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7 Attorneys for Plaintiff
Joshua Thompson individually
8 and on behalf of all similarly situated employees

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SHASTA**

11 JOSHUA THOMPSON, individually and on
behalf of all similarly situated employees

12 Plaintiff(s),

13 v.

14 FROZEN GOURMET, INC., a California
15 Corporation; and DOES 1 to 100, inclusive,

16 Defendants.

CASE NO. SCRDCVC21-0198322

**PLAINTIFF'S NOTICE OF
SUPPLEMENTAL MOTION AND
SUPPLEMENTAL MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

Assigned to Hon. Tamara L. Wood

Date.: January 30, 2023
Time: 8:30 AM
Dept: Dept. 8
Action Filed: October 6, 2021

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

2 **PLEASE TAKE NOTICE** that on January 30, 2023, at 8:30 a.m., or as soon thereafter as
3 may be heard before the Honorable Tamara L. Wood, judge presiding, in Department 8 of the
4 above referenced Court located at 1500 Court St., Redding, California, 96001, Plaintiff Joshua
5 Thompson (“Plaintiff”) will move the Court for an order for final approval of the class action
6 settlement with Defendant Frozen Gourmet, Inc. (“Defendant”). On December 19, 2022, this Court
7 instructed the parties to provide additional information prior to receiving court approval. Through
8 this Supplemental Motion, and pursuant to the Parties’ Joint Stipulation of Class Action Settlement
9 and Release (the “Settlement” or “Settlement Agreement”), Plaintiff seeks further entry of an
10 Order:

- 11 (1) Approving the parties’ class and representative action settlement in the amount of
12 \$215,060.61 (the “Gross Settlement Amount”);
- 13 (2) Approving the requested Class Representative Enhancement Award of \$5,000.00 to
14 Plaintiff, the full amount of which is to be paid from the Gross Settlement Amount;
- 15 (3) Approving the payment of \$75,271.21 (or 35% of the Gross Settlement Amount) to
16 Class Counsel as reasonable attorney’s fees, the full amount of which is to be paid from
17 the Gross Settlement Amount;
- 18 (4) Approving the payment of \$10,741.49 to Class Counsel for reimbursement of
19 reasonably incurred litigation expenses, the full amount of which is to be paid from the
20 Gross Settlement Amount;
- 21 (5) Approving the payment of \$3,995.00 to the Settlement Administrator, Phoenix
22 Settlement Administrators, for its services in administering the settlement, the full
23 amount of which is to be paid from the Gross Settlement Amount;
- 24 (6) Approving the payment of the \$18,000.00 the Parties set aside from the Gross
25 Settlement Amount as PAGA civil penalties, \$13,500.00 of which is to be paid to the
26 Labor & Workforce Development Agency (“LWDA”), and \$4,500.00 of which is to be
27 paid to the Class Members on a pro rata basis; and
- 28 (7) Approving the distribution of \$106,552.91 (the “Net Settlement Amount”) to the Class

1 Members on a pro rata basis.

2 This Supplemental Motion is unopposed by Defendant. This Supplemental Motion is based
3 upon this Notice of Supplemental Motion, the Supplemental Memorandum of Points and
4 Authorities, the Joint Stipulation of Class Action Settlement, the supporting Declarations of
5 Plaintiff Joshua Thompson, Attorney Manny Starr, and Kevin Lee of Phoenix Settlement
6 Administrators, the [Proposed] Order of Final Approval and Judgment, as well as all pleadings and
7 documents filed in this action, and any other matters as may be presented at or before the final
8 approval hearing.

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10 Date: January 16, 2023

FRONTIER LAW CENTER

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/s/ Joseph Gross _____

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Joseph Gross

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Attorneys for Plaintiff and the Class

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1 **SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This is a wage and hour class and representative Private Attorneys General Act (“PAGA”)
4 action. Plaintiff Joshua Thompson (“Plaintiff”) worked as non-exempt route driver for Defendant
5 Frozen Gourmet, Inc., (“Defendant”) between June 4, 2021, and August 19, 2021. Plaintiff alleges
6 that Defendant, as a matter of its corporate policy and procedure, violated the Labor Code by its
7 uniform policy of: (1) failing to provide off-duty meal and rest breaks; (2) employing a rounding
8 policy that operated to deprive Plaintiff and the Class of all wages owed; (3) failing to reimburse
9 employees for all business-related expenses, including the costs associated with use of their
10 personal cell phone; (4) failing to provide accurate and complete wage statements; and (5) failing to
11 pay all wages due and payable upon termination, or within 72 hours of resignation. As a result,
12 Plaintiff alleges that he and putative class members are entitled to unpaid wages and penalties.
13 Defendant denies each, every, and all of these allegations.

14 On December 19, 2022, this Court continued the hearing on Plaintiff’s unopposed Motion
15 for Final Approval of Class Action Settlement to allow Plaintiff to address certain issues with their
16 Motion.

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18 **II. ADDRESSING THE COURT’S CONCERNS**

19 In the December 19, 2022, Order, this Court asked Plaintiff to address 5 specific issues: (1)
20 Whether the Declaration of Kevin Lee’s assertions contained typographical errors; (2) the details of
21 how the escalator clause was triggered; (3) the basis for the underlying numbers involved in the
22 escalator clause; (4) Plaintiff’s personal recovery in this matter; and (5) the specific risks Plaintiff
23 took in pursuing his claim. Plaintiff will briefly address each issue in turn.

24
25 **A. HOW THE ESCALATOR WAS TRIGGERED, AND HOW THE UNDERLYING**
26 **NUMBERS WERE CALCULATED, AND HOW THAT IMPACTED THE REMAINDER**
27 **OF THE SETTLEMENT**

28 In Mr. Lee’s Supplemental Declaration (“*Lee Supp. Decl.*” declaration, he states that the

1 escalator clause was based on Defendant's representation that there were 1,350 workweeks and is
2 *only* triggered if the actual number of workweeks worked by the 25 Class Members was 10%
3 higher than that represented by Defendant, or 1,485 workweeks. (*Lee Supp. Decl.* ¶4).

4 The actual number of workweeks worked by the Class Members was 1,774.25, or 289.25
5 workweeks above the maximum amount allowed for before triggering the Escalator Clause; this
6 overage amounted to approximately 19.48%. As such, pursuant to the Escalator Clause, the original
7 amount of \$180,000 was increased by 19.48%, which brought the new Settlement Fund to
8 \$215,060.61. (*Id.*).

9 Plaintiff's attorneys' fees are 35% of the Settlement Fund and increased proportionally with
10 the Settlement Fund's increase in accordance with the Escalator Clause. (*Id.*, at ¶5). Thus, Plaintiff
11 is now entitled to 35% of \$215,060.61, or \$75,271.21.

12 **B. THERE WERE TYPOGRAPHICAL ERRORS IN KEVIN LEE'S**
13 **DECLARATION**

14 In the December 19, 2022 Order, the Court specifically identified two portions of Mr. Lee's
15 declaration that may have typographical errors, and identified a potential error in the Notice as
16 well: (1) In ¶3, Mr. Lee indicated that the class consisted of 1,983 members, whereas Plaintiff had
17 indicated that there were only 25 members of the Class; (2) In ¶13, Mr. Lee indicated that
18 Plaintiff's costs amounted to \$12,271.21 instead of Plaintiff's claimed \$10,741.49; and (3) the
19 Class Notice stated that the Net Settlement Fund was \$105,294.40 but Mr. Lee's declaration
20 indicated that the Net Settlement Fund was \$105,522.91.

21 In Mr. Lee's Supplemental Declaration, he indicates that the Class consists of 25
22 employees, Counsel's costs are \$10,741.49, and the Net Settlement Fund is
23 \$106,552.91 (*Declaration of Kevin Lee* ("Lee Supp Decl.") ¶¶3,6). As such, Mr. Lee has confirmed
24 that those errors were, in fact, typographical errors and corrected them.

25 **C. PLAINTIFF'S DECLARATION NOW CONTAINS SPECIFIC RISKS HE TOOK**
26 **IN REPRESENTING THE CLASS, AND KEVIN LEE'S DECLARATION NOTES**
27 **PLAINTIFF'S INDIVIDUAL RECOVERY**

28 In Plaintiff's Supplemental Declaration, he indicates that he faced real risk by representing

1 the class. Specifically, Plaintiff risked: (1) being forced to pay for Defendant’s legal fees; (2) being
2 identified as a “litigious employee,” and losing job opportunities on that basis; and (3) incurring
3 costs that he would not have recovered if he lost his case. (*Supplemental Declaration of Joshua*
4 *Thompson* (“*Thompson Supp. Decl.*”) ¶5). These risks more than justify Plaintiff’s requested
5 Enhancement Payment. Further, Plaintiff will receive an individual settlement amount of \$608.96.
6 (*Lee Supp. Decl.*’ ¶6).

7
8 **III. CONCLUSION**

9 Based on the above, Plaintiff submits that the settlement is fair, reasonable, and adequate.
10 Plaintiff respectfully request the court to grant final approval and enter judgment.

11
12 Date: January 16, 2023

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14 /s/ Joseph Gross

Joseph Gross

15 Attorney for Plaintiff and the Class
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