file and pay statements, and a sampling of time record data, pay
26 data, and wage statements for Class Members containing class member contact information, which
27 confirms that all Class Member may be readily identified based on Defendant’s records. (Szamet
28 Decl. ¶22.)

1 2. Numerosity

2 There is no set number that is required as a matter of law to maintain a class action. (See,
3 *e.g.*, *Rose v. City of Hayward*, *supra*, 126 Cal.App.3d at p. 934.) Here, the proposed settlement
4 Class contains, based upon information and belief, approximately 133 non-exempt employees in
5 the State of California. (Ex. 1 at § 1, ¶1.5.) Therefore, Plaintiff is confident he will be able to
6 establish that the proposed settlement Class is ascertainable and sufficiently numerous. (Szamet
7 Decl. ¶23.)

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

9 1. There Are Predominant Questions of Law and Fact

10 In deciding whether questions of common or general interest predominate, a court must
11 determine whether “the issues which may be jointly tried, when compared with those requiring
12 separate adjudication, are so numerous or substantial that the maintenance of a class action would
13 be advantageous to the judicial process and to the litigants.” (*Collins v. Rocha* (1972) 7 Cal.3d
14 232, 238; *accord*, *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.) As a
15 general matter, if the defendant’s liability can be determined by facts common to all members of
16 the class, a class will be certified even if the members must individually prove their damages.”
17 (*Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 916, 107; *accord*, *Knapp v.*
18 *AT & T Wireless Services, Inc.* (2011) 195 Cal.App.4th 932, 941.)

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

- 22 1) Whether Defendant failed to pay all wages and/or overtime compensation;
23 2) Whether Defendant failed to provide lawfully required meal periods and/or failed
24 to compensate employees one (1) hour’s wages in lieu thereof;
25 3) Whether Defendant failed to provide lawfully required rest periods and/or failed to
26 compensate employees one (1) hour’s wages in lieu thereof;
27 4) Whether Defendant failed to pay compensation due and owing upon termination
28 of employment;

1 5) Whether Defendant engaged in unfair competition; and,

2 6) Whether Defendant violated § 2699, et seq. of the Labor Code by engaging in the
3 acts previously alleged.

4 (Szamet Decl. ¶25.)

5 Plaintiff’s challenge to Defendant’s uniform policies and practices involves common
6 factual and legal issues that are amenable to class treatment. (Szamet Decl. ¶26.) As the California
7 Supreme Court has emphasized, “[c]laims alleging that a uniform policy consistently applied to a
8 group of employees is in violation of the wage and hour laws are of the sort routinely, and properly,
9 found suitable for class treatment.” (*Brinker, supra*, 53 Cal.4th at 1033; *see also Bradley v.*
10 *Networkers International, LLC* (2012) 211 Cal.App.4th 1129, 1141-1146.) Moreover, a class of
11 similarly situated employees may be certified based on common questions of fact or law, even if
12 each employee has to establish the amount of his or her damages. (*See Bell v. Farmers Ins. Exch.*
13 (2004) 115 Cal.App.4th 715, 741; *Sav-On Drug Stores, Inc. v. Superior Court, supra*, 34 Cal.4th
14 at 340.)

15 Here, Plaintiff maintains that the proposed Class Members suffered the same injuries, in
16 the same manner: (1) Class Members were not properly paid all wages/overtime; (2) Class
17 Members did not receive their meal and rest periods as required; (3) Class Members were not paid
18 all wages owed upon termination/resignation. (Szamet Decl. ¶27.) Plaintiff alleges that Class
19 Members worked in the same capacity for the same employer and were subject to the same
20 employment policies and practices, the questions of fact and claims regarding the status of these
21 employees are the same for each member of the settlement Class. Accordingly, for purposes of
22 settlement, certification for settlement purposes is appropriate. (Szamet Decl. ¶28.)

23 2. As 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
that the representative is similarly situated so that he or she will have the motive to litigate on

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

7 Plaintiff worked hourly non-exempt driver based out of Defendant's yard in Sacramento,
8 California from May 2019 to March 18, 2020. (Szamet Decl. ¶29.) Plaintiff alleges that he: (1)
9 worked without being paid all wages and/or overtime; (2) worked without being provided meal/rest
10 periods as required by law; (5) worked without being paid all wages due upon separation. He also
11 alleges that he experienced derivative claims for unfair business competition (B&P Code §17200)
12 and Labor Code §2699, et seq. (Szamet Decl. ¶30.) Plaintiff also contends that his claims are
13 typical of those of the settlement Class. (Szamet Decl. ¶31.)

14 3. As The Class Representative He Has and Will Fairly Represent the Interests
15 of the Class Members

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

20 Plaintiff believes that he is capable of fairly representing and adequately protecting the
21 interests of the proposed Class Members. (Szamet Decl. ¶32.) Plaintiff's interests in this litigation
22 are coextensive with the interests of the proposed Class Members. The members of the proposed
23 settlement Class all worked for Defendant during the relevant time period and incurred the same
24 type of alleged damages with regard to Defendant's alleged violations of the law. (Szamet Decl.
25 ¶33.) Moreover, Plaintiff has agreed to serve as Class Representative and has retained qualified
26 Counsel who is experienced in prosecuting wage and hour class actions. (Szamet Decl. ¶34.) This
27 demonstrates his commitment to bringing about the best possible results for the benefit of the
28 proposed settlement Class. (Szamet Decl. ¶35.) Plaintiff has provided his Counsel with all

1 necessary and pertinent information. (Szamet Decl. ¶36.) He has been a very active participant in
2 the litigation including having frequent contact with Class Members, responding to informal
3 discovery, and working closely with Class Counsel to develop the theories of liability. (Szamet
4 Decl. ¶37.) Plaintiff has provided his Counsel with all necessary and pertinent information.
5 (Szamet Decl. ¶38.) He also made himself available to attend the full-day mediation in this matter
6 and was informed of and involved in all of the Settlement negotiations. (Szamet Decl. ¶39.)
7 Therefore, Plaintiff believes that he has and will continue to adequately represent the proposed
8 Class Members. (Szamet Decl. ¶40.)

9 C. Plaintiff Contends The Class Action Vehicle Is Superior to the Alternatives

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

24 Plaintiff maintains that class treatment would be the superior method of managing this case.
25 A class action is superior to individual litigation “when numerous parties suffer injury of
26 insufficient size to warrant individual action and when denial of class relief would result in unjust
27 advantage to the wrongdoer.” (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.) In
28 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. (Szamet Decl. ¶41.) The only alternative to certification would be to force over 133 employees to join this action, file individual, uniform actions, or abandon their legal rights altogether. (Szamet Decl. ¶42.) Plaintiff maintains that this economic reality would result in a windfall for Defendant if this case were not certified. (Szamet Decl. ¶43.)

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.

The proposed settlement satisfies each of these factors. (Szamet Decl. ¶44.) Class Counsel conducted meaningful informal discovery before entering into informed and arms-length settlement negotiations in this matter. (*Id* at Szamet Decl. ¶¶7-11.) This discovery permitted Class Counsel to fairly evaluate the strength of the case and the risks associated with ongoing litigation. (Szamet Decl. ¶45.) Class Counsel is very experienced in handling wage and hour class actions and, after weighing all of the following factors, supports this Agreement. (Szamet Decl. ¶46.)

1. The Strength of Plaintiff's Case

a) Defendant's Alleged Failure to Pay Wages and/or Overtime

Here, Plaintiff alleged that he and the Proposed Class were forced to work on a regular and consistent basis without receiving compensation for all hours worked at the proper rate. (Szamet Decl. ¶47.) Specifically, Plaintiff alleged that Defendant failed to blend **incentive pay** into their regular rate of pay when calculating the appropriate overtime and/or double-time rate for class members. (Szamet Decl. ¶48.) Plaintiff also alleged that Defendant paid "call out" bonuses and

1 failed to properly blend them into the regular rate. (Szamet Decl. ¶49.) Further, on occasions that
2 Defendant paid meal period premiums to Plaintiff and Proposed Class members, Plaintiff alleged
3 Defendant failed to blend the meal period premiums into the regular rate of pay for purposes of
4 calculating the proper overtime and/or double time rate. (Szamet Decl. ¶50.)

5 The data reveal that there was exposure on a failure to proper blend, as such, Plaintiff
6 contends there can be no dispute that Plaintiff and the Proposed Class were paid at a regular rate
7 less than the rate required under California Law and Defendant is liable for unpaid wages but the
8 assessed exposure for that claim was very minimal as will be discussed in further detail below.
9 (Szamet Decl. ¶51.) Nonetheless, Plaintiff was extremely confident that this claim would be
10 certified. (Szamet Decl. ¶52.) As for the “call out” bonus, this appeared once in Plaintiff’s records
11 but not in the time and pay data sample for any other class members. (Szamet Decl. ¶53.) As
12 such, it was an isolated incident that would have been difficult if not impossible to prove on a class
13 wide basis. (Szamet Decl. ¶54.) Accordingly, Plaintiff placed very little value on this theory of
14 liability for settlement purposes. (Szamet Decl. ¶55.)

15 b) Plaintiff Alleged That Defendant Failed to Provide Meal Breaks

16 Plaintiff alleged that Defendant failed to provide Plaintiff and the Proposed Class with
17 proper meal periods of not less than thirty (30) minutes and failed to pay one (1) hour of pay at the
18 employees’ regular rate of compensation for each workday that a meal period was not provided,
19 was not provided in full, or was not provided in a timely manner, as required by California state
20 wage and hour laws. (Szamet Decl. ¶56.) Expert analysis of the time and pay data revealed that
21 there were very few potential meal period violations with the number of first meal periods missed
22 altogether or less than 30 minutes at 1.7%, number of meal periods exactly 30 minutes at 24.5%
23 and number of first meal periods greater than 30 minutes in length at 73.8%. (Szamet Decl. ¶57.)
24 Notably, Defendant did pay meal period premiums and most of the meal periods missed altogether
25 or less than 30 minutes were coded in the data and correspond with a valid meal period waiver in
26 place. (Szamet Decl. ¶58.) The potential meal period exposure was already minimal, but when
27 properly waived meal periods are excluded, then the exposure drops even more significantly to
28 approximately only \$2,700. (Szamet Decl. ¶59.)

1 Further, Plaintiff was confident that Defendant would attempt to gather testimonial
2 evidence from class members indicating that the records were accurate and either they took
3 compliant meal breaks as reflected in the records or validly waived the meal period or were paid a
4 meal period premium in lieu thereof. (Szamet Decl. ¶60.) Plaintiff must acknowledge this poses
5 risks for the Class. (Szamet Decl. ¶61.) Taken together, Plaintiff did not believe this claim was
6 readily certifiable and there was significant risk as to establishing liability on the meal period
7 claim. (Szamet Decl. ¶62.) Considering this risk, Plaintiff did not place much value on the missed
8 meal period claim and believes it is fair and reasonable to discount the meal period claim for
9 settlement purposes. (Szamet Decl. ¶63.)

10 However, Plaintiff also alleged that Defendant had a consistent policy of paying meal
11 period premiums at the base rate and not the blended rate (including the necessary incentive pay
12 referenced above) in violation of *Ferra v. Loews Hollywood Hotel, LLC* and Labor Code §§ 226.7
13 and 512. (Szamet Decl. ¶64.) Though the expert evaluation of this claim was minimal at
14 approximately \$1,798 because the unblended wages are generally a matter of a few cents, Plaintiff
15 believes this claim would be certified. (Szamet Decl. ¶65.)

16 c) Plaintiff Alleged That Defendant Failed to Provide Rest Breaks

17 Labor Code section 226.7, subdivision (c), requires an employer to pay an additional hour
18 of compensation for each workday the employer fails to provide a rest period according to law.
19 Employees are entitled to a paid ten (10) minute rest break for every four (4) hours worked, or
20 major fraction thereof. (Cal. Code Regs., tit. 8, § 11070, subd. 12(A).)

21 Plaintiff and the Proposed Class Members' rest period claims arise from a common course
22 of conduct wherein Defendant allegedly failed to provide employees with the opportunity to take
23 first, second, and/or third 10-minute rest breaks in compliance with California law. (Szamet Decl.
24 ¶66.) The California Supreme Court has held: "Employees are entitled to 10 minutes' rest for
25 shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours
26 up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours and so on." (*Brinker*
27 *Rest. Corp v. Superior Court, supra*, 53 Cal.4th at 1029.) In an eight-hour work day, being denied
28 the two paid rest breaks in a day is "essentially perform[ing] 20 minutes of 'free' work." (*Murphy*

1 *v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1104).

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

13 Here, Plaintiff alleged that Defendant maintained a consistent policy of failing to provide
14 Plaintiff and the Class members with rest breaks of not less than ten (10) minutes per four (4) hour
15 work period or major fraction thereof. (Szamet Decl. ¶67.) Plaintiff maintains that he and the
16 Class members were unable to take compliant rest breaks due to work volume and the general
17 inability to take rest breaks. (Szamet Decl. ¶68.) For purposes of settlement, Plaintiff assumed a
18 100% rest period violation rate. (Szamet Decl. ¶69.)

19 In its defense, Defendant would have argued that Plaintiffs’ rest period claim was even less
20 appropriate for certification than their meal period claim because California law does not require
21 employees to record rest periods. (Szamet Decl. ¶70.) Absent a shift-by-shift, break-by-break,
22 employee-by-employee inquiry, Defendant would have argued that there was simply no way to
23 know (1) whether a break was taken; and (2) if not, why not. (Szamet Decl. ¶71.) For each
24 instance where an employee alleged it did not take a 10-minute rest period by the end of the fourth
25 hour of work, the trier of fact would have to determine why that particular employee had less than
26 their full allotment of rest time. (Szamet Decl. ¶72.) Defendant accordingly would have argued
27 that rest break claims are inherently individualized in nature because employers only need to
28 “authorize and permit” breaks; they need not ensure that rest breaks are taken. *Brinker*, 53 Cal. 4th

1 at 1004. To succeed, “[a]n employee must show that the employer prevented the employee from
2 taking breaks; mere proof of knowledge that the employee was forgoing breaks is insufficient.”
3 As such, Plaintiff had to acknowledge both that rest break claims can be notoriously difficult to
4 prove on a class-wide basis and it could potentially be easy for Defendant to defeat certification
5 of this claim if it was able to gather testimonial evidence from class members indicating that they
6 were able to take all required rest breaks each day. (Szamet Decl. ¶73.) Though Plaintiff does not
7 believe this was the case, Plaintiff must acknowledge it poses significant risks as to establishing
8 liability and as to recovery for the Class. (Szamet Decl. ¶74.) There is risk as to both sides as to
9 what declarations and depositions of class members might reveal. (Szamet Decl. ¶75.)

10 d) Defendant Failed to Provide All Wages Due at the Time of
11 Termination

12 This claim alleges that Defendant failed to pay all wages due and owing upon termination
13 or resignation. Labor Code § 203(a) provides:

14 If an employer willfully fails to pay ... any wages of an employee
15 who is discharged or who quits, the wages of the employee shall
16 continue as a penalty from the due date thereof at the same rate until
paid or until an action therefor is commenced; but the wages shall
not continue for more than 30 days.

17 Under Labor Code § 203, a “‘willful’ failure to pay wages ... occurs when an employer
18 intentionally fails to pay wages to an employee when those wages are due.” Cal. Code Regs., tit.
19 8, § 13520; *see also Diaz v. Grill Concepts Services, Inc.* (2018) 23 Cal.App.5th 859 (“willful”
20 simply means that “the employer intentionally failed or refused to perform an act which was
21 required to be done[.] Willful ... does not necessarily imply anything blameable, or any malice or
22 wrong toward the other party”).

23 Here, Plaintiff contends that Defendant failed to properly pay overtime for any work in
24 excess of eight (8) hours per day and/or any work in excess of forty (40) hours per week. (Szamet
25 Decl. ¶76.) The risk analysis for the section 203 claim flows from the risk analysis for the
26 underlying wage claim discussed above as derivative waiting-time penalties are only as strong as
27 the underlying predicate claims, and are subject to good faith defenses. (Szamet Decl. ¶77.) If
28 Defendant could prove, as it contends, that class members were properly paid for all hours worked,

1 there would be no recovery of wages and no waiting time penalties that flow therefrom. (Szamet
2 Decl. ¶78.)

3 Though, as Plaintiff believes the failure to properly blend claim is readily certifiable and
4 liability is straightforward to establish, the bigger risk that Plaintiff analyzed, however, is that to
5 establish liability for waiting time penalties, Plaintiff would have to establish not only that the
6 underlying violations occurred, but also that Defendant’s conduct was “willful.” (Labor Code §
7 203; Szamet Decl. ¶79.) If Defendant could establish that any alleged failure to blend was the
8 result of mistake or oversight and not “willful”, then it is possible that Plaintiff would not be able
9 to recover penalties for this claim. (Szamet Decl. ¶80.) Because of this risk, Plaintiff determined
10 that accepting a discount for settlement purposes was appropriate. (Szamet Decl. ¶81.)

11 e) The Risks Associated with the Claim for Civil Penalties Pursuant
12 to the Private Attorneys General Action of 2002 (“PAGA”)

13 PAGA’s statutory penalties are available for violations of Labor Code sections 201-203,
14 226(a), 226.7, 510, 512, 1194, 1194.2 and 1199, as stated in Labor Code section 2699.5. Labor
15 Code section 2699(f) provides, in relevant part, “[f]or all provisions of this code except those for
16 which a civil penalty is specifically provided, there is established a civil penalty for a violation of
17 these provisions, as follows: one hundred dollars (\$100) for each aggrieved employee per pay
18 period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per
19 pay period for each subsequent violation.” In addition, the statute provides that “[a]ny employee
20 who prevails in any action shall be entitled to an award of reasonable attorney’s fees and costs.”
21 (Labor Code § 2699(g)(1).)

22 Plaintiff discounted the PAGA claim for multiple reasons. (Szamet Decl. ¶82.) First, the
23 aggrieved employees’ PAGA claims are derivative of all the foregoing class claims. (Szamet Decl.
24 ¶83.) If Plaintiff cannot establish liability on the underlying claim (taking into account the risks
25 discussed above), then the derivative PAGA claim will also necessarily fail. (*Id.*) Second, a court
26 has discretion to award less than the maximum penalty. (Szamet Decl. ¶84.) (Labor Code §
27 2699(e)(2) (“a court may award a lesser amount than the maximum civil penalty amount specified
28 by this part if, based on the facts and circumstances of the particular case, to do otherwise would

1 result in an award that is unjust, arbitrary and oppressive, or confiscatory”). *See e.g., Carrington*
2 *v. Starbucks Corporation* (2018) 30 Cal.App.5th 504, 241 Cal.Rptr.3d 647, 669 (affirming award
3 of 10% of maximum PAGA penalty). Third, the likelihood of the Court reducing the PAGA
4 damages awarded to Plaintiffs and the aggrieved employees – assuming liability is proven as to
5 each of Plaintiffs’ claims – is also higher in this case where these same individuals will also be
6 receiving money for the same unlawful conduct under the class claims. (Szamet Decl. ¶85.) (*see*
7 *Avila v. Cold Spring Granite Co.* (E.D. Cal. Jan. 12, 2018) Case No. 1:16-cv-001533-AWI-SKO,
8 2018 U.S. Dist. LEXIS 6142 *17 (“Because the PAGA penalties sought are at least partially
9 duplicative of penalties granted by the underlying Labor Code violations, see, e.g., Cal. Lab. Code
10 §§ 203, 226, 558(a), 1194.2, and because a Court has discretion in whether and in what amount to
11 award PAGA penalties, see Cal. Lab. Code § 2699(e)(2), Plaintiff recognizes that the potential
12 PAGA penalties are highly uncertain.”); and see *Nordstrom Commissions Cases*, 186 Cal.App.4th
13 576, 589 (2010) (affirming settlement allocating \$0 of \$6.4 million settlement to PAGA penalties.

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

15 There is significant expense associated with the class certification process, which the
16 Parties can avoid by entering into the contemplated Agreement now. (Szamet Decl. ¶86.) If the
17 Court did eventually certify an unpaid wages period class, trial of a case involving approximately
18 133 Class Members would require the retention of expensive expert witnesses, the accrual of
19 extensive litigation costs, and a significant time overlay by the parties. (Szamet Decl. ¶87.)
20 Moreover, given the complexity and unsettled nature of the issues in this case it is likely that any
21 outcome at trial would have resulted in a lengthy and costly appeal. (Szamet Decl. ¶88.) An
22 appeal would result in further delay for the Class Members who are waiting for a resolution in this
23 matter. (*Id.*)

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

25 This case has not been certified to be tried as a class action. (Szamet Decl. ¶89.) While
26 Plaintiff believes there is strong evidence to support certification of the unpaid wages (failure to
27 blend) subclass and a meal premium (*Ferra* blending) subclass, certification is always hard fought
28 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 policies and practices. (*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 \$285,000.00. (Szamet Decl. ¶90.) This Settlement is the result of adversarial, non-collusive, and arms-length negotiations. (Szamet Decl. ¶91.) The Parties arrived at it only after extensive meet and confer efforts; meaningful 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; expert review of the time and pay data produced for mediation; and the assistance of an experienced mediator, Steven Serratore. (*Id.*)

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

With the assistance of expert analysis of the time and pay data produced, Plaintiff assessed the full value of the unpaid wages claim due to the alleged failure to blend, without any discount, at \$399. (Szamet Decl. ¶92.)

Plaintiff assessed the full value of the meal period claim resulting from the alleged failure to provide all complaint meal periods, without any discount, at \$23,674. (Szamet Decl. ¶93.) However, there were meal waivers corresponding with \$20,920 of the allegedly owed meal period premiums. (Szamet Decl. ¶94.) Thus, taking the meal waivers into account, the exposure is reduced dramatically to \$2,754. (Szamet Decl. ¶95.)

Plaintiff assessed the full value of the *Ferra* meal premium claim resulting to the alleged failure to blend, without any discount, at \$1,789. (Szamet Decl. ¶96.)

Plaintiff assessed the full value of the rest period claim assuming a 100% violation rate for the alleged failure to provide all complaint rest periods, without any discount, at \$360,746. (Szamet Decl. ¶97.) For the reasons above, Plaintiff determined that accepting a discount of the full amount was appropriate. (Szamet Decl. ¶98.)

Plaintiff valued the waiting time penalties claim, tied to the unpaid wages claim, at

1 \$415,298. (Szamet Decl. ¶99.) Considering the derivate nature of Labor Code §203 and the
2 dispute over whether class members can prove willfulness, Plaintiff determined that accepting a
3 discount on this claim was appropriate. (Szamet Decl. ¶100.)

4 Finally, Plaintiff calculated the value of the PAGA claim at \$225,600 for 55 aggrieved
5 employees during the relevant statutory period (using \$100 per pay period). (Szamet Decl. ¶101.)
6 The main risk taken into account with PAGA is the discretionary nature of the penalty award.
7 (Szamet Decl. ¶102.) A judge can award the statutory maximum of \$100 for the initial violation
8 and \$200 thereafter or – in theory – one cent per wage statement. (Szamet Decl. ¶103.) While
9 there is a dearth of available authority, in Plaintiff’s view, were he to succeed on any of the
10 underlying Labor Code violations, it is not likely that a Judge would also award a large amount of
11 penalties of top of any damages recovered. (Szamet Decl. ¶104.)

12 Per Plaintiff’s assessment, the maximum potential value of all of Plaintiff’s and the Class
13 Members’ claims was approximately \$591,288. (Szamet Decl. ¶105.) However, as a result of the
14 forgoing risks on the merits, Class Counsel believes the Gross Settlement Amount of \$285,000.00
15 is fair and reasonable. (Szamet Decl. ¶106.)

16 b) Defendant’s Financial Status

17 The final, but very significant, consideration for purposes of resolution is Defendant’s
18 financial status. Defendant is a local business founded in 1983 and headquartered in Durham,
19 California. (Szamet Decl. ¶107.) Originally called Chico Produce, Defendant began by providing
20 fresh produce to local retailers and foodservice operators and have grown to deliver fresh fruits
21 and vegetables, dairy, cheese, eggs, meat, frozen items, salads and salad dressing, cooking oils,
22 pickles and tortillas. (Szamet Decl. ¶108.) Defendant is not a large, statewide company that can
23 withstand a significant judgment against it. (Szamet Decl. ¶109.) In addition to honestly and
24 realistically assessing the likelihood of success on the merits, Plaintiff’s main concern was working
25 with the mediator to come to a reasonable resolution that puts real money in the pockets of Class
26 Members, but is an amount that Defendant can actually manage to pay. (Szamet Decl. ¶110.)
27 Relying on the expert guidance of Mr. Serratore, the Parties came to a Settlement that is a true
28 compromise, but also fair and reasonable based on the risks discussed and the exposure analysis

1 to follow. (Szamet Decl. ¶111.)

2 5. The Experience and Views of Counsel

3 Finally, counsel's experience and success in similar class actions also weigh in favor of
4 preliminary approval. *See Wershba, supra*, 91 Cal.App.4th at 245. Kingsley & Kingsley, APC is
5 very experienced in prosecuting complex employment litigation, and the firm has focused its
6 practice since the year 2000 on complex wage, hour, and working condition violations. (Szamet
7 Decl. ¶¶112-114.) The firm is well versed in class action litigation and has diligently and
8 aggressively pursued this action. (*Id.*) Kingsley & Kingsley, APC currently serves as Class
9 Counsel for dozens of pending class action lawsuits in Northern, Central, and Southern California.
10 (*Id.*) A list of representative cases that Kingsley & Kingsley, APC has handled is included in the
11 accompanying declaration of Kelsey M. Szamet (*Id.*) After factoring in the risks explained above,
12 Class Counsel believes that the proposed settlement is fair and reasonable. (Szamet Decl. ¶115.)

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

14 Plans of allocation are subject to the same standard of review as class action settlements;
15 they must be "fair, adequate and reasonable." (*See, e.g., Officers for Justice v. Civil Service*
16 *Comm'n* (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the proposed plan of allocation
17 compensates Class Members pro rata based on the number of compensable Workweeks worked
18 by the Class Member during the Class Period. The lump sum payment to each Class Member not
19 excluding him/ herself will be determined on an individualized basis by (a) dividing the Net
20 Settlement Amount by the total number of Workweeks worked by all Participating Class Members
21 during the Class Period and (b) multiplying the result by each Class Member's Workweeks. (Ex.
22 1 at § 3, ¶3.2.4.) This allocation distributes Agreement funds proportionally to each class
23 member's potential damages and should therefore be approved as fair, adequate, and reasonable.
24 (Szamet Decl. ¶116.)

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

27 Plaintiff requests that the Court approve the proposed plan and form of Class Notice. The
28 standard for determining the adequacy of notice is whether the notice has "a reasonable chance of

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

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

14 Here, the Notice clearly explains the proposed Agreement and the options to opt out of the
15 Settlement or object to it at the Final Approval Hearing. (Ex. 1 at § 8, ¶8.5; 8.7; *see also* Ex. A to
16 the Agreement at pp. 2-3, 5, and 8-9 [Class Notice].) In short, the Court should approve the
17 proposed Class Notice because it describes the proposed settlement with enough specificity to
18 allow Class Members to make an informed choice regarding whether to participate.

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

20 The Class Representative is entitled to an enhancement for his valiant effort and time
21 expended in this matter. (Szamet Decl. ¶117.) The time spent by Ronald Allen Miles is significant
22 and includes researching and retaining competent counsel; providing information to Class Counsel
23 regarding the nature of the work at Defendant; compiling relevant documents; working closely
24 with Class Counsel to develop the theories of liability and martial relevant evidence; regularly
25 discussing the status of the case with Class Counsel; discussing the case via telephone with many
26 Class Members; making himself available to attend a full-day of mediation; and responding
27 promptly to Class Counsel’s communications regarding settlement. (*Id.*) Thus, in addition to the
28 sums paid to Class Members, Plaintiff requests a proposed litigation enhancement in the amount

1 of \$5,000.00, to be paid from the Gross Settlement Amount. (Ex. 1 at § 3, ¶3.2.1.) As set forth in
2 the Agreement, Plaintiff will also be entering into a general release of liability pursuant to Civil
3 Code Section 1542. (Szamet Decl. ¶118; Ex. 1 at § 3, ¶3.2.1.)

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

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

10 As indicated on the Proof of Service, Plaintiff's Motion for Approval of Class Action
11 Settlement ("Motion") will be concurrently uploaded to the LWDA website on the date this Motion
12 is filed as required by statute. Proof of submission of Plaintiff's Motion, all related documents,
13 and copy of the email from the LWDA confirming receipt is attached to the Declaration of Kelsey
14 M. Szamet as Exhibit "2." (Szamet Decl. ¶120.)

15 **VIII. CONCLUSION**

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

23 DATED: December 22, 2023

KINGSLEY & KINGSLEY, APC

24
25 By: 

26 Kelsey M. Szamet
27 Attorneys for Plaintiff RONALD ALLEN MILES
28 and the proposed class

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

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

On December 22, 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 AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

O'HAGAN MEYER LLP

DEREK S. SACHS, Esq.

dsachs@ohaganmeyer.com

ELAINE M. McCORMICK, Esq.

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One Embarcadero Center, Suite 2100

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D.LAW, INC.

400 N. Brand Blvd., Ste 700

Glendale, CA 91203

[] (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.

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

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

Executed on December 22, 2023, at Woodland Hills, California.

Michelle Tanzer