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

REGINALD ANTONIO CHAVIS JR., an
individual, on behalf of himself and others
similarly situated,

PLAINTIFF,

v.

GROCERY OUTLET INC.; and DOES 1 thru
50, inclusive,

DEFENDANTS.

CASE NO. 34-2021-00309003

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

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

*[Filed concurrently with Motion for Approval
of Attorneys' Fees and Costs; Declarations of
Kelsey M. Szamet, Emil Davtyan, Reginald
Antonio Chavis Jr. and Jonathan Paul,
Proposed Order, and Judgment]*

Date: September 15, 2023

Time: 9:00 a.m.

Dept.: 28

Complaint Filed: September 29, 2021

FAC Filed: December 7, 2021

SAC Filed: December 20, 2022

Trial Date: None Set

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

2 PLEASE TAKE NOTICE that on September 1, 2023 at 9:00 a.m. in Department 28 of the
3 above-entitled court, Plaintiff REGINALD ANTONIO CHAVIS JR. ("Plaintiff") will, and
4 hereby does, move the Court for an Order of Final Approval of the Class Settlement in this case.
5 Plaintiff moves the Court for an order:

6 1. Granting final approval of the settlement in the case pursuant to the Amended Joint
7 Stipulation of Class Action and PAGA Settlement and Release ("Stipulation of Settlement"), a
8 copy of which is attached to the concurrently-filed Declaration of Kelsey M. Szamet as Exhibit
9 "A";

10 2. Affirming Kingsley & Kingsley, APC and D.Law, Inc. as Class Counsel;

11 3. Affirming REGINALD ANTONIO CHAVIS JR. as Class Representative and
12 awarding an enhancement award of \$7,500.00;

13 4. Awarding Xpand Legal claims administration fees of \$11,500.00 for its services
14 as Settlement Administrator; and,

15 5. Entering judgment.

16 This Motion will be made pursuant to Code of Civil Procedure section 382 and California
17 Rule of Court, rule 3.769 on the grounds that the proposed Stipulation of Settlement is fair,
18 adequate, reasonable, and in the best interest of the Class Members and the parties.

19 The Motion will be based on this Notice of Motion, the attached Memorandum of Points
20 and Authorities, the Declarations of Kelsey M. Szamet, Reginald Antonio Chavis Jr., Jonathan
21 Paul, all other papers and records on file in this action, and on such oral and documentary evidence
22 as may be presented at the hearing on this Motion.

23 DATED: August 23, 2023

KINGSLEY & KINGSLEY, APC

24
25 By: 

26 Kelsey M. Szamet
27 Attorneys for Plaintiff REGINALD ANTONIO
28 CHAVIS JR. and the Proposed Classes

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff REGINALD ANTONIO CHAVIS JR. (“Plaintiff”) submits this Motion for Final
4 Approval of Class Settlement and requests that the Court:

5 1. Grant final approval of the settlement in this case pursuant to the Amended Joint
6 Stipulation of Class Action and PAGA Settlement and Release (“Stipulation of Settlement”), a
7 copy of which is attached to the concurrently-filed Declaration of Kelsey M. Szamet as Exhibit
8 “1”;

9 2. Award attorneys’ fees and costs as detailed in the concurrently-filed Motion for
10 Attorneys’ Fees and Costs;

11 3. Award Xpand Legal claims administration fees of \$11,500.00 for its services as
12 Settlement Administrator;

13 4. Affirm named Plaintiff REGINALD ANTONIO CHAVIS JR. as Class
14 Representative and award a cumulative Class Representative payment of \$7,500.00; and

15 5. Enter judgment.

16 **II. FACTUAL BACKGROUND**

17 **A. Litigation Overview and Procedural History**

18 On September 29, 2021, Plaintiff filed a class action complaint, individually and on behalf
19 of other similarly situated, in the Sacramento County Superior Court alleging claims of failure to
20 pay wages pursuant to Labor Code sections 510, 1194, and 1199, failure to provide rest breaks
21 pursuant to Labor Code section 226.7, violation of Labor Code section 226(a), and violation of
22 Business and Professions Code section 17200, against Defendant under Case No. 34-2021-
23 00309003 (the “Action”). (Declaration of Kelsey M. Szamet (“Szamet Decl.”) ¶5.) On December
24 7, 2021, Plaintiff filed a First Amended Class Action and Representative Action Complaint, which
25 asserted the same claims as the Action and added a claim for penalties for wage and hour violations
26 under the California Private Attorneys’ General Act (“PAGA”). (*Id.*)

27 On December 20, 2022, Plaintiff filed a Second Amended Class Action and Representative
28 Action Complaint that: (1) defines the putative class as all persons currently and formerly

1 employed by Defendant as non-exempt employees at Defendant's Regional Fulfillment Centers in
2 California from September 29, 2017 to trial; (2) omits Plaintiff's cause originally pled cause of
3 action for failure to provide rest breaks pursuant to Labor Code section 226.7; (3) adds a cause of
4 action for failure to pay wages at termination in violation of Labor Code section 203; and (4)
5 includes all claims released by this Settlement. (Szamet Decl. ¶6.)

6 B. The Discovery Process

7 The Parties have yet to engage in formal discovery, instead focusing their efforts on
8 resolving this case. (Szamet Decl. ¶7.) The Parties scheduled a private mediation with Russ J.
9 Wunderli, Esq. on May 24, 2022. (Szamet Decl. ¶8.) In preparation for mediation, Defendant
10 informally produced multiple documents and provided other information necessary to evaluate
11 settlement. (Szamet Decl. ¶9.) This included Plaintiff's personnel file and time and pay records,
12 sample wage statements for the Class, a 10% data sample of pay records that included all codes
13 for premium pay that Defendant allegedly failed to blend, and the total number of Class Members
14 and relevant work weeks at issue. (Szamet Decl. ¶10.) As such, the Parties engaged in meaningful
15 informal discovery to properly assess their strength and weakness in this lawsuit. (Szamet Decl.
16 ¶11.) After the substantial production, the Parties engaged in direct negotiations and, ultimately,
17 were able to arrive at the proposed settlement now presented to the Court for preliminary approval.
18 (Szamet Decl. ¶12.)

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

25 Based on their own independent investigation and evaluation, Class Counsel is of the
26 opinion that the Stipulation of Settlement with Defendant is fair, reasonable and adequate, and in
27 the best interest of the settlement classes in light of all known facts and circumstances, including
28 the risk of significant delay, defenses asserted by Defendant, uncertainties regarding a class and

representative action trial on the merits, and numerous potential appellate issues. (Szamet Decl. ¶14.) Although Defendant denies any liability, Defendant is agreeing to this Stipulation of Settlement solely to avoid the cost of litigation. (*Id.*) Accordingly, the Parties and their counsel desire to fully, finally, and forever settle, compromise and discharge all disputes and claims arising from or relating to the Action on the terms set forth here. (*Id.*)

C. Preliminary Approval

On May 8, 2023, the Court issued an Amended Order preliminarily approving the settlement in this case, approving the proposed Class Notice, ordering that the Settlement Administrator send notice to the Settlement Class, and setting a date for the Final Approval and Fairness Hearing. (Szamet Decl. ¶15.)

III. THE PRELIMINARILY APPROVED SETTLEMENT

A. The Settlement Class

For purposes of settlement, the Class is defined as: “all persons currently and formerly employed by Defendant as non-exempt employees at Defendant’s Regional Fulfillment Centers in California from September 29, 2017 to December 31, 2022.” (“Class Members” or “Settlement Class”).” (Stipulation of Settlement, ¶6, Szamet Decl. ¶16.). The Settlement Class, however, shall not include any person who previously settled or released any of the claims covered by this Settlement, any person who previously was paid or received awards through civil or administrative actions for the claims covered by the Settlement, or any person who submits a timely and valid Request for Exclusion as provided in the Settlement. (*Id.*)

The Class Period is September 29, 2017 through December 31, 2022. (Szamet Decl. ¶17; Ex. A at ¶4.) Based on documents and other information produced by Defendant, there are approximately 614¹ Class Members and 45,494 workweeks at issue. (Szamet Decl. ¶18.)

The final Settlement Class contained 614 individuals. (Paul Decl. ¶13.)

///

¹ Note that this number is larger than at the time of preliminary approval, but the escalator clause in the Settlement Agreement was not triggered. The Settlement was negotiated based on workweeks. As such, per paragraph 15(c)(ix) of the Settlement Agreement, the escalator is tied to workweeks and is triggered for workweeks above 48,358, not based on headcount. The final workweeks are 45,494 during the Class Period.

1 B. The Aggrieved Employees

2 For purposes of settlement, the Aggrieved Employees are defined as: “all persons currently
3 and formerly employed by Defendant as non-exempt employees at Defendant’s Regional
4 Fulfillment Centers in California from September 29, 2020 to December 31, 2022. (“Aggrieved
5 Employees” or “PAGA Members”). (Stipulation of Settlement, ¶7; Szamet Decl. ¶19.) The
6 Aggrieved Employees shall not include any person who previously settled or released any of the
7 claims covered by the Settlement or any person who previously was paid or received awards
8 through civil or administrative actions for the claims covered by the Settlement. (*Id.*) Aggrieved
9 Employees shall not be able to “opt-out” or Request Exclusion from the PAGA Release. (*Id.*)

10 The PAGA Period is September 29, 2020 to December 31, 2022. (Szamet Decl. ¶20.)

11 C. Settlement Payments

12 As detailed fully in the Stipulation of Settlement, the Settlement provides for Defendant to
13 pay a Maximum Settlement Amount of \$450,000.00, which includes the sum of the individual
14 Settlement Awards, the Plaintiff service award, the Class Counsel Award, PAGA Payment, and
15 the Settlement Administration Costs. (Szamet Decl. ¶21; Ex. A at ¶15(c).)

16 The Net Settlement Amount is the Maximum Settlement Amount, less all Class Counsel’s
17 attorneys’ fees and litigation costs, the enhancement award to the class representative, the PAGA
18 penalty payment to the LWDA as described further below, and settlement administration expenses.
19 (Szamet Decl. ¶22.)

20 Plaintiff now requests final approval of the allocation of the Maximum Settlement Amount
21 to determine the Net Settlement Amount for distribution to the Settlement Class as follows:

22	Maximum Settlement Amount:	\$	450,000.00
23	Attorneys’ Fees (1/3):	\$	150,000.00
24	Requested Case Costs:	\$	8,742.00
25	Claims Administration:	\$	11,500.00
26	PAGA Penalties:	\$	20,000.00
			(\$15,000.00 to the LWDA;
			\$5,000.00 to remain in the Net
			Settlement Amount)
27	Named Plaintiff Enhancement:	\$	<u>7,500.00</u>
28	Net Settlement Amount:	\$	257,258.00

1 D. Individual Settlement Payments

2 The amount of each participating Class Member's individual Settlement Award is an
3 individualized amount that is based on the number of compensable workweeks worked by the
4 participating Class Member during the Class Period. (Ex. A at ¶15(c)(i); see also Ex. 1 to the
5 Stipulation of Settlement at pp. 2-3 [Class Notice].) This individual amount shall be determined
6 according to the settlement payment formula set forth in the Stipulation of Settlement. (*Ibid.*) The
7 Stipulation of Settlement provides for a specific and detailed work week dispute process. (*Ibid.*)

8 Based on these calculations, the average potential recovery is \$419 per Class Member.
9 (Paul Decl. ¶14.)

10 E. Class Notice

11 The Court approved the proposed Class Notice and directed the mailing of the Notice by
12 first-class mail to Class Members in accordance with the proposed implementation schedule.
13 (Szamet Decl. ¶23.) The procedures for giving notice to the Class Members, as set forth in the
14 Stipulation of Settlement and Plaintiffs' Motion for Preliminary Approval and approved by the
15 Court, have been fully and properly carried out. (Paul Decl. ¶2.)

16 To date, Xpand Legal received zero (0) requests to be excluded ("opt-outs") from the
17 proposed Stipulation of Settlement and zero (0) objections. (Paul Decl. ¶¶7-8.)

18 F. Check Mailed Settlement – No Reversion

19 The Parties agreed to, and the Court preliminary approved, a checks-mailed settlement
20 without the possibility of reversion of settlement funds to Defendant. Under the Stipulation of
21 Settlement, every Class Member will receive a settlement check and Class Member do not need to
22 submit a claim in order to receive a settlement check. Any funds that remain uncashed after 180
23 days shall be turned over by the Settlement Administrator, with information for each Class
24 Members who failed to timely cash his/her settlement check, to the Koinonia Family Services, a
25 non-profit 501(c)(3) organization with child advocacy programs in the State of California, as the
26 *cy pres* recipient, subject to Court approval. Any residue received by Koinonia shall be ordered by
27 the Court to be used solely for child advocacy programs within the State of California pursuant to
28 California Code of Civil Procedure section 384(b). (Ex. A at ¶21.)

IV. THE COURT SHOULD ORDER FINAL APPROVAL OF THE SETTLEMENT

Pursuant to California Code of Civil Procedure § 1781(f), “a class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the Class in such manner as the court directs” In deciding whether to grant final approval to a proposed class action settlement under Code of Civil Procedure § 382, the court’s overriding concern is whether the proposed settlement is “fair, adequate, and reasonable.” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.)

A. The Settlement is Entitled to a Presumption of Fairness

“A presumption of fairness exists where: (1) the settlement is reached through arm’s length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” (*Dunk, supra*, 48 Cal.App.4th at p. 1802.) The proposed Settlement in the present case meets all of the *Dunk* factors and is therefore entitled to a presumption of fairness.

As to the first *Dunk* factor, this settlement is the result of adversarial, non-collusive, and arm’s-length negotiations overseen by an experienced mediator. All settlement discussions were made by experienced and informed counsel, who believe that this settlement represents a favorable resolution for the Class Members. (Szamet Decl. ¶24.) The settlement negotiations have been, at all times, adversarial and non-collusive, with the aid of a mediator, and no self-dealing or other type of misconduct by either side has taken place. (Szamet Decl. ¶25.)

Second, the Parties engaged in informal discovery that permitted Class Counsel to fairly evaluate the strength of the case and the risks associated with ongoing litigation. In addition, Defendant produced additional data and documents informally for purposes of settlement. (Szamet Decl. ¶26.) This included Plaintiff’s personnel file and time and pay records, sample wage statements, and the total number of Class Members and relevant work weeks at issue. (*Id.*) Receipt of appropriate discovery allowed Class Counsel to fairly evaluate the exposure and risks associated with each claim alleged in the lawsuit. (Szamet Decl. ¶27.)

Third, Class Counsel have significant experience in cases of this type, including several years prosecuting wage, hour, and working condition violations. (Szamet Decl. ¶28.) Class

Counsel is thus qualified to evaluate the class claims and viability of the defenses. Class Counsel believes that the settlement is fair, reasonable, adequate, and in the best interests of the class and that the average recovery for each Class Member of over \$419 is substantial, given the risks inherent in litigation and the defenses asserted. (Szamet Decl. ¶29.)

Finally, the fourth *Dunk* factor considers the percentage of objectors. Here, there were zero (0) requests to be excluded and no objectors. (Paul Decl. ¶¶7-8.) As all of the *Dunk* factors are satisfied, this settlement is entitled to a presumption of fairness.

B. The Court Should Approve This Class Action Settlement Because it Satisfies Each of the *Kullar* Factors

In *Kullar v. Foot Locker Retail, Inc* (2008) 168 Cal.App.4th 116, 128, the court 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. ¶30.) Class Counsel conducted extensive informal discovery before entering into meaningful settlement negotiations in this matter. (*Id.* at Szamet Decl. ¶¶7-14.) This discovery permitted Class Counsel to fairly evaluate the strength of the case and the risks associated with ongoing litigation. (Szamet Decl. ¶31.) Class Counsel is experienced in handling wage and hour class actions and, after weighing all of the following factors, supports this Stipulation of Settlement. (Szamet Decl. ¶32.)

1. The Strength of Plaintiffs' Case

a) The Risks Associated with the Overtime Claim

“Under state and federal law, overtime compensation is based on an employee's ‘regular rate’” of pay. (*Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal.App.4th 893, 902.) “California Labor Code section 510, subdivision (a) provides, as relevant here, [that] an employee is entitled to overtime pay at one and one-half times the ‘regular rate’ for work in excess of eight

1 hours in one day and twice the ‘regular rate’ for work in excess of 12 hours in one day.” (*Ibid.*)
2 For hourly employees, the regular rate is generally the employee’s straight-time hourly rate.
3 (*Huntington, supra*, 131 Cal.App.4th at p. 905.) However, in any pay period where an hourly
4 employee earns other includable compensation in addition to hourly wages—such as a non-
5 discretionary bonus, commission, or shift differential—her or his regular rate is computed by
6 dividing the employee’s total compensation in the period in which the other compensation is
7 earned by the total hours worked in that period. (*Marin v. Costco Wholesale Corp.* (2008) 169
8 Cal.App.4th 804, 807.)

9 Here, Plaintiff maintains that he and other Class members earned premium pay at \$1 per
10 hour during certain pay periods. (Szamet Decl. ¶33.) Plaintiff alleges that Defendant failed to
11 include this premium pay in the regular rate calculation for Class Members in pay periods that they
12 were paid premium pay and also paid overtime. (Szamet Decl. ¶34.) As a result of this alleged
13 failure to properly blend, Plaintiff maintains that Defendant underpaid Plaintiff and Class Members
14 whenever they worked overtime and earned premium pay in the same pay period. (Szamet Decl.
15 ¶35.) Because this claim can be readily analyzed from Defendant’s time and pay records, Plaintiff
16 felt confident that this claim was certifiable and that he would likely prevail on the merits at trial.
17 However, Defendant argued that Plaintiff did not work any daily or weekly overtime during his
18 short period of employment, and therefore would argue that he was not owed any wages and could
19 not be an adequate or typical class representative because he suffered no injury. (Szamet Decl.
20 ¶36.) This argument posed meaningful risk to recovery that Plaintiff had to acknowledge in
21 reaching the resolution now presented to the Court. (Szamet Decl. ¶37.)

22 b) The Risks Associated with the Wage Statement Claim

23 California Labor Code §226(a) requires Defendant to provide its employees with an
24 accurate, itemized written wage statement that shows, in relevant part, all applicable hourly rates
25 and the corresponding number of hours worked. An employee “suffering injury,” like Plaintiff and
26 Class Members, can recover penalties for an employer’s “knowing and intentional failure” to
27 comply with Labor Code §226(a). See Labor Code § 226(e)(1). Under the statute, an employee is
28 deemed to “suffer injury” if the employer does not provide accurate and complete information

1 required by Labor Code § 226(a) and the employee cannot “promptly and easily determine” from
2 the wage statement alone the amount of gross wages or net wages paid to the employee or other
3 information specified by Labor Code § 226(a). See Labor Code § 226(e)(2)(B).

4 Plaintiff maintains that Defendant issued wage statements that allegedly violate Labor
5 Code §§ 226(a)(2) and (9). (Szamet Decl. ¶38.) Labor Code § 226(a) specifically requires that the
6 employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her
7 employees, an accurate itemized statement in writing showing all applicable hourly rates in effect
8 during the pay period and the corresponding number of hours *worked* at each hourly rate by the
9 employee. Plaintiff alleges that he and Class Members are issued wage statements that do not
10 accurately show the applicable overtime rate and the number of hours worked at the corresponding
11 rate based on Defendant’s alleged failure to blend discussed above. (Szamet Decl. ¶39.) However,
12 Plaintiff has to recognize that this is a derivative claim. (Szamet Decl. ¶40.) Plaintiff does not argue
13 that Defendant failed to show required information on the paystubs it issued to Class Members,
14 only that the paystubs do not accurately show the information. (Szamet Decl. ¶41.) While plaintiff
15 believes this claim is easily certifiable, Plaintiff has to acknowledge that this is a more difficult
16 argument to prevail on when it comes to assessing liability. (Szamet Decl. ¶42.)

17 c) The Risks Associated with the Waiting Time Penalty Claim

18 As a result of the wage claim described above, Plaintiff maintains that Defendant failed to
19 pay all wages due and owing upon termination or resignation. Labor Code § 203(a) provides:
20 If an employer willfully fails to pay ... any wages of an employee who is discharged
21 or who quits, the wages of the employee shall 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.

22 Under Labor Code § 203, a “‘willful’ failure to pay wages ... occurs when an employer
23 intentionally fails to pay wages to an employee when those wages are due.” Cal. Code Regs., tit.
24 8, § 13520; *see also Diaz v. Grill Concepts Services, Inc.* (2018) 23 Cal.App.5th 859 (“willful”
25 simply means that “the employer intentionally failed or refused to perform an act which was
26 required to be done[.] Willful ... does not necessarily imply anything blameable, or any malice or
27 wrong toward the other party”).

28 Here, Plaintiff contends that Defendant failed to properly pay overtime for any work in

1 excess of eight (8) hours per day and/or any work in excess of forty (40) hours per week based on
2 the alleged failure to blend as discussed above. (Szamet Decl. ¶43.) As such, the risk analysis for
3 the section 203 claim flows from the risk analysis for the underlying wage claim discussed above.
4 (Szamet Decl. ¶44.) If Defendant could prove, that class members were properly paid for all hours
5 worked at the appropriate overtime rate, there would be no recovery of wages and no waiting time
6 penalties that flow therefrom at all. (Szamet Decl. ¶45.)

7 Further, to establish liability for waiting time penalties, Plaintiff would have to establish
8 not only that the underlying violations occurred, but also that Defendant's conduct was "willful."
9 Labor Code § 203. (Szamet Decl. ¶46.)

10 d) The Risks Associated with the PAGA Claim

11 California's Private Attorneys General Act ("PAGA"), Labor Code § 2698, *et seq.*, permits
12 private litigants to recover civil penalties for violations of the Labor Code. PAGA provides that
13 plaintiffs may recover previously established civil penalties (section 2699(a)) or, if none were
14 established, plaintiffs may recover default penalties provided in section 2699(f) in the amount
15 of \$100 per employee per pay period for the initial violation and \$200 for subsequent violations.

16 The Parties discounted the PAGA claim for multiple reasons. (Szamet Decl. ¶47.) First,
17 the aggrieved employees' PAGA claims are derivative of all the foregoing class claims. (Szamet
18 Decl. ¶48.) Second, a court has discretion to award less than the maximum penalty. (Szamet Decl.
19 ¶49.) Labor Code § 2699(e)(2) ("a court may award a lesser amount than the maximum civil
20 penalty amount specified by this part if, based on the facts and circumstances of the particular case,
21 to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory").
22 *See e.g., Carrington v. Starbucks Corporation* (2018) 30 Cal.App.5th 504, 241 Cal.Rptr.3d 647,
23 669 (affirming award of 10% of maximum PAGA penalty). Finally, the Settlement Class is
24 arguably compensated for these violations in the proposed Stipulation of Settlement, and thus any
25 PAGA recovery for these same violations would be duplicative. As such, the Stipulation of
26 Settlement's contemplated PAGA payment of \$20,000.00 is appropriate. (Szamet Decl. ¶50.) *See*
27 *Nordstrom Commissions Cases*, 186 Cal.App.4th 576, 589 (2010) (affirming settlement allocating
28 \$0 of \$6.4 million settlement to PAGA penalties).

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

2 There is significant expense associated with the class certification process, which the
3 Parties can avoid by entering into the contemplated Stipulation of Settlement now. (Szamet Decl.
4 ¶51.) If the Court did eventually certify class, trial of a case involving approximately 614 Class
5 Members would require the retention of expensive expert witnesses, the accrual of extensive
6 litigation costs, and a significant time overlay by the parties. (Szamet Decl. ¶52.) Moreover, given
7 the complexity and unsettled nature of the issues in this case it is likely that any outcome at trial
8 would have resulted in a lengthy and costly appeal. (Szamet Decl. ¶53.) An appeal would result in
9 further delay for the Class Members who are waiting for a resolution in this matter. (*Id.*)

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

11 This case has not been certified to be tried as a class action. (Szamet Decl. ¶54.) While
12 Plaintiff believes there is strong evidence to support certification of several possible subclasses,
13 certification is always hard fought and subject to judicial discretion. Moreover, in class actions,
14 decertification is always a possibility. (*Id.*) In attempting to certify a class, the parties would need
15 to conduct multiple depositions, including of the Plaintiff and of several person(s) most
16 knowledgeable regarding Defendant's wage policies. (*Id.*) There is a risk for both sides as to what
17 these depositions will reveal and whether they will support class certification to the extent
18 expected. (*Id.*)

19 4. The Amount Offered in Settlement

20 It was very difficult for the Parties to reach this Settlement of \$450,000.00. (Szamet Decl.
21 ¶55.) This Settlement is the result of adversarial, non-collusive, and arms-length negotiations.
22 (Szamet Decl. ¶56.) The Parties arrived at it after extensive investigation and discovery, careful
23 evaluation of the law, risks, and all information substantiating the amount of penalties reasonably
24 likely to be awarded to the class were the trier of fact to find Defendant liable, and the assistance
25 of an experienced mediator, Russ J. Wunderli, Esq. (*Id.*)

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

27 Plaintiff assessed full value of the Minimum Wage/Overtime claim, without any discount,
28 at approximately \$54,000. (Szamet Decl. ¶57.) This calculation was based upon a 10% data sample

1 and included all pay codes that allegedly should have been blended into the regular rate to
2 determine the correct overtime rate. (Szamet Decl. ¶58.) That analysis found that allegedly
3 \$5,402.35 was underpaid as a result of the allegations that Defendant failed to blend correctly and
4 was then extrapolated to the entire Class for the duration of the Class Period resulting in exposure
5 of approximately \$54,000. (Szamet Decl. ¶59.)

6 Plaintiff valued the Wage Statement Claim, without discount, at \$1,956,000. (Szamet Decl.
7 ¶60.) Labor Code §226(e)(1) provides for a \$50 penalty for the initial wage statement and \$100
8 thereafter for each wage statement but puts a \$4,000 cap on wage statement penalties per
9 employee. (Szamet Decl. ¶61.) Thus, assuming that each Class Member was entitled to penalties
10 for each and every workweek during the Section 226(a) statutory period, which is likely very
11 overstated due to employee turnover, the exposure maximum is \$1,956,000 (489² Class Members
12 x \$4,000). (Szamet Decl. ¶62.) Plaintiff determined that a steep discount of this claim was fair for
13 settlement purposes due to the risk that liability would not attach; as discussed in detail above,
14 Plaintiff did not allege a standalone claim for Section 226(a) penalties, but only a derivative claim
15 that because the overtime rates allegedly were not blended correctly, the paystubs were therefore
16 not accurate. This can be a very difficult claim to prove because Plaintiff does not dispute that the
17 paystubs show all the required information, just the information was not correct as a result of the
18 alleged failure to blend. (Szamet Decl. ¶63.)

19 Plaintiff valued the Waiting Time Claim, tied to the Wage/Overtime claim, at \$1,500,000.
20 (Szamet Decl. ¶64.) Considering the derivate nature of Labor Code §203 and the dispute over
21 whether class members were owed any wages as a result of the alleged failure to blend, Plaintiff
22 determined that accepting a discount on this claim was appropriate. (Szamet Decl. ¶65.)

23 Finally, Plaintiff calculated the maximum value of the PAGA claim at \$4,340,800 for Class
24 Members (using \$100 per pay period x 43,408 pay periods). (Szamet Decl. ¶66.) However, it must
25 be noted this figure is arguably overstated as most employers pay bi-weekly, but Defendant pays

26 ² This analysis was conducted at the time of mediation using 489 Class Members but
27 using 614 Class Members x \$4,000 (the statutory cap), the amount is \$2,456,000. Plaintiff still
28 contends that the Settlement is reasonable because, as discussed in footnote 1, the Settlement
compromise was reached based on workweeks and not headcount and the workweek count has
remained within the Settlement's escalator provision at 45,494.

1 weekly so there are far more pay periods as a result. (*Id.*) If this number was cut in half, it would
2 be reduced to \$2,170,400. (Szamet Decl. ¶67.) The main risk taken into account with PAGA is the
3 discretionary nature of the penalty award. (Szamet Decl. ¶68.) A judge can award the statutory
4 maximum of \$100 for the initial violation and \$200 thereafter or – in theory – one cent per wage
5 statement. (Szamet Decl. ¶69.) While there is a dearth of available authority, in Plaintiff’s view,
6 there is significant risk that were he to succeed on any of the underlying Labor Code violations, it
7 is not likely that a Judge would also award a large amount of civil penalties on top of any damages
8 recovered. (Szamet Decl. ¶70.)

9 Per Plaintiff’s assessment, the maximum potential value of all of Plaintiff’s and the Class
10 Members’ claims was approximately \$5,680,400 based on the figures as set forth above. (Szamet
11 Decl. ¶71.) However, Plaintiff has to acknowledge the vast majority of this amount is penalties
12 (Labor Code Sections 226(a), 203, and 2699.). Looking realistically at just the core alleged regular
13 rate liability of \$54,000 and when considered in context with the forgoing risks on the merits, Class
14 Counsel believes the Maximum Settlement Amount of \$450,000.00 is fair and reasonable. (Szamet
15 Decl. ¶72.)

16 5. The Extent of Discovery Completed and Stage of the Proceedings

17 As outlined above, Class Counsel conducted a thorough investigation into the facts of the
18 claims alleged. (Szamet Decl. ¶73.) The agreement to settle did not occur until Class Counsel
19 exchanged and possessed sufficient information to make an informed judgement regarding the
20 likelihood of success on the merits and the results that could be obtained through further litigation.
21 (*Id.*)

22 6. The Experience and Views of Counsel

23 D.Law, Inc. and Kingsley & Kingsley are very experienced in prosecuting and defending
24 employment litigation. (Davtyan Decl. ¶¶5-6; Szamet Decl. ¶¶74-75.) The firms are well versed
25 in class action litigation and has diligently and aggressively pursued this action. (*Ibid.*) After
26 factoring in the risks explained above, Class Counsel believes that the proposed settlement is fair
27 and reasonable. (Szamet Decl. ¶76.)
28

1 7. The Presence of a Governmental Participant

2 There is no governmental participant in this action. (Szamet Decl. ¶77.)

3 8. The Proposed Plan of Allocation Is Fair and Reasonable

4 Plans of allocation are subject to the same standard of review as class action settlements;
5 they must be “fair, adequate and reasonable.” (*See, e.g., Officers for Justice v. Civil Service*
6 *Comm’n* (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the proposed plan of allocation
7 compensates Class Members pro rata based on the number of compensable Work Weeks worked
8 by the Class Member during the Class Period. The lump sum payment to each Class Member not
9 excluding him/ herself will be determined on an individualized basis based upon the compensable
10 Work Weeks worked by the Class Member. (Ex. A at ¶15(c)(i).) This allocation distributes
11 Stipulation of Settlement funds proportionally to each class member’s potential damages and
12 should therefore be approved as fair, adequate, and reasonable. (Szamet Decl. ¶78.)

13 9. The Reaction of the Class Members to the Proposed Settlement

14 To date, there are zero (0) request to be excluded from the proposed Stipulation of
15 Settlement and zero (0) objections. (Paul Decl. ¶¶7-8.) Such indicates that the reaction of Class
16 Members on the whole is positive and weighs in favor of approval.

17 **V. ENHANCEMENT TO PLAINTIFF**

18 Plaintiff’s Counsel request an enhancement of \$7,500.00 to the Class Representative
19 REGINALD ANTONIO CHAVIS JR. for his work on behalf of the Settlement Class. (Szamet
20 Decl. ¶126.) “Courts routinely approve incentive awards to compensate named plaintiffs for the
21 services they provide and the risks they incurred during the course of the class action litigation.”
22 *Ingram v. The Coca-Cola Company*, 200 F.R.D. 685, 694 (N.D. Ga 2001) (internal quotations and
23 citations omitted); *see also Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299 (N.D.
24 Cal. 1995). In *Coca-Cola*, the Court approved service awards of \$300,000 to each named plaintiff
25 in recognition of the services they provided to the class by responding to discovery, participating
26 in the mediation process, and taking the risk of stepping forward on behalf of the class. *Coca-Cola*,
27 200 F.R.D. at 694; *see also, e.g. Van Vranken*, 901 F. Supp. at 299 (approving \$50,000
28 participation award to plaintiffs); *Glass v. UBS Financial Services, Inc.*, Case No. C-06-4068

1 MMC, 2007 WL 227862, at *17 (N.D. Cal. Jan. 26, 2007) (approving \$25,00 enhancement to each
2 named plaintiff).

3 Mr. Chavez is an adequate class representative because he has diligently, adequately and
4 fairly represented the Settlement Class and has not placed his interests above any member of the
5 Settlement Class. (*see* Declaration of REGINALD ANTONIO CHAVIS JR. (“Chavis Decl.”) ¶¶3-
6 13.)

7 Here, Class Counsel requests an enhancement for Mr. Chavez’s valiant effort and time
8 expended in this matter. The time spent by REGINALD ANTONIO CHAVIS JR. is significant
9 and includes researching and retaining competent counsel; providing information to Class Counsel
10 regarding the nature of the work at Defendant; compiling relevant documents; working closely
11 with Class Counsel to develop the theories of liability and martial relevant evidence; regularly
12 discussing the status of the case with Class Counsel; discussing the case via telephone with many
13 Class Members; and responding promptly to Class Counsel’s communications regarding
14 settlement. (Szamet Decl. ¶127; Chavez Decl. ¶¶6-8.) As set forth in the Stipulation of Settlement,
15 Plaintiff will also be entering into a general release of liability pursuant to Civil Code Section
16 1542. (Szamet Decl. ¶128; Ex. A at ¶25.)

17 Class Counsel considers this to be a fair and reasonable enhancement. (Szamet Decl. ¶129.)
18 The enhancement takes into consideration the time, effort, and expense incurred by Mr. Chavez in
19 coming forward to litigate this matter on behalf of all Class Members. (Szamet Decl. ¶130.)
20 Additionally, the Class Representative was at risk for paying for Defendant’s legal fees and costs
21 in the event that Defendant prevailed at trial. (Szamet Decl. ¶131.)

22 **VI. SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY**

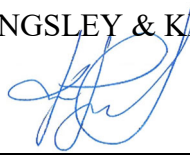
23 As indicated on the Proof of Service, Plaintiff’s Motion for Final Approval of Class Action
24 Settlement (“Motion”) will be concurrently uploaded to the Labor and Workforce Development
25 Agency’s (“LWDA”) website on the date this Motion is filed as required by statute. Proof of
26 submission of Plaintiff’s Motion, all related documents, and copy of the email from the LWDA
27 confirming receipt is attached to the Declaration of Kelsey M. Szamet as Exhibit “F.” (Szamet
28 Decl. ¶136.)

1 **VII. CONCLUSION**

2 Plaintiff respectfully submits that the proposed Stipulation of Settlement is fair, adequate,
3 reasonable, and in the best interest of the Class Members. Therefore, Plaintiff respectfully requests
4 that the Court (1) grant Final Approval of the Stipulation of Settlement and all of its terms; (2)
5 award attorneys' fees and costs in the amount detailed in the concurrently filed Motion for
6 Attorneys' Fees and Costs; (3) award Xpand Legal claims administration fees of \$11,500.00; and
7 (4) award the Class Representative an enhancement of \$7,500.00; and (5) enter judgment.

8 DATED: August 23, 2023

KINGSLEY & KINGSLEY, APC

9
10 By: 

Kelsey M. Szamet
Attorneys for Plaintiff REGINALD ANTONIO
CHAVIS JR. and the Proposed Classes

(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 August 23, 2023, I served all interested parties in this action the following documents described as: **NOTICE OF MOTION AND MOTION FOR FINAL 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:

JACKSON LEWIS P.C. Cary G. Palmer cary.palmer@jacksonlewis.com Erika M. Barbara erika.barbara@jacksonlewis.com 400 Capitol Mall, Suite 700 Sacramento, CA 95814 <i>Attorneys for Defendant</i>	D.LAW, INC. Emil Davtayan emil@d.law 400 N. Brand Blvd, 7th Floor Glendale, CA 91203 <i>Attorneys for Plaintiff</i>
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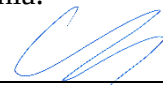
[] (BY MAIL) I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage fully prepaid at Encino, California in the ordinary course of business. I am aware that 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 August 23, 2023, at Woodland Hills, California.



Michelle Tanzer