

KINGSLEY & KINGSLEY, APC
ERIC B. KINGSLEY, Esq. (SBN 185123)
eric@kingsleykingsley.com
LIANE KATZENSTEIN LY, Esq., (SBN 259230)
liane@kingsleykingsley.com
ARI J. STILLER, Esq. (SBN 294676)
ari@kingsleykingsley.com
16133 Ventura Blvd., Suite 1200
Encino, CA 91436
Tel: (818) 990-8300, Fax (818) 990-2903

Attorneys for Plaintiff and the Proposed Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

VICKI FLORES, an individual, on behalf of
herself and others similarly situated,

PLAINTIFF,

v.

HERITAGE BAG COMPANY; and DOES 1
thru 50, inclusive,

DEFENDANTS.

CASE NO. CIVDS2023373

[Case Assigned for All Purposes to Hon. David
Cohn in Dept. S-26]

**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 Ari J.
Stiller]*

Date: March 23, 2022

Time: 9:00 a.m.

Dept.: S-26

Complaint Filed: October 20, 2020

Trial Date: None Set

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

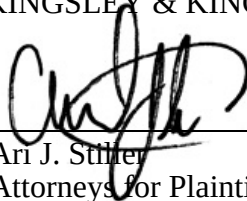
2 **PLEASE TAKE NOTICE** that on March 23, 2022 at 9:00 a.m. in Department S-26 of the
3 above-entitled court, Plaintiff VICKI FLORES will move the Court for an Order of Preliminary
4 Approval of the Joint Stipulation of Class Action Settlement and Release of Claims ("Settlement
5 Agreement" or "Settlement"), a copy of which is filed concurrently herewith.

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

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

12 DATED: January 13, 2022

KINGSLEY & KINGSLEY, APC

13
14 By: 

15 Ari J. Stiller
16 Attorneys for Plaintiff Vicki Flores and the Proposed
17 Class
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff VICKI FLORES (“Plaintiff”) submits this Memorandum of Points and Authorities
4 in support of Plaintiff’s Motion for Preliminary Approval of the Joint Stipulation of Class Action
5 Settlement and Release of Claims reached between Plaintiff and Defendant HERITAGE BAG
6 COMPANY (“Defendant”) (collectively, the “Parties”).

7 By this Motion, Plaintiff requests that the Court:

8 (1) Grant preliminary approval of the fully executed Joint Stipulation of Class Action
9 Settlement and Release of Claims (“Settlement” or “Settlement Agreement”). A true and correct
10 copy of the Settlement Agreement is attached to the concurrently filed Declaration of Ari J. Stiller
11 as Exhibit “1”;

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

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

18 **II. FACTUAL BACKGROUND**

19 A. Litigation Overview and Procedural History

20 Plaintiff worked as an inspector/packer for Defendant Heritage Bag Company
21 (“Defendant”) at its facility in Rancho Cucamonga, California. Her job duties included packing
22 and inspecting trash bags, lawn bags and waste basket bags sold by Defendant. (Declaration of Ari
23 J. Stiller [“Stiller Decl.”] ¶ 4.) In this action, she alleges that Defendant failed to blend her shift
24 differential pay into her regular rate of pay for purposes of calculating overtime, that it failed to
25 pay premium wages for missed meal and rest periods at the appropriate rate of pay, and that it
26 failed to reimburse for work-related expenses, among other claims. (Stiller Decl. ¶ 5.)

27 On October 20, 2020, Plaintiff filed a Class Action Complaint against Defendant alleging
28 claims for: (1) Failure to Pay all Wages and/or Overtime Under Labor Code §§ 510, 1194, and

1 1199; (2) Failure to Provide Meal Breaks Pursuant to Labor Code §§ 226.7 and 512; (3) Penalties
2 Pursuant to Labor Code § 203; and (4) Violation of Business & Professions Code § 17200. (Stiller
3 Decl. ¶ 6.) On August 12, 2021, Plaintiff filed a notice with the California’s Labor and Workforce
4 Development Agency (“LWDA”) regarding her intent to file an action seeking civil penalties
5 under PAGA. (Stiller Decl. ¶ 7.) She submitted an amended PAGA notice on January 3, 2021.
6 (Stiller Decl. ¶ 8.)

7 Prior to the hearing on this motion, Plaintiff intends to file a stipulation requesting leave to
8 file a First Amended Complaint with claims for failure to provide accurate itemized wage
9 statements in violation of Labor Code § 226(a), failure to reimburse business expenses, and
10 penalties pursuant to Labor Code § 2699, et seq. (Stiller Decl. ¶ 9.) A stipulation for leave is
11 currently pending approval by defense counsel. (Stiller Decl. ¶ 9.)

12 B. The Discovery Process

13 After the matter was at issue, the Parties began to engage in discovery to understand the
14 nature of the allegations and the scope of potential liability. (Stiller Decl. ¶ 10.) In advance of
15 mediation, Defendant provided Plaintiff’s counsel with pertinent data for the Class Members so
16 that the Parties could fully investigate the claims at issue and understand their strengths and
17 weaknesses. (Stiller Decl. ¶ 11.) Specifically, Defendant provided its handbook and other relevant
18 policy documents; thousands of pages of timekeeping and payroll data for the entire class over six
19 randomly selected payroll periods during the class period; the number of pay periods in the PAGA
20 and class periods; the number of class members, including those who signed arbitration
21 agreements; and an analysis of the number of pay periods worked by class members with
22 arbitration agreements. (Stiller Decl. ¶ 12.) Plaintiff’s counsel also served formal discovery but
23 agreed to stay that discovery pending settlement negotiations. (Stiller Decl. ¶ 13.) Plaintiff’s
24 counsel had mediation data analyzed by an expert to prepare a damage model for mediation. (Stiller
25 Decl. ¶ 14.)

26 On July 30, 2021, the Parties attended a full-day mediation with experienced mediator
27 Kelly A. Knight. (Stiller Decl. ¶ 15.) Although the parties did not resolve the matter that day,
28 they continued their settlement efforts in the following months with the assistance of the mediator

1 and, in September 2021, reached a settlement, as provided herein, to settle Plaintiff’s claims on a
2 class-wide and representative basis. (*Id.*) The Parties also engaged in meaningful confirmatory
3 discovery after the mediation in which Defendant provided Plaintiff’s counsel with an exemplar
4 wage statement confirming that Defendant cured the alleged paystub and wage blending claims.
5 (Stiller Decl. ¶ 16.) This information was provided on October 20, 2021. (Stiller Decl. ¶ 17.)

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

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

21 **III. THE PROPOSED SETTLEMENT CLASS SHOULD BE CERTIFIED FOR** 22 **SETTLEMENT PURPOSES**

23 Originally creatures of equity, class actions have been statutorily embraced by the
24 Legislature whenever “the question [in a case] is one of a common or general interest, of many
25 persons, or when the parties are numerous, and it is impracticable to bring them all before the
26 court” (Code Civ. Proc. § 382; *see, e.g., Fireside Bank v. Sup. Court* (2007) 40 Cal.4th 1069,
27 1078.) They serve an important function by “establishing a technique whereby the claims of many
28 individuals can be resolved at the same time” thereby “eliminat[ing] the possibility of repetitious

litigation and provid[ing] small claimants with a method of obtaining redress.” (*Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 469.) Public policy supports the use of class actions to enforce wage and overtime laws for the benefit of workers. (*See Sav-on Drug Stores, Inc. v. Sup. Court* (2004) 34 Cal.4th 319, 340.)

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

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

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

A. The Proposed Classes Are Ascertainable and Sufficiently Numerous

1. Ascertainability

Putative class members are deemed “ascertainable” when they may be “readily identified 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.)

1 Here, the proposed Settlement Class is ascertainable because Defendant has agreed in the
2 Settlement Agreement to provide a class list to the Settlement Administrator containing Settlement
3 Class Member's full name; last known address; last known home telephone number; social security
4 number; dates of employment, and Eligible Pay Periods, or data that will allow the Settlement
5 Administrator to reasonably determine Eligible Pay Periods for all putative class members after
6 issuance of the preliminary approval order. (Stiller Decl. ¶ 20; Ex. 1 at § I, ¶4.) Moreover,
7 Settlement Class Members consist of Defendant's hourly employees, and Defendant is required to
8 keep records of its hourly employees' names, home addresses, and social security numbers. (See
9 Wage Order 7-2001, subsection 7(c); Stiller Decl. ¶ 21.)

10 2. Numerosity

11 There is no set number that is required as a matter of law to maintain a class action. (See,
12 e.g., *Rose v. City of Hayward*, supra, 126 Cal.App.3d at p. 934.) Here, the proposed Settlement
13 Class contains approximately 459 hourly non-exempt employees in the State of California. (Ex. 1
14 at § III, ¶32.) Therefore, Plaintiff is confident she will be able to establish that the proposed
15 Settlement Class is ascertainable and sufficiently numerous. (Stiller Decl. ¶ 22.)

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

17 1. There Are Predominant Questions of Law and Fact

18 In deciding whether questions of common or general interest predominate, a court must
19 determine whether "the issues which may be jointly tried, when compared with those requiring
20 separate adjudication, are so numerous or substantial that the maintenance of a class action would
21 be advantageous to the judicial process and to the litigants." (*Collins v. Rocha* (1972) 7 Cal.3d
22 232, 238; accord, *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.) As a
23 general matter, if the defendant's liability can be determined by facts common to all members of
24 the class, a class will be certified even if the members must individually prove their damages."
25 (*Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 916, 107; accord, *Knapp v.*
26 *AT & T Wireless Services, Inc.* (2011) 195 Cal.App.4th 932, 941.)

27 Here, Plaintiff argues that there are questions of law and fact common to the proposed
28 Settlement Class that predominate over any questions affecting only individual Class Members.

(Stiller Decl. ¶ 23.) These common questions include:

- 1) Whether Defendant failed to pay all wages and/or overtime compensation;
- 2) Whether Defendant failed to provide lawfully required meal periods and/or failed to compensate employees one (1) hour's wages in lieu thereof;
- 3) Whether Defendant failed to reimburse business-related expenses;
- 4) Whether Defendant failed to provide accurate itemized wage statements;
- 5) Whether Defendant failed to pay compensation time and whether it failed to pay all wages owed upon termination of employment; and
- 6) Whether Defendant engaged in unfair competition.

(Stiller Decl. ¶ 24.)

Plaintiff's challenge to Defendant's uniform policies and practices involves common factual and legal issues that are amenable to class treatment. (Stiller Decl. ¶ 25.) As the California Supreme Court has emphasized, "[c]laims alleging that a uniform policy consistently applied to a group of employees is in violation of the wage and hour laws are of the sort routinely, and properly, found suitable for class treatment." (*Brinker, supra*, 53 Cal.4th at 1033; *see also Bradley v. Networkers International, LLC* (2012) 211 Cal.App.4th 1129, 1141-1146.) Moreover, a class of similarly situated employees may be certified based on common questions of fact or law, even if each employee has to establish the amount of his or her damages. (*See Bell v. Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 741; *Sav-On Drug Stores, Inc. v. Superior Court, supra*, 34 Cal.4th at 340.)

Here, Plaintiff maintains that the proposed Settlement Class Members suffered the same injuries, in the same manner: (1) Settlement Class Members were not paid all wages/overtime; (2) Settlement Class Members did not receive their meal periods as required; (3) Settlement Class Members were not reimbursed for business-related expenses; (4) Settlement Class Members were not provided accurate itemized wage statements; and (5) Settlement Class Members were not paid all wages owed on a timely basis or upon termination/resignation. (Stiller Decl. ¶ 26.) Plaintiff alleges that Settlement Class Members worked in the same capacity for the same employer and were subject to the same employment policies and practices, the questions of fact and claims

1 regarding the status of these employees are the same for each member of the Settlement Class.
2 Accordingly, for purposes of settlement, the evidence reviewed by Class Counsel demonstrates
3 that common meal policies and wage policies applied to the proposed Settlement Class Members
4 and certification for settlement purposes is appropriate. (Stiller Decl. ¶ 27.)

5 2. The Named Plaintiff Has Claims Typical of the Proposed Class

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

18 Plaintiff worked as an inspector/packer at Defendant's warehouse in Rancho Cucamonga
19 earning between \$13.50-14.50 per hour. (Stiller Decl. ¶ 28.) Plaintiff alleges that she: (1) worked
20 without being paid all wages and/or overtime; (2) worked without being provided meal periods as
21 required by law; (3) worked without being reimbursed for business-related expenses; (4) worked
22 without being provided accurate itemized wage statements; and (5) worked without being paid all
23 wages due on a timely basis and upon separation. She also alleges derivative claims for unfair
24 business competition (B&P Code §17200) (Stiller Decl. ¶ 29.) Plaintiff also contends that her
25 claims are typical of those of the Settlement Class. (Stiller Decl. ¶ 30.)

26 3. Plaintiff Contends That As The Named Plaintiff She Has and Will Fairly
27 Represent the Interests of the Settlement Class Members

28 A putative class representative must show that she can adequately represent the class.

1 (*Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.App.4th 1096, 1104.) The representative,
2 through qualified counsel, must be capable of “vigorously and tenaciously” protecting the interests
3 of the class members. (*Simons v. Horowitz* (1984) 151 Cal.App.3d 834, 846.)

4 Plaintiff believes that she is capable of fairly representing and adequately protecting the
5 interests of the proposed Settlement Class Members. (Stiller Decl. ¶ 31.) Plaintiff’s interests in
6 this litigation are coextensive with the interests of the proposed Settlement Class Members. The
7 members of the proposed Settlement Class all worked for Defendant during the relevant time
8 period and incurred the same type of alleged damages with regard to Defendant’s alleged violations
9 of the law. (Stiller Decl. ¶ 32.) Moreover, Plaintiff has agreed to serve as Named Plaintiff and has
10 retained qualified Counsel who is experienced in prosecuting wage and hour class actions. (Stiller
11 Decl. ¶ 33.) This demonstrates her commitment to bringing about the best possible results for the
12 benefit of the proposed Settlement Class. (Stiller Decl. ¶ 34.) Plaintiff has provided her Counsel
13 with all necessary and pertinent information. (Stiller Decl. ¶ 35.) She has been a very active
14 participant in the litigation including having frequent contact with Settlement Class Members and
15 working closely with Class Counsel to develop the theories of liability. (Stiller Decl. ¶ 36.) She
16 also participated by phone in the mediation in this matter and was informed of and involved in all
17 of the Settlement negotiations. Therefore, Plaintiff believes that she has and will continue to
18 adequately represent the proposed Settlement Class Members. (Stiller Decl. ¶ 37.)

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

20 “The ultimate question in every case of this type is whether . . . the issues which may be
21 jointly tried, when compared with those requiring separate adjudication, are so numerous or
22 substantial that the maintenance of a class action would be advantageous to the judicial process
23 and to the litigants.” (*Lockheed Martin, supra*, 29 Cal.App.4th at 1104–1105.) The California
24 Supreme Court has directed the courts to utilize the class action device to fashion “an effective
25 and inclusive group remedy.” (*Richmond v. Dart Indus., Inc.* (1981) 29 Cal.3d 462, 469.)
26 Normally, in making its class certification decision, the Court must determine that a class action
27 would be superior to alternate means for a fair and efficient adjudication. If the causes of action
28 may be adjudicated in a single proceeding, thereby saving time, reducing waste, and limiting

1 duplication of effort, class certification is superior to individual litigation. (*See, e.g., Vasquez v.*
2 *Superior Court* (1971) 4 Cal.3d 800, 816.) Since the Parties agreed to a settlement in principle
3 and now seek Court approval of that Settlement, Plaintiff submits that there is not as much need
4 as there would be in an ordinary motion for class certification for the Court to determine that the
5 case can be manageably tried.

6 Plaintiff maintains that class treatment would be the superior method of managing this case.
7 A class action is superior to individual litigation “when numerous parties suffer injury of
8 insufficient size to warrant individual action and when denial of class relief would result in unjust
9 advantage to the wrongdoer.” (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.) In
10 cases such as this, where individual damages may be small, the class action device is the most
11 feasible method of recovery. (*See, e.g. Lockheed Martin, supra*, 29 Cal.4th at 1131.) In this regard,
12 the superiority of class treatment is evident here because individual pursuit of class members’
13 claims may not be economically viable. (Stiller Decl. ¶ 38.) The only alternative to certification
14 would be to force over 459 employees to join this action, file individual, uniform actions, or
15 abandon their legal rights altogether. (Stiller Decl. ¶ 39.) Plaintiff maintains that this economic
16 reality would result in a windfall for Defendant if this case were not certified. (Stiller Decl. ¶ 40.)

17 **IV. THE PROPOSED SETTLEMENT**

18 **A. The Settlement Class**

19 For purposes of Settlement Agreement, the settlement class is defined as: “all hourly paid,
20 non-exempt persons employed by Defendant in the State of California during the Settlement
21 Period” of October 20, 2016 through December 31, 2021 (“Settlement Class Members” or “Class
22 Members”). (Stiller Decl. ¶ 41; Settlement Agreement, Ex. 1 at § I, ¶¶ 5, 37.) Based on documents
23 and other information produced by Defendant, there are approximately 459 Settlement Class
24 Members. (Stiller Decl. ¶ 42; Ex. 1 at § III, ¶32.)

25 For purposes of Settlement Agreement, the PAGA settlement group is defined as: “all
26 hourly paid, non-exempt persons employed by Defendant in the State of California during the
27 PAGA Settlement Period” from August 12, 2020 through December 31, 2021 (“PAGA Settlement
28 Group”) (Stiller Decl. ¶ 43; Settlement Agreement, Ex. 1 at § I, ¶¶ 23–24.)

1 B. Gross Settlement Fund

2 As detailed fully in the Settlement Agreement, the Settlement provides for Defendant to
3 pay a Gross Settlement Fund of \$475,000.00, which includes the sum of the Class Counsel Award,
4 Incentive Award, Individual Settlement Payments, PAGA Payment, and Settlement Administrator
5 Costs. (Stiller Decl. ¶ 44; Ex. 1 at § I, ¶ 14.)

6 The Net Settlement Fund is the Gross Settlement Fund, less Court-approved Class Counsel
7 Award, Incentive Award, payment to the LWDA, and Settlement Administrator Costs. (Stiller
8 Decl. ¶ 45; Ex. 1 at § I, ¶ 19.)

9 The Parties estimate the amount of the Net Settlement Fund as follows:

10	Gross Settlement Fund:	\$	475,000.00
11	Incentive Award:	\$	5,000.00
12	Class Counsel Fees:	\$	158,333.33
13	Class Counsel Costs:	\$	12,000.00
14	PAGA Payment:	\$	30,000.00
15			<i>(\$22,500.00 to the LWDA and</i>
16			<i>\$7,500.00 to remain in the Net</i>
17			<i>Settlement Fund for PAGA Settlement</i>
18			<i>Group)</i>
19	<u>Settlement Administrator Costs:</u>	\$	<u>15,000.00</u>
20	Net Settlement Fund	\$	262,166.67

21 (Ex. 1 at § III, ¶ 17.)

22 C. Individual Settlement Payments

23 The Individual Settlement Payment amount of each Participating Class Member is an
24 individualized amount that is based on the number of Eligible Pay Periods worked by the
25 Participating Class Member during the Settlement Period. (Ex. 1 at § III, ¶ 19; *see also* Ex. A to
26 the Settlement Agreement [Class Notice].) Specifically, Individual Settlement Payments will be
27 paid from the Net Settlement Fund on a pro rata basis based on the number of Eligible Pay Periods
28 worked during the Settlement Period in proportion to the aggregate number of Eligible Pay Periods
worked by all Settlement Class Members during the Settlement Period.

 The PAGA Settlement Group payment will also be paid on a pro-rata basis. A PAGA
Settlement Group Member's distribution from the employees' share of the PAGA Payment will
be based on the number of Eligible Pay Periods worked during the PAGA Settlement Period in

proportion to the aggregate number of Eligible Pay Periods worked by all PAGA Settlement Group Members during the PAGA Settlement Period. (See Ex. 1 at § III, ¶ 20.)

Twenty percent (20%) of the Gross Settlement Fund to each Participating Class Member shall be deemed payment for settlement of claims for wages and will be subject to appropriate deductions and withholdings calculated and made by the Settlement Administrator. (Ex. 1 at § III, ¶18.) Eighty percent (80%) of the Gross Settlement Fund to each Participating Class Member shall be deemed payment for settlement of claims for penalties and interest not subject to withholdings. (*Id.*) All Individual Settlement Payments to PAGA Settlement Group Members shall be allocated as 100% non-wage payment for civil penalties. (*Id.*) The Settlement Agreement provides for a specific and detailed dispute process regarding Individual Settlement Payments. (See Ex. 1 at § III, ¶11.)

D. Process for Administering Settlement after Preliminary Approval

The detailed Notice Procedure established by the Settlement Agreement will efficiently and accurately ensure that Notice is provided to the Settlement Class Members. (Ex. 1 at § III, ¶ 9.) The Parties have agreed to use a reputable third-party claims administrator, ILYM Group, Inc., to administer the Settlement Agreement. (Ex. 1 at § I, ¶35.)

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

Settlement Class Members will have an opportunity to request exclusion from the Settlement Class (i.e. opt out) and to object to the Settlement at the Final Approval Hearing. (Ex. 1 at § III, ¶¶ 13–14.)

Settlement Class Members who do not opt out of the Settlement Class may object to the Settlement Agreement in person at the final approval hearing or by mailing written objections to the Settlement Administrator no later than sixty (60) calendar days after the mailing of the Notice Packet. (Ex. 1 at § I, ¶ 33, § III, ¶ 14.) Any attorney who will represent an individual objecting to this Settlement who has not filed a written objection must file a notice of appearance with the Court and serve Class Counsel and counsel for Defendant. (Ex. 1 at § III, ¶ 14.) The Settlement Administrator will provide any written objections to Class Counsel and Defendant’s Counsel, who will file them with the Court in advance of the final approval motion. (Ex. 1 at § III, ¶ 14.)

1 Class Members may also opt out of the settlement by submitting a Request for Exclusion
2 no later than sixty (60) calendar days after the mailing of the Notice Packet expressing that the
3 Settlement Class Member elects to be excluded from the Settlement. (Ex. 1 at § III, ¶ 13.)

4 F. The Release

5 The Released Class Settlement Claims, for the Settlement Period, are defined as: “all wage
6 and hour claims against the Released Parties brought or that could have been brought in the Action
7 based on the facts and theories alleged therein, including but not limited to claims under California
8 Labor Code sections 201-204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174.5, 1182.12, 1194, 1197,
9 1197.1, 1198, and 2802 as well as California Business and Professions Code Section 17200.” (Ex.
10 1 at § I, ¶ 29.)

11 The Released PAGA Claims, for the PAGA Settlement Period, are defined as: “all wage
12 and hour claims for civil penalties brought or that could have been brought against Defendant in
13 the Action based on the facts and theories alleged therein, including but not limited to claims under
14 California Labor Code sections 201-204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174.5, 1182.12,
15 1194, 1197, 1197.1, 1198, and 2802. The PAGA Settlement Group may not opt out of this
16 release.” (Ex. 1 at § I, ¶ 30.)

17 **V. ARGUMENT**

18 A. Plaintiff Requests Approval of This Class Action Settlement

19 The case of *Kullar v. Foot Locker Retail, Inc* (2008) 168 Cal.App.4th 116, 128, set forth
20 several factors that the Court should analyze in determining whether to approve a class action
21 settlement. These factors include: (1) the strength of plaintiff’s case; (2) the risk, expense,
22 complexity and likely duration of further litigation; (3) the risk of maintaining class action status
23 through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and stage
24 of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental
25 participant; and (8) the reaction of the class members to the proposed settlement. In *Munoz v. BCI*
26 *Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal. App. 4th 399, 409, the court clarified that
27 a *Kullar* showing does not require the parties to submit the outer reaches of maximum possible
28 recovery without taking into account the actual risks of certification, decertification, dispositive

1 motions, and trial, so long as there is a record which allows “an understanding of the amount that
2 is in controversy and the realistic range of outcomes of the litigation.”

3 The proposed settlement satisfies each of these factors. Class Counsel conducted extensive
4 discovery before entering into meaningful settlement negotiations in this matter. (*Id* at Stiller Decl.
5 ¶¶ 10- 17.) This discovery permitted Class Counsel to fairly evaluate the strength of the case and
6 the risks associated with ongoing litigation. (Stiller Decl. ¶ 46.) The Parties also engaged in
7 meaningful confirmatory discovery after the mediation in which Defendant provided Plaintiff’s
8 counsel with an exemplar wage statement confirming that Defendant cured the alleged paystub
9 and wage blending claims. (Stiller Decl. ¶ 47.) Class Counsel is experienced in handling wage
10 and hour class actions and, after weighing all of the following factors, supports this Settlement
11 Agreement. (Stiller Decl. ¶ 48.)

12 1. The Strength of Plaintiff’s Case

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

14 Under state and federal law, overtime compensation is based on an employee’s “regular
15 rate of pay.” (*Huntington Mem’l Hosp. v. Superior Court* (2005) 131 Cal.App.4th 893, 902.) For
16 hourly employees, the regular rate is generally the employee’s straight-time hourly rate.
17 (*Huntington, supra*, 131 Cal.App.4th at p. 905.) However, in any pay period where an hourly
18 employee earns other compensation in addition to hourly wages – such as a non-discretionary
19 bonus, commission, or shift differential – the “regular rate” is computed by dividing the
20 employee’s total compensation by the total hours worked in that period. (*See Marin v. Costco*
21 *Wholesale Corp.* (2008) 169 Cal.App.4th 804, 807.) “Regular rate of pay, which can change from
22 pay period to pay period, includes adjustments to the straight time rate, reflecting, among other
23 things, shift differentials and the per-hour value of any non-hourly compensation the employee has
24 earned.” (*Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 554.)

25 “Where two rates of pay are paid during a workweek, the California method for
26 determining the regular rate of pay for calculating overtime in that workweek [is] based upon the
27 weighted average of all hourly rates paid.” (DLSE Policies and Interpretations Manual § 49.2.5.)
28 This “blended’ rate is “established by adding all hours worked in the week and dividing that

number into the total compensation for the week.” *Ibid.*

Plaintiff alleges that Defendant failed to pay overtime at the proper rate by not blending shift differentials into the employees’ regular rate of pay. (Stiller Decl. ¶ 49.) Plaintiff’s wage statements show her overtime rate as 1.5 times her standard hourly rate of \$13.50 even in pay periods where most of Plaintiff’s regular hours were paid at a higher rate due to earning a shift differential. (Stiller Decl. ¶ 50.) While this type of claim normally does not involve much risk, Defendant here argued that it paid overtime on shift differentials, just with a different pay code on its wage statements compared to the pay code used for overtime on non-shift-differential hours. (Stiller Decl. ¶ 51.) Plaintiff argued that the separate calculations did not follow California’s rules for calculating the “regular rate of pay” but Defendant contended that its practice was unlikely to result in under-compensation of wages regardless. (Stiller Decl. ¶ 52.) Plaintiff disputes this but had to acknowledge the risk posed by Defendant’s argument. (Stiller Decl. ¶ 53.)

b) The Risks Associated with the Meal Break Claim

Employers must pay one hour at the employee’s “regular rate of compensation” as a penalty when they fail to provide a thirty-minute uninterrupted meal period as required by Labor Code section 512. *See* Labor Code § 226.7(b). Here, for the same reasons that Defendant’s failure to blend shift differentials into the regular rate caused an overtime violation, it also resulted in underpaid meal period premiums when such premiums were owed. The California Supreme Court recently decided that there is no distinction between the “regular rate of pay” for calculating overtime and “regular rate of compensation” for calculating meal period premiums: “We hold that the terms are synonymous: ‘regular rate of compensation’ under section 226.7(c), like ‘regular rate of pay’ under section 510(a), encompasses all nondiscretionary payments, not just hourly wages.” (*Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 863.)

Plaintiff perceived some risk on this claim based on Defendant’s argument that it used the blended rate for meal period premiums. (Stiller Decl., ¶ 54.) Plaintiff contests this argument based on paystub evidence that she believes demonstrates the violation under *Ferra*. (Stiller Decl., ¶ 54.) Still, the alleged underpaid meal premiums constituted a relatively small portion of the potential damages and there is uncertainty about whether employees can win waiting time penalties based

only on unpaid meal period premium wages. (See *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal.App.5th 444, review granted January 2, 2020, S258966.)

c) The Risks Associated with the Reimbursement Claim

Under California Labor Code § 2802(a) an employer “shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.”

Plaintiff alleges that Defendant required employees to incur business expenditures for which they were never reimbursed, including the costs of steel-toed boots and protective eyewear. (Stiller Decl. ¶ 55.) Plaintiff perceived this as a high-risk claim for several reasons. First, steel-toed boots may not be a clothing item that’s so specialized as to require reimbursement. Second, it appears Defendant issued vouchers to employees for the cost of these items. (Stiller Decl. ¶ 56.) Plaintiff argues that the vouchers could prove insufficient, but she had to acknowledge that it’s unlikely that the difference between the voucher and the actual cost would be significant. Also, there is a risk that the Court would find no liability if the voucher was sufficient to cover the realistic cost of these items, even if certain employees paid more. (Stiller Decl. ¶ 56.)

d) The Risks Associated with the Inaccurate Wage Statement Claim

Labor Code § 226(a)(2) requires that every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees an accurate itemized statement in writing showing total hours worked by the employee. Labor Code § 226(a)(9) requires the wage statement to display all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Plaintiff alleges that Defendant failed to provide employees with accurate itemized wage statements, as required by the Labor Code, because Defendant issued Plaintiff and the aggrieved employees wage statements that fail to accurately show the total hours worked and the applicable hourly rates in effect. (Stiller Decl. ¶ 57.) Specifically, whenever Plaintiff and the aggrieved employees earned meal period premiums, the extra hour of pay was added to total hours worked. (*Id.*) Moreover, Defendant failed to accurately list total overtime hours worked and the corresponding number of hours worked at each hourly rate when an employee earns shift

1 differential pay or other bonuses and works overtime. (Stiller Decl. ¶ 58.)

2 On the overtime rates issue, Plaintiff acknowledged risk posed by Defendant's argument
3 that this claim is derivative of a wage violation, and therefore not actionable pursuant to
4 *Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308, 1336–1337.) Defendant also
5 argued that a reasonable employee could still determine their hours and wages from Defendant's
6 paystubs. (See *Morgan v. United Retail Inc.* (2010) 186 Cal.App.4th 1136.) While Plaintiff
7 believes there is lower risk in her claim for including meal period premiums as total hours worked,
8 the meal premiums and regular hours were separately listed elsewhere on the stub, so there was
9 still risk that a Court would find no liability as to this issue. (Stiller Decl. ¶ 59.)

10 e) The Risks Associated with the Untimely Payment and Waiting
11 Time Penalty Claims

12 Under Labor Code § 203, if an employer fails to provide wages at the time of an employee's
13 termination or within 72 hours of resignation, then the employee's wages shall continue as a
14 penalty for up to 30 days. Section 203 reflects a public policy that favors the full and prompt
15 payment of earned wages. (See *Barnhill v. Robert Saunders & Co.* (1981) 125 Cal.App.3d 1, 7;
16 *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.) Similarly, Labor Code § 204 and 210, an
17 employee may seek a penalty for not being paid timely after the close of a payroll period.

18 Here, Plaintiff and some members of the Proposed Class are no longer employed by
19 Defendant. (Stiller Decl. ¶ 60.) Plaintiff argues that she is owed waiting time penalties due to
20 Defendant's failure to pay appropriate overtime wages and meal period premiums. (See *Diaz v.*
21 *Grill Concepts Services, Inc.* (2018) 23 Cal.App.5th 859.) (Stiller Decl. ¶ 61.)

22 In evaluating settlement, Plaintiff considered Defendant's argument that a good-faith belief
23 exception applies because its actions were not willful and its payment calculations did not result
24 in underpayment. While Plaintiff disputes that not knowing the law is a sufficient defense, she still
25 had to acknowledge that this argument posed some risk. (Stiller Decl. ¶ 62.) Moreover, the parties
26 dispute how the Court would interpret Defendant's use of a formula that paid overtime on shift
27 differentials separate from the overtime on non-shift-differential hours. (Stiller Decl. ¶ 63.)
28 Defendant argues that this shows inadvertence as to the pay periods where Plaintiff alleges a

violation. (Stiller Decl. ¶ 64.) Finally, Plaintiffs expected Defendant to argue that the Court has discretion to lower the waiting time penalty amount where it is significantly higher than the wages owed, which is the case here. Plaintiffs disagree that the Court has this discretion, but nonetheless had to consider this argument when determining an appropriate settlement. (Stiller Decl. ¶ 65.)

f) The Risks Associated with the PAGA Claim

Plaintiff is cognizant of risks associated with their PAGA claim and have therefore agreed to discount this claim for multiple reasons. First, the aggrieved employees' PAGA claims arise from the same violations as the foregoing class claims and bear the same risks on the merits. Second, the Court has discretion to award less than the maximum penalty, which Defendant argued would be appropriate considering the low amount of direct wage damages, even if Plaintiff prevails. (See Labor Code § 2699(e)(2) ["a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory"]; *Carrington v. Starbucks Corporation* (2018) 30 Cal.App.5th 504, 529 [affirming award of 10% of maximum PAGA penalty].) Finally, the Settlement Class is compensated for these violations in the proposed Settlement Agreement, and thus any PAGA recovery for these same violations would be duplicative. Thus, PAGA did not make up a significant percentage of the overall potential liability compared to other claims. (Stiller Decl. ¶ 66.) As such, the Settlement Agreement's contemplated PAGA payment of \$30,000.00 is appropriate. (Stiller Decl. ¶ 67.)

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

There is significant expense associated with the class certification process, which the Parties can avoid by entering into the contemplated Settlement Agreement now. (Stiller Decl. ¶ 68.) If the Court did eventually certify a class, trial of a case involving approximately 459 Settlement Class Members would require the retention of expensive expert witnesses, the accrual of extensive litigation costs, and a significant time overlay by the parties. (Stiller Decl. ¶ 69.) 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. (Stiller Decl. ¶ 70.) An appeal would result in further delay for the Settlement Class Members who are waiting for a resolution in

1 this matter. (*Id.*)

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

3 This case has not been certified to be tried as a class action. (Stiller Decl. ¶ 71.) While
4 Plaintiff believes there is strong evidence to support certification of several possible subclasses,
5 certification is always hard fought and subject to judicial discretion. Moreover, in class actions,
6 decertification is always a possibility. (*Id.*) In attempting to certify a class, the parties would need
7 to conduct multiple depositions, including of the Named Plaintiff and of several person(s) most
8 knowledgeable regarding Defendant's policies. (*Id.*) There is a risk for both sides as to what these
9 depositions will reveal and whether they will support class certification to the extent expected.
10 (*Id.*)

11 4. The Amount Offered in Settlement

12 It was very difficult for the Parties to reach this Settlement of \$475,000.00. (Stiller Decl.
13 ¶ 72.) This Settlement is the result of adversarial, non-collusive, and arms-length negotiations.
14 (Stiller Decl. ¶ 73.) The Parties arrived at it after extensive investigation and discovery, careful
15 evaluation of the law, risks, and all information substantiating the amount of penalties reasonably
16 likely to be awarded to the class were the trier of fact to find Defendant liable, and the assistance
17 of an experienced mediator, Kelly A. Knight. (*Id.*)

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

19 Plaintiff assessed full value of the Minimum Wage/Overtime claim, without any discount,
20 at approximately \$12,396. (Stiller Decl. ¶ 74.) Plaintiff used an hourly average rate of \$18.07 and
21 25,647 workweeks for Settlement Class Members. (Stiller Decl. ¶ 75.)

22 The full value of the Meal Period claim, without any discount, was approximately \$2,152.
23 (Stiller Decl. ¶ 76.) Meal period premiums were paid infrequently, and the claim requires both a
24 meal premium and shift differential in the same pay period. (Stiller Decl. ¶ 77.)

25 With regard to the Reimbursement Claim analysis, Plaintiff believed that it was reasonable
26 to value the potential reimbursement at \$20 per year, per employee, for reimbursement of the
27 difference between the voucher and actual cost of protective boots and eyewear. This brought the
28 damages for this claim to \$10,889.74 (\$20 x average of 1.18 years worked/class member x 459

1 class members). (Stiller Decl. ¶ 78.)

2 Plaintiff valued the Wage Statement Claim, without discount, at approximately \$669,277.
3 (Stiller Decl. ¶ 79.) This is based on wage statements that list meal period premiums as part of the
4 total hours worked. Due to the risk discussed above that 226(a) liability wouldn't attach under
5 *Morgan* and *Maldonado*, Plaintiff determined that a steep discount of this claim was fair for
6 settlement purposes. (Stiller Decl. ¶ 80.)

7 Plaintiff valued the Waiting Time Claim, tied to the Wage/Overtime claim, at \$506,571.
8 (Stiller Decl. ¶ 81.) This was based on the employees whose meal period premium wages failed to
9 incorporate the appropriate regular rate of pay under *Ferra*. This accounts for Defendant's
10 argument that it did, in fact, pay overtime for hours worked at the shift differential rate, even if
11 they were not listed under the overtime pay code on its wage statements. (Stiller Decl. ¶ 82.)
12 Considering the derivate nature of Labor Code section 203 and the dispute over willfulness,
13 Plaintiffs determined that accepting a discount on this claim was appropriate. (Stiller Decl. ¶ 83.)

14 Finally, Plaintiffs calculated the value of the PAGA claim at \$162,317 for pay periods with
15 a regular rate violation and another \$529,826 for pay periods with an independent wage statement
16 violation. (Stiller Decl. ¶ 84.) The main risk taken into account with PAGA is the discretionary
17 nature of the penalty award. (Stiller Decl. ¶ 85.) The court could award the statutory maximum of
18 one hundred (\$100) dollars for the initial violation and two hundred (\$200) dollars thereafter or –
19 in theory – one cent per wage statement. (Stiller Decl. ¶ 86.) While there is a dearth of available
20 authority, in Plaintiffs' view, were they to succeed on any of the underlying Labor Code violations
21 (especially waiting time penalties), it is not likely that the Court would also award a large amount
22 of PAGA penalties on top of damages. (Stiller Decl. ¶ 87.)

23 Per Plaintiff's assessment, the maximum potential value of all of Plaintiff's and the
24 Settlement Class Members' claims was approximately \$1,893,429. (Stiller Decl. ¶ 88.) However,
25 as a result of the forgoing risks on the merits, Class Counsel believes the Gross Settlement Fund
26 of \$475,000.00 is fair and reasonable. (Stiller Decl. ¶ 89.)

27 5. The Experience and Views of Counsel

28 Finally, counsel's experience and success in similar class actions also weigh in favor of

1 preliminary approval. *See Wershba, supra*, 91 Cal.App.4th at 245. Kingsley & Kingsley, APC is
2 very experienced in prosecuting complex employment litigation, and the firm has focused its
3 practice since the year 2000 on complex wage, hour, and working condition violations. (Stiller
4 Decl. ¶¶ 90- 92.) The firm is well versed in class action litigation and has diligently and
5 aggressively pursued this action. (*Id.*) Kingsley & Kingsley, APC currently serves as Class
6 Counsel for dozens of pending class action lawsuits in Northern, Central, and Southern California.
7 (*Id.*) A list of representative cases that Kingsley & Kingsley, APC has handled is included in the
8 accompanying declaration of Ari J. Stiller. (*Id.*) After factoring in the risks explained above, Class
9 Counsel believes that the proposed settlement is fair and reasonable. (Stiller Decl. ¶ 93.)

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

11 Plans of allocation are subject to the same standard of review as class action settlements;
12 they must be “fair, adequate and reasonable.” (*See, e.g., Officers for Justice v. Civil Service*
13 *Comm’n* (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the proposed plan of allocation
14 compensates Settlement Class Members pro rata based on the number of work weeks worked by
15 the Settlement Class Member during the Settlement Period. The payment to each member of the
16 Settlement Class not excluding him/ herself will be determined by dividing the Net Settlement
17 Fund by the total number of Eligible Pay Periods worked by all members of the Settlement Class
18 during the Settlement Period and then multiplying the weekly amount by the number of Eligible
19 Pay Periods by the individual class member as determined by the Settlement Administrator. This
20 allocation distributes Settlement funds proportionally to each class member’s damages, and should
21 therefore be approved as fair, adequate, and reasonable. (Ex. 1 at § III, ¶19.)

22 7. The Proposed Notice Fairly Apprises the Settlement Class Members of the
23 Terms of the Settlement and of the Class Members’ Rights under the
24 Settlement

25 Plaintiff requests that the Court approve the proposed plan and form of Class Notice. The
26 standard for determining the adequacy of notice is whether the notice has “a reasonable chance of
27 reaching a substantial percentage of the class members.” (*Cartt v. Superior Court* (1975) 50
28 Cal.App.3d 960, 974.) Pursuant to the Settlement Agreement, the Notice will be sent to the last

1 known address of all Settlement Class Members, or to an updated address if one is located in the
2 National Change of Address Database. (Ex. 1 at § III, ¶ 9). If any Notices are returned as
3 undeliverable, the Settlement Administrator will undertake another reasonable address verification
4 measure to locate a valid mailing address and will promptly send the Notice to the new address.
5 (*Id.*) As such, the Notice is likely to reach most, if not all, Settlement Class Members.

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

12 Here, the Notice clearly explains the proposed Settlement Agreement and the options to
13 opt out of the Settlement or object to it at the Final Approval Hearing. (Ex. 1 at § III, ¶¶ 13-14;
14 *see also* Ex. A to the Settlement Agreement at pp. 2, 4 [Class Notice].) In short, the Court should
15 approve the proposed Class Notice because it describes the proposed settlement with enough
16 specificity to allow Settlement Class Members to make an informed choice regarding whether to
17 participate.

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

19 The Named Plaintiff is entitled to an enhancement for her valiant effort and time expended
20 in this matter. (Stiller Decl. ¶ 94.) The time spent by Vicki Flores is significant and includes
21 researching and retaining competent counsel; providing information to Class Counsel regarding
22 the nature of the work at Defendant; compiling relevant documents; working closely with Class
23 Counsel to develop the theories of liability and martial relevant evidence; regularly discussing the
24 status of the case with Class Counsel; participating by telephone during mediation; and responding
25 promptly to Class Counsel’s communications regarding settlement. (*Id.*) Thus, in addition to the
26 sums paid to Settlement Class Members, Plaintiff requests a proposed litigation enhancement in
27 the amount of \$5,000.00, to be paid from the Gross Settlement Fund. (Ex. 1 at § III, ¶ 23.) As set
28 forth in the Settlement Agreement, Plaintiff will also be entering into a general release of liability

pursuant to Civil Code Section 1542. (Stiller Decl. ¶ 95; Ex. 1 at § III, ¶ 3.)

Class Counsel considers this to be a fair and reasonable enhancement. (Stiller Decl. ¶ 96.) The enhancement takes into consideration the time, effort, and expense incurred by Plaintiff in coming forward to litigate this matter on behalf of all Settlement Class Members. (*Id.*) Plaintiff will provide a detailed declaration with the Final Approval Motion detailing her participation and further justification for the enhancement. (*Id.*)

VII. SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY

As indicated on the Proof of Service, Plaintiff's Motion for Approval of Class Action Settlement will be concurrently uploaded to the Labor and Workforce Development Agency's ("LWDA") website on the date this Motion is filed as required by statute. Proof of submission of Plaintiff's Motion, all related documents, and copy of the email from the LWDA confirming receipt is attached to the Declaration of Ari J. Stiller as Exhibit 2. (Stiller Decl. ¶ 97.)

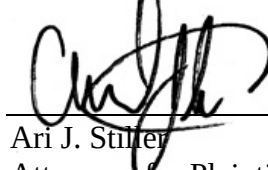
VIII. CONCLUSION

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

DATED: January 13, 2022

KINGSLEY & KINGSLEY, APC

By:



Ari J. Stiller
Attorneys for Plaintiff Vicki Flores 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 January 13, 2022, I served all interested parties in this action the following documents described as: **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

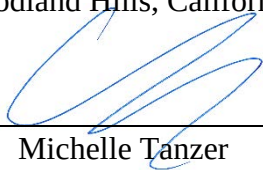
Lonnie D. Giamela
Anet Drapalski
lgiamela@fisherphillips.com
adrapalski@fisherphillips.com
FISHER & PHILLIPS LLP
444 South Flower Street, Suite 1500
Los Angeles, California 90071

[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 January 13, 2022, at Woodland Hills, California.



Michelle Tanzer