KINGSLEY SZAMET
EMPLOYMENT LAWYERS
ERIC B. KINGSLEY, Esq. (SBN 185123)
eric@kingsleylawyers.com
KELSEY M. SZAMET, Esq. (SBN 260264)
kelsey@kingsleylawyers.com
JESSICA BULAON, Esq., (SBN 340749)
jessi@kingsleylawyers.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 LOS ANGELES - SPRING STREET COURTHOUSE

FIDEL PEREZ, an individual, on behalf of himself and others similarly situated,

PLAINTIFF,

v.

FAM, LLC; and DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO. 21STCV33308

[Case Assigned for All Purposes to Hon. Timothy Patrick Dillon in Dept. 15]

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 Eric B. Kingsley, Fidel Perez, and Mayra Gonzalez, Proposed Order and Judgment]

Date: June 22, 2026
Time: 10:00 AM
Dept.: 15

Complaint Filed: September 9, 2021
Trial Date: None Set

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on June 22, 2026, at 10:00 AM in Department 15 of the above-entitled court, Plaintiff FIDEL PEREZ ("Plaintiff") will, and hereby does, move the Court for an Order of Final Approval of the Class Settlement in this case. Plaintiff moves the Court for an order:

1. Granting final approval of the settlement in the case pursuant to the Class Action and PAGA Settlement Agreement ("Agreement"), a copy of which is attached to the concurrently-filed Declaration of Eric B. Kingsley as Exhibit "1";

2. Affirming Kingsley Szamet Employment Lawyers as Class Counsel;

3. Affirming FIDEL PEREZ as Class Representative and awarding an enhancement award of $7,500.00;

4. Awarding Phoenix Class Action Administration Solutions claims administration fees of $8,750.00 for its services as Administrator; and,

5. Entering judgment.

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

The Motion will be based on this Notice of Motion, the attached Memorandum of Points and Authorities, the Declarations of Eric B. Kingsley, Fidel Perez, Mayra Gonzalez, all other papers and records on file in this action, and on such oral and documentary evidence as may be presented at the hearing on this Motion.

DATED: May 28, 2026

KINGSLEY SZAMET EMPLOYMENT LAWYERS

By: ______________________

Eric B. Kingsley
Kelsey M. Szamet
Jessi Bulaon
Attorneys for Plaintiff FIDEL PEREZ and the proposed class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff FIDEL PEREZ ("Plaintiff") submits this Motion for Final Approval of Class Settlement and requests that the Court:

1. Grant final approval of the settlement in this case pursuant to the Class Action and PAGA Settlement Agreement ("Agreement"), a copy of which is attached to the concurrently-filed Declaration of Eric B. Kingsley as Exhibit "1";

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

3. Award Phoenix Class Action Administration Solutions claims administration fees of $8,750.00 for its services as Administrator;

4. Affirm named Plaintiff FIDEL PEREZ as Class Representative and award a cumulative Class Representative payment of $7,500.00; and

5. Enter judgment.

II. FACTUAL BACKGROUND

A. Litigation Overview and Procedural History

Plaintiff Fidel Perez filed this action on September 9, 2021, alleging claims for 1) Failure to Pay Wages and/or Overtime Under Labor Code §§ 510, 1194, and 1199; 2) Failure to Provide Rest Breaks Pursuant to Labor Code § 226.7; 3) Failure to Reimburse Expenses Pursuant to Labor Code § 2802; 4) Violation of Labor Code § 226(a); 5) Penalties Pursuant to Labor Code § 203; and 6) Violation of Business & Professions Code § 17200. (Declaration of Eric B. Kingsley ("Kingsley Decl.") ¶5.) On September 9, 2021, in compliance with Labor Code § 2699.3(a)(l), written notice was provided via online filing to the LWDA, setting forth the facts and theories of the violations alleged against Defendant. (Kingsley Decl. ¶6.)

On November 15, 2021, Plaintiff filed a First Amended Complaint, adding an additional claim for civil penalties pursuant to Labor Code section 2699, et seq. ("PAGA") based upon the same alleged Labor Code violations at issue in the complaint. (Kingsley Decl. ¶7.)

FAM filed a Motion to Compel Arbitration on February 25, 2022, and the Court denied

Defendant's Motion on May 10, 2022. (Kingsley Decl. ¶8.) Defendant appealed this decision. (Kingsley Decl. ¶9.) After submission of the opening and respondent's briefs, FAM chose to dismiss the appeal. (Kingsley Decl. ¶10.) The Parties filed a Joint Stipulation to Dismiss Defendant's Appeal on August 28, 2023, and the case was sent back to the trial court. (Kingsley Decl. ¶11.)

FAM's attorney informed Plaintiff's counsel of a settlement in *Luevanos v. Fambrands, LLC*, LASC Case no. BC620740, and provided documentation of that settlement releasing the claims in this action from May 23, 2012 through May 31, 2019. (Kingsley Decl. ¶12.)

On November 21, 2025, in light of the settlement, Plaintiff filed a Second Amended Complaint adding a claim for meal breaks. (Kingsley Decl. ¶13.)

B. <u>The Discovery Process and Mediation</u>

Plaintiff served an initial round of written discovery, but the parties thereafter agreed to proceed with informal discovery for mediation purposes. (Kingsley Decl. ¶14.) On May 24, 2024, the Parties participated in an all-day mediation presided over by Jason Marsili, Esq. which let to this Agreement to settle the Action. (Kingsley Decl. ¶15.) In preparation for mediation, Defendant produced all of the timekeeping and payroll records that it was able to obtain; relevant handbooks and other policy documents; Perez's personnel file; and emails from its HR department to employees regarding FAM's temperature check policy and its encouragement of employees to clock into work using an app on their personal phones. (Kingsley Decl. ¶16.) It is Plaintiffs' position that the Parties engaged in sufficient formal and informal discovery to allow the Parties to fully investigate the claims at issue and understand their strengths and weakness and to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*"). (Kingsley Decl. ¶17.)

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

Based on their own independent investigation and evaluation, Class Counsel is of the opinion that the Agreement with Defendant is fair, reasonable and adequate, and in the best interest of the settlement classes in light of all known facts and circumstances, including 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. (Kingsley Decl. ¶19.) Although Defendant denies any liability, Defendant is agreeing to this Agreement 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 December 16, 2025, the Court issued an Order preliminarily approving the settlement in this case, approving the proposed Class Notice, ordering that the Administrator send notice to the Class, and setting a date for the Final Approval and Fairness Hearing. (Kingsley Decl. ¶20.)

III. THE PRELIMINARILY APPROVED SETTLEMENT

A. The Settlement Class

For purposes of Agreement, the settlement class is defined as: "all persons FAM, LLC employed in California and paid on an hourly basis for one or more Workweeks during the Class Period." ("Settlement Class Members," "Class" or "Settlement Class") (Kingsley Decl. ¶21; Ex. 1 at ¶1.5)

The Class Period is June 1, 2019, to October 11, 2024, except only for claims for missed meal periods and penalties, for which "Class Period" means the period from November 21, 2021, to October 11, 2024. (Kingsley Decl. ¶22; Ex. 1 at ¶1.12.) As of April 8, 2025 (the date of the Agreement), and based on documents and other information produced by Defendant, there are approximately 403 Settlement Class Members. (Kingsley Decl. ¶23; Ex. 1 at ¶ 4.1.)

The final Class contained 397 individuals. (Gonzalez Decl. ¶14.)

///

B. Aggrieved Employees

For purposes of the Agreement, the Aggrieved Employees are defined as: "all persons FAM, LLC employed in California and paid on an hourly basis for one or more PAGA Pay Periods during the PAGA Period." ("Aggrieved Employees") (Kingsley Decl. ¶24; Ex. 1 at ¶1.4.)

The PAGA Period is September 9, 2020 through October 11, 2024. (Kingsley Decl. ¶25; Ex. 1 at ¶1.31.) Based on documents and other information produced by Defendant in connection with the mediation and the negotiation of the Settlement Agreement, there are approximately 356 Aggrieved Employees who collectively worked a total of 14,856 PAGA Pay Periods. (Kingsley Decl. ¶26; Ex. 1 at ¶4.1.)

C. Settlement Payments

As detailed fully in the Agreement, the Settlement provides for Defendant to pay a Gross Settlement Amount of $585,000.00, which includes the sum of the Individual Class Payments, the Class Representative service award, the Class Counsel Award, PAGA Payment, and the Settlement Administration Costs. (Kingsley Decl. ¶27; Ex. 1 at ¶ 1.22.)

The Net Settlement Amount is the Gross Settlement Amount, less Class Counsel Award, Class Representative Enhancement, PAGA Payment, and Settlement Administration Costs. (Kingsley Decl. ¶28; Ex. 1 at ¶1.28.) Plaintiff now requests final approval of the allocation of the Gross Settlement Amount to determine the Net Settlement Amount for distribution to the Class as follows:

Gross Settlement Amount:	$	585,000.00
Less Class Representative Enhancement	$	7,500.00
Less Class Counsel's Fees:	$	193,050.00[1]
Less Class Counsel's Costs:	$	21,000.00
Less PAGA Payment:	$	25,000.00 *($18,750.00 to the LWDA; $6,250.00 to remain in the* Net Settlement Amount*)*
Less Administrator Costs:	$	8,750.00
Net Settlement Amount:	**$**	335,950.00

(Kingsley Decl. ¶29; Ex. 1 at ¶ 1.22.)

[1] The Agreement permitted a request of up to 35% of the Gross Settlement Amount, but Class Counsel is seeking only 33%. (Kingsley Decl. ¶30, Ex. 1 at ¶ 3.2.2.)

D. Individual Settlement Payments

The amount of each Participating Class Member's Individual Class Payment is an individualized amount that is based on the number of compensable workweeks worked by the Participating Class Member during the Class Period. (Ex. 1 at ¶3.2.4; see also Ex. A to the Agreement at pp. 3 [Class Notice].) This individual amount shall be determined according to the settlement payment formula set forth in the Agreement. (See Ex. 1 at ¶3.2.4; *Id*. at Ex. A to the Agreement [Class Notice].) The Agreement provides for a specific and detailed Work Week dispute process. (See Ex. 1 at ¶7.6.)

The Individual PAGA Payment is an individualized amount based on the number of PAGA Period Pay Periods worked by the aggrieved employee during the PAGA Period. (Ex. 1 at ¶3.2.5.1; see also Ex. A to the Agreement at pp. 3 [Class Notice].) It shall be calculated as follows: twenty-five percent (25%) of the PAGA Payment (or $6,250) divided by the total number of PAGA Period Pay Periods worked by all aggrieved employees during the PAGA Period and multiplying the result by each aggrieved employee's PAGA Period Pay Periods. (See Ex. 1 at ¶3.2.5.1; *Id.* at Ex. A to the Agreement [Class Notice].)

Based on these calculations, the average potential recovery is $830.48 per Settlement Class Member. (Gonzalez Decl. ¶17.)

E. Class Notice

The Court approved the proposed Class Notice, and directed the mailing of the Notice by first-class mail to Settlement Class Members in accordance with the proposed implementation schedule. (Kingsley Decl. ¶31.) The procedures for giving notice to the Settlement Class Members, as set forth in the Agreement and Plaintiffs' Motion for Preliminary Approval and approved by the Court, have been fully and properly carried out. (Gonzalez Decl. ¶¶2-18.)

To date, Phoenix Class Action Administration Solutions received one (1) request to be excluded ("opt-outs") from the proposed Agreement and no objections. (Gonzalez Decl. ¶¶11-12.)

F. Check Mailed Settlement – No Reversion

The Parties agreed to, and the Court preliminary approved, a checks-mailed settlement without the possibility of reversion of settlement funds to Defendant. Under the Agreement, every

Settlement Class Member will receive a settlement check and Settlement Class Members do not need to submit a claim in order to receive a settlement check. Any funds that remain uncashed after 180 days shall be turned over by the Administrator, with information for each Settlement Class Member who failed to timely cash his/her settlement check, to the State of California Controller's Office Unclaimed Property Fund. (Ex. 1 at ¶4.4.3.)

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. <u>The Settlement is Entitled to a Presumption of Fairness</u>

"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 Settlement Class Members. (Kingsley Decl. ¶32.) 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. (Kingsley Decl. ¶33.)

Second, the Parties engaged in formal and informal discovery that permitted Class Counsel to fairly evaluate the strength of the case and the risks associated with ongoing litigation. (Kingsley Decl. ¶34.) Receipt of appropriate discovery allowed Class Counsel to fairly evaluate the exposure and risks associated with each claim alleged in the lawsuit. (Kingsley Decl. ¶35.)

Third, Class Counsel have significant experience in cases of this type, including several years prosecuting wage, hour, and working condition violations. (Kingsley Decl. ¶36.) 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 Settlement Class Member of over $800 is substantial, given the risks inherent in litigation and the defenses asserted. (Kingsley Decl. ¶37.)

Finally, the fourth *Dunk* factor considers the percentage of objectors. Here, there was one (1) request to be excluded and no objectors. (Gonzalez Decl. ¶¶11-12.) 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

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

The proposed settlement satisfies each of these factors. Class Counsel conducted extensive formal and informal discovery before entering into meaningful settlement negotiations in this matter. (*Id*. at Kingsley Decl. ¶¶14-19.) This discovery permitted Class Counsel to fairly evaluate the strength of the case and the risks associated with ongoing litigation. (Kingsley Decl. ¶38.) Class Counsel is experienced in handling wage and hour class actions and, after weighing all of the following factors, supports this Agreement. (Kingsley Decl. ¶39.)

1. The Strength of Plaintiffs' Case

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

"Under California's minimum wage law, employees must be compensated for each hour worked at either the legal minimum for the contractual hourly rate, and compliance cannot be determined by averaging hourly compensation." *Bluford*, 216 Cal. App. 4th at 872; *Armenta v. Osmose, Inc.*, 135 Cal.App.4th 314, 324 (2005 ("While the averaging method utilized by the federal courts to assess whether a minimum wage violation has occurred may be appropriate when considered in light of federal public policy, it does not advance the policies underlying California's minimum wage law and regulations.") (emphasis added); see also *Cardenas v. McLane FoodServices, Inc.*, 796 F. Supp. 2d 1246, 1252 (C.D. Cal. 2011) (finding that the federal averaging method did not apply to the payment of piece-rate wages under California law). This was reiterated again recently in *Gonzalez v. Downtown LA Motors, LP*, 215 Cal.App.4th 36 (2013) where the Court concluded that "[a]veraging piece-rate wages over total hours worked results in underpayment of employee wages" Id. at 50. Compensation on a "'Piece rate basis' is a method of payment based on units of production or a fraction thereof." 8 CA ADC § 11140, para. 2.(L). Under California law, workers are entitled to receive paid rest breaks. Wage Order 14 provides in pertinent part the following with regards to California's rest period requirement: "Every employer shall authorize and permit all employees to take rest periods . . . Authorized rest period time shall be counted, as hours worked for which there shall be no deduction from wages." 8 CA ADC § 11140, para. 12 (emphasis added). This same Wage Order defines "Hours Worked" as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Id., para. 2.(G). "Hours Worked," in turn, must be compensated at the employees' regular rate and in no case less than the minimum wage. 8 CA ADC § 11000 (Order Regulating the Minimum Wage), para. 2.

Here, Plaintiff alleges that FAM failed to pay for the time it required warehouse employees to undergo pre-work temperature checks from approximately March 15, 2020 through September 30, 2022. (Kingsley Decl. ¶40.) Labor Code §§ 510, 1194 and 1199 require an employer to compensate its employees at the rate of no less than one and one-half times the regular rate of pay for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek. Plaintiff and the Proposed Class were forced to work on a regular and consistent basis without receiving compensation for all hours worked at the appropriate rate.

Plaintiff specifically alleges that Defendant required Plaintiff and other warehouse workers to report to the job site and complete temperature checks before the scheduled start of each shift. (Kingsley Decl. ¶41.) Plaintiff contends that the temperature checks, in fact, occurred prior to clocking in at both of FAM's California warehouses. (*Id.*) The line at the temperature check station caused employees to need to wait over five minutes before clocking in. (*Id.*) As such, Plaintiff and the Proposed Class were routinely required to work "off the clock" to complete these temperature checks. (*Id.*)

However, Defendant vigorously contested this claim. (Kingsley Decl. ¶42.) In opposition to class certification, and ultimately at trial, Defendant would argue that its HR department sent emails instructing employees to clock in prior to submitting to the temperature check. (*Id.*) Thus, Defendant would argue, that its policies were valid and that any violations arising from this policy were one-offs and a deviation from company policy. (*Id.*) Defendant would likely produce witnesses in opposition to class certification and at trial that would testify as such. (*Id.*) While Plaintiff disagrees with Defendant's arguments, such arguments presented risks on the merits. (*Id.*) Beyond the merits risk, Defendant also argued that this claim would be difficult to certify because it requires determining the length of time each class member spent having his/her temperature taken. (*Id.*) Although Plaintiff believes this claim is still certifiable, doing so would require expensive expert analyses that would take away from the class's net recovery. (*Id.*)

b) The Risks Associated with the Meal Break Claim

Labor Code section 512 provides: "An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes . . . ." (See also Wage Order 7-2001(11)(A).) Pursuant to the Labor Code and applicable Wage Order, an employer's obligation to provide a meal period is "triggered" upon the employee working five hours. (See *Brinker*, supra, 53 Cal.4th at p. 1039.)

Here, Plaintiff alleges that Defendant's companywide practice was to relieve employees for lunch using a bell. (Kingsley Decl. ¶43.) Plaintiff contends that he can specifically identify violations arising from this procedure through the timekeeping and payroll data that the bell did not always give employees enough time to clock out before the fifth hour of work. (*Id.*) Moreover, there were often long lines at the timeclock both leaving and returning from lunch. (*Id.*) Thus, Plaintiff alleges that even where the data might show a 30-minute meal period, employees had to spend part of this time waiting to clock back in, meaning that the full 30 minutes was not "uninterrupted," and part of the time was under the employer's control. (*Id.*) Plaintiff further alleges that walking from the workstation to the break area was approximately a three-minute walk. (*Id.*)

However, Defendant contends that it implemented a 40-minute meal period to allow employees to still receive a 30-minute break, taking into account the time spent waiting to access the timeclock and walking to and from the break area. (Kingsley Decl. ¶44.) At trial, Defendant would argue that the implementation of this 40-minute meal period would minimize any liability for meal premiums. (*Id.*) Furthermore, as with the temperature check claim, Defendant would further argue that the time spent waiting in line for the time clock or walking to the break area are individualized questions that would vary day-to-day and person-to-person. (*Id.*) As such, while Plaintiff still believes that this claim is still certifiable based on review of the time records, Plaintiff still understands the risk of class certification, the risk of prevailing on the merits, and the uncertainty of whether they could collect the full value of the claim if he won. (*Id.*)

Moreover, Defendant identified at least 106 class members who signed arbitration agreements. (Kingsley Decl. ¶45.) Defendant contends that the number of arbitration signers is, in fact, much higher, and that all of these individuals waived their right to participate in a class action. The Parties dispute whether the arbitration agreements are valid, but Plaintiff acknowledges the risk that Defendant could prevail if this case moves forward. (*Id.*)

c) The Risks Associated with the Rest Period Claim

Employees are entitled to a paid ten (10) minute rest break for every four (4) hours worked, or major fraction thereof. (Cal. Code Regs., tit. 8, § 11040, subd. 12(A).) Labor Code section 226.7, subdivision (c), requires an employer to pay an additional hour of compensation for each workday the employer fails to provide a rest period according to law.

Plaintiffs and the Class Members' rest period claims arise from an alleged common course of conduct wherein Defendant did not provide employees with the opportunity to take a third 10-minute rest break during their shifts in compliance with California law. (Kingsley Decl. ¶46.) The

California Supreme Court has held: "Employees are entitled to 10 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on." (*Brinker Rest. Corp. v. Superior Court,* supra, 53 Cal.4th at 1029.) In an eight-hour workday, being denied the two paid rest breaks in a day is "essentially perform[ing] 20 minutes of 'free' work." (*Murphy v. Kenneth Cole Productions, Inc*. (2007) 40 Cal.4th 1094, 1104.)

Employers must authorize and permit a net ten-minute paid rest period for every four hours, or major fraction thereof, of work for its employees. If an employer does not, then the employer must pay the employee one hour of pay at the employee's regular rate of pay for each workday that the rest period is not provided. (Cal. Code Regs., tit. 8, § 11040, subd. 12(B).)

Here, Plaintiff maintains that Defendant failed to maintain an accurate policy advising Plaintiff and the Class of its right to take third rest breaks. (Kingsley Decl. ¶47.) Plaintiff and the proposed Class Members consistently worked shifts of up to ten (10) hours and were not authorized or permitted to take third rest breaks. (*Id*.) Therefore, pursuant to Labor Code section 226.7, for each work day that each Class Member was not provided with a rest period, Plaintiff contends that Defendant is liable for one (1) additional hour of pay at the employee's regular rate of compensation. (Lab. Code 226.7, subd. (b); Code Regs., tit. 8, § 11070 (12)(B).)

Specifically, Plaintiff alleges that FAM had a policy not to allow a third rest period on shifts over 10 hours. (Kingsley Decl. ¶48.) Its handbook states that a third rest break will be provided on these shifts, but in practice, Defendant provided breaks to groups of employees at the same time. (*Id*.) Plaintiff contends that while warehouses had a bell that would ring to advise a group of employees that they could leave on break, the bell was not programmed to ring for a third rest break on shifts over 10 hours. (*Id*.) On those shifts, the manager determined when employees would be relieved for a break. (*Id*.) Thus, Plaintiff contends that common practice was not to relieve employees for a third rest break on shifts of over 10 hours because the shift was going to be ending soon. (*Id*.) Plaintiff further contends that he asked whether Defendant would provide a third rest break but was told that it's not provided because the shift was about to end. (*Id*.)

However, Defendant would argue any missed third breaks were confined to a brief period and few class members. (Kingsley Decl. ¶49.) At deposition, Plaintiff testified he and others in the receiving section of FAM's larger warehouse had to ask for third breaks on shifts of 10 hours or more, but also stated that they generally got those breaks. (*Id*.) Plaintiff further testified that once a new supervisor took over 15 months into the 65-month class period, he and the others consistently got third breaks on long shifts. (*Id*.) Defendant would further rely on Plaintiff's testimony about his experience at a smaller warehouse where he finished out his time as Defendant's employee. (*Id*.) There, Defendant would argue, a rogue supervisor refused to permit third breaks to Plaintiff and those employees after 10 hours. (*Id*.) Thus, Defendant would further argue that was only for the receiving department Plaintiff worked in at that small warehouse and for no more than a six-month period, after which he and the others no longer worked shifts of 10 hours or more. (*Id*.)

While Plaintiff does not agree that these arguments are legally correct or persuasive, Plaintiff had to acknowledge that it presents a risk to that could limit Defendant's liability on this claim.

d) 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." An employee acts in "discharge of his duties," for purposes of this Section when the employee acts within the "course and scope of employment." *See O'Hara v. Teamsters Union Local No. 856*, C.A.9 (Cal.)1998, 151 F.3d 1152.

Plaintiff and the Proposed Class routinely used their cell-phones for work-related purposes. (Kingsley Decl. ¶50.) Plaintiff alleges that Defendant encouraged warehouse and other employees to use the ADP and Workday apps on their personal phones to clock into work, but did not reimburse them for cell phone use. (*Id*.) Despite encouraging cell phone use to clock in and out, FAM's handbook and other written policies do not call for warehouse workers to receive cell phone reimbursements. (*Id*.) In addition to the cell phone claim, FAM failed to reimburse home office expenses for the office employees who it required to work from home during COVID. (*Id*.)

Thus, Plaintiff contends that despite these written policies, Defendant had a practice of requiring class members to use their cell phones and vehicles without reimbursement. (*Id.*)

However, Defendant would argue only necessary expenses qualify for reimbursement, and, since all class members were free to use company timeclocks, their cellphones may have been convenient but were in no way necessary to clock in or out. (Kingsley Decl. ¶51.) Defendant would also argue that most class members did not have any need or opportunity to use their cellphones for work. (*Id.*) Those who worked in office jobs could use company phones. (*Id.*) And for those in the warehouse, cellphones were against the rules, as Plaintiff stated in his deposition, describing himself as one of the few trusted to use his phone. (*Id.*) Defendant further maintains that it never required class members to use personal vehicles for work-related purposes, and while those with office jobs did work from home, that was for just a few months early in the COVID pandemic. (*Id.)* Since then, few or no class members have worked from home; and beginning 2024, Defendant has paid all class members and other employees $50 a month to cover any business use of their cellphones and other personal devices. (*Id.*) Based on these risks, Plaintiff believes it was appropriate to discount this claim dramatically for settlement purposes. (*Id.*)

e) The Risks Associated with the Inaccurate Wage Statement Claim

California Labor Code §226(a) requires Defendant to provide its employees with an accurate, itemized written wage statement that shows, in relevant part, gross wages earned, the start and end date of the pay period and all applicable hourly rates and the corresponding number of hours worked. An employee "suffering injury," like Plaintiffs and Class Members, can recover penalties for an employer's "knowing and intentional failure" to comply with Labor Code §226(a). See Labor Code § 226(e)(1). Under the statute, an employee is deemed to "suffer injury" if the employer does not provide accurate and complete information required by Labor Code § 226(a) and the employee cannot "promptly and easily determine" from the wage statement alone the amount of gross wages or net wages paid to the employee or other information specified by Labor Code § 226(a). See Labor Code § 226(e)(2)(B).

Plaintiff alleges a derivative claim that Defendants issued wage statements that allegedly violate Labor Code §§ 226(a)(2) and (9). (Kingsley Decl. ¶52.) Plaintiff alleges that they and Class

Members are issued wage statements that do not accurately show all required information such all applicable hourly rates, and the number of hours worked at the corresponding rate based on Defendant's alleged failure to pay all wages including overtime and meal/rest premiums as discussed above. (*Id.*) However, Plaintiff has to recognize that this is a derivative claim. (*Id.*) Plaintiff does not argue that Defendant failed to show required information on the paystubs it issued to Class Members, only that the paystubs do not accurately show the information as a result of the other claims alleged. (*Id.*) While Plaintiff believes this claim is easily certifiable, Plaintiff has to acknowledge that this is a more difficult argument to prevail on when it comes to assessing liability and a resulting discount for settlement purposes is appropriate. (*Id.*)

Indeed, the California Supreme Court recently affirmed in just May 2024, "[u]nder long established law, an employer cannot incur civil or criminal penalties for the willful nonpayment of wages when the employer reasonably and in good faith disputes that wages are due." (*Naranjo v. Spectrum Sec. Servs., Inc.* (2024) 15 Cal.5th 1056, 1065 ("*Naranjo V*"). Notably, the Court revived the "knowing and intentional" violation standard as applied to claims for wage statement violations, definitively concluding: "an employer's objectively reasonable, good faith belief that it has provided employees with adequate wage statements precludes an award of penalties under section 226, subdivision (e)(1). An employer that believes reasonably and in good faith, albeit mistakenly, that it has complied with wage statement requirements does not fail to comply with those requirements knowingly and intentionally." (*Naranjo V*, 15 Cal.5th at 1087.) In cases such as here, where the wage statement claim is a derivative claim premised on disputed claims without a "standalone" violation pled, Plaintiff acknowledges that recovery of statutory penalties is likely very difficult. (Kingsley Decl. ¶53.) Based on this risk, Plaintiff believes it was appropriate to discount this claim dramatically for settlement purposes. (*Id.*)

f) The Risks Associated with the Waiting Time Penalty Claim

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

Here, some Class Members, including Plaintiff, are no longer employed by Defendants. (Kingsley Decl. ¶54.) Plaintiff contends that Defendants have failed to pay employees wages immediately or within 72 hours of termination and/or resignation by not paying all meal period premiums owed and wages. (Kingsley Decl. ¶55.) Therefore, under California Law, Plaintiff contends that "waiting time" penalties would be triggered for each former employee in the class. (Kingsley Decl. ¶56.) Labor Code section 203 reflects a public policy concern that favors the full and prompt payment of earned wages. (*See, e.g., Barnhill v. Robert Saunders & Co*. (1981) 125 Cal.App.3d 1, 7; *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.)

Plaintiff contends that Defendants' actions were willful, as they have intentionally failed or refused to perform an act which was required to be done. (*See Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201.) "The failure to pay is willful if the employer 'knows what [it] is doing [and] intends to do what [it] is doing', and does not also require proof that the employer acted with "a deliberate evil purpose to defraud work[ers] of wages which the employer knows to be due.'" (*Diaz v. Grill Concepts Services, Inc.* (2018) 23 Cal.App.5th 859, 868.)

In response, Defendants would surely argue that even if, assuming arguendo, Plaintiff were owed any additional wages, they could not establish that Defendants "willfully" withheld final wages from him (or any other former employee), because waiting time penalties may only be recovered if the employer "willfully fails to pay" all final wages due upon separation of employment. (Cal. Lab. Code § 203(a) (emphasis added); see also e.g., *Almanzar v. Home Depot U.S.A., Inc.* (E.D.Cal. 2022) 2022 U.S. Dist. LEXIS 127724, at *36 ("[Labor Code] § 203 ... require[s] a showing of bad faith by the employer.").)

The risk analysis for the section 203 claim flows from the risk analysis for the underlying wage claims discussed above. (Kingsley Decl. ¶57.)

g) The Risks Associated with the PAGA Claim

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

The Parties discounted the PAGA claim for multiple reasons. First, the aggrieved employees' PAGA claims are derivative of all the foregoing class claims. Second, a court has discretion to award less than the maximum penalty. 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"). *See e.g., Carrington v. Starbucks Corporation* (2018) 30 Cal.App.5th 504, 241 Cal.Rptr.3d 647, 669 (affirming award of 10% of maximum PAGA penalty) *See Nordstrom Commissions Cases*, 186 Cal.App.4th 576, 589 (2010) (affirming settlement allocating $0 of $6.4 million settlement to PAGA penalties)[2]. Finally, the Settlement Class is compensated for these violations in the proposed Agreement, and thus any PAGA recovery for these same violations would be duplicative. As such, the Agreement's contemplated PAGA payment of $25,000.00 is appropriate. (Kingsley Decl. ¶58.)

2. <u>The Risk, Expense, Complexity, and Likely Duration of Further Litigation</u>

There is significant expense associated with the class certification process, which the Parties can avoid by entering into the contemplated Agreement now. (Kingsley Decl. ¶59.) If the Court did eventually certify a rest or wage statement class, trial of a case involving 397 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. (*Id.*) 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. (*Id.*) An appeal would result in further delay for the Settlement Class Members who are waiting for a resolution in this matter. (*Id.*)

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[2] *See e.g., Thurman*, 203 Cal.App.4th at 1135-36 (affirming a 30% reduction of a PAGA award where employer took its obligations seriously to correct its violation after receiving notice). On May 11, 2016, following a bench trial, Los Angeles Superior Court Judge John Wiley reduced PAGA penalties from $409,950 to $53,294 after finding the maximum statutory penalty amount to be unjust, arbitrary, oppressive, and/or confiscatory. *(Kaanaana et al. v. Barrett Business Serv.s Inc., et al.,* L.A. Super. Ct., Case No. BC 496090.)

3. The Risk of Maintaining Class Action Status through Trial

This case has not been certified to be tried as a class action. (Kingsley Decl. ¶60.) While Plaintiff believes there is strong evidence to support certification of several possible subclasses (especially a rest period class), certification is always hard fought and subject to judicial discretion. Moreover, in class actions, decertification is always a possibility. (*Id.*) In attempting to certify a class, the parties would need to conduct multiple depositions, including of the Class Representative and of several person(s) most knowledgeable regarding Defendant's meal and rest policies. (*Id.*) There is a risk for both sides as to what these depositions will reveal and whether they will support class certification to the extent expected. (*Id.*)

4. The Amount Offered in Settlement

It was very difficult for the Parties to reach this Settlement of $585,000.00. (Kingsley Decl. ¶61.) This Settlement is the result of adversarial, non-collusive, and arms-length negotiations. (*Id.*) The Parties arrived at it after extensive investigation and discovery, careful evaluation of the law, risks, and all information substantiating the amount of penalties reasonably likely to be awarded to the class were the trier of fact to find Defendant liable, and the assistance of an experienced mediator, Jason Marsili, Esq. (*Id.)*

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

Based upon Plaintiff's expert's analysis, Defendant's recent estimates, and Plaintiff's counsel's extrapolation, Plaintiff assessed full value of the Wage/Overtime claim for 403 class members, without any discount, at approximately $225,407.03.[3] (Kingsley Decl. ¶62.) This calculation assumed that Settlement Class Members worked an average of 4.43 shifts per week and a total of 5 minutes unpaid per shift. (*Id.*) However, Defendant argued that it instructed its employees to clock in prior to submitting to the temperature check, and since this time is off-the-clock and not reflected in the time records, Plaintiff believes this presents a substantial risk and that accepting a discount of the full amount was appropriate. (*Id.*)

The full value of the Meal Period claim, without any discount, was approximately

[3] At the time of mediation, the Parties estimated that there were approximately 375 class members. (Kingsley Dec. ¶ 63.) Since then, the class had grown to approximately 403 class members, and as such Plaintiff's counsel extrapolated the assessments to reflect the increase. (*Id.*)

$315,014.89. (Kingsley Decl. ¶64.) This figure assumes of a 10% violation rate, but as discussed above, Defendant implemented a 40-minute meal period to reduce any meal break violations, and the actual violation rate may be much lower. (*Id.*) As such, Plaintiff determined that accepting a discount of the full amount was also appropriate. (*Id.*)

The full value of the Rest Period claim, without any discount, was approximately $284,409.46. (Kingsley Decl. ¶65.) This figure assumes a 100% violation rate. Again, Defendant presented considerable arguments against this claim (i.e. this claim is limited to only a few class members for a shorter time period), and as such, the violation rate for this claim may be substantially lower. (*Id.*) For the reasons above, Plaintiff determined that accepting a discount of the full amount was again appropriate. (*Id.*)

With regard to the Reimbursement Claim analysis, Plaintiff believed that it was reasonable to value the potential reimbursement at $10 per month, per employee, for reimbursement of personal cell phone usage and home-office usage during the COVID-19 pandemic. This brought the damages for this claim to $142,629.76. (Kingsley Decl. ¶66.)

Thus, Plaintiff assesses the maximum exposure of the core wage and hour claims as $967,461.14. (Kingsley Decl. ¶67.) Thus, the settlement reached here is approximately 60% of the maximum exposure of the core Labor Code violations before penalties. (*Id.*)

Plaintiff also acknowledges that there is substantial risk in pursuing penalty claims as courts have broad discretions when awarding. Plaintiff valued the Wage Statement Penalty Claim, without discount, at $1,612,000 (403 class members × $4,000 maximum wage statement penalty per employee). (Kingsley Decl. ¶68.) Due to the risk discussed above that 226(a) liability wouldn't attach under Naranjo and Maldonado, Plaintiff determined that a steep discount of this claim was fair for settlement purposes. (*Id.*)

Plaintiff valued the Waiting Time Penalty Claim, tied to the Wage/Overtime claim, at $1,127,632.69. (Kingsley Decl. ¶69.) Considering the derivate nature of Labor Code §203 and the dispute over whether class members were owed any wages, Plaintiff determined that accepting a discount on this claim was also appropriate. (*Id.*)

Finally, Plaintiff calculated the value of the PAGA claim at $1,485,6000.00 for the

Aggrieved Employees (using $100 per pay period). (Kingsley Decl. ¶70.) The main risk taken into account with PAGA is the discretionary nature of the penalty award. (*Id.*) "PAGA penalties…are mandatory, not discretionary" and must be awarded upon a showing that Defendant violated the Labor Code. *Amaral v. Cintas Corp. No. 2* 163 Cal. App 4th 1157, 1213 (2008); *Moreno v. Autozone, Inc.* (N.D. Cal. June 5, 2007) No. C05-04432 MJJ, 2007 WL 1650942, at *3. However, PAGA does provide the Court with discretion when it awards these penalties. Labor Code section 2699(e)(2) states that "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." (*See Fleming v. Covidien Inc.* (C.D. Cal., Aug. 12, 2011, No (OPX)), 2011 WL 7563047 [court awarded $18 per wage statement, reflecting 18% of the potential exposure]; *Carrington v. Starbucks Corp.* (2018) 30 Cal. App. 5th 504, 529 [awarding 10% of maximum civil penalty for meal break claims in light of Starbucks' "good faith attempts" to comply and because the violations were minimal]; *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135–1136, disapproved on another ground in *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175, 196, fn. 8 [considering the defendant's inability to pay as a factor in reducing the penalties imposed]; *see also Raines v. Coastal Pacific Food Distributors, Inc.* (2018) 23 Cal.App.5th 667, 681 [noting that a court should consider whether a violation was inadvertent when assessing penalties].)[4] A court exercising its discretion to significantly reduce the civil penalty awarded under PAGA is not a rare occurrence. (*Id.*)

While Plaintiff's assessment of all penalty claims totals over $3,000,000, Plaintiff believes that a discount is appropriate given the broad discretion courts have to reduce such penalties based on several factors, including willfulness. (*Id.*)

Overall, Plaintiff's assessment, the maximum potential value of all of Plaintiff's and the Settlement Class Members' claims was approximately $4,870,293.83. (Kingsley Decl. ¶71.)

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[4] On May 11, 2016, following a bench trial, Los Angeles Superior Court Judge John Wiley reduced PAGA penalties from $409,950 to $53,294 after finding the maximum statutory penalty amount to be unjust, arbitrary, oppressive, and/or confiscatory. (*Kaanaana et al. v. Barrett Business Serv.s Inc., et al.*, L.A. Super. Ct., Case No. BC 496090.))

However, as a result of the substantial risks on the merits and the courts broad discretion in awarding penalties, Class Counsel believes the Gross Settlement Amount of $585,000.00 is fair and reasonable. (*Id.*)

5. <u>The Extent of Discovery Completed and Stage of the proceedings</u>

As outlined above, Class Counsel conducted a thorough investigation into the facts of the claims alleged. (Kingsley Decl. ¶72.) The agreement to settle did not occur until Class Counsel exchanged and possessed sufficient information to make an informed judgement regarding the likelihood of success on the merits and the results that could be obtained through further litigation. (*Id.*)

6. <u>The Experience and Views of Counsel</u>

Kingsley Szamet Employment Lawyers is very experienced in prosecuting employment litigation, and the firm has focused its practice since 2000 on wage, hour, and working condition violations. (Kingsley Decl. ¶¶73-74.) The firm is well versed in class action litigation and has diligently and aggressively pursued this action. (*IbId.*) Kingsley Szamet Employment Lawyers currently serves as Class Counsel for dozens of pending class action lawsuits in Northern, Central, and Southern California. (*Ibid.*) A list of representative cases that Kingsley Szamet Employment Lawyers has handled is included in the accompanying declaration of Eric B. Kingsley. (Kingsley Decl. ¶¶73-74; 84.) After factoring in the risks explained above, Class Counsel believes that the proposed settlement is fair and reasonable. (Kingsley Decl. ¶75.)

7. <u>The Presence of a Governmental Participant</u>

There is no governmental participant in this action. (Kingsley Decl. ¶76.)

8. <u>The Proposed Plan of Allocation Is Fair and Reasonable</u>

Plans of allocation are subject to the same standard of review as class action settlements; they must be "fair, adequate and reasonable." (*See, e.g., Officers for Justice v. Civil Service Comm'n* (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the proposed plan of allocation compensates Settlement Class Members pro rata based on the number of compensable work weeks worked by the Settlement Class Member during the Class Period. The lump sum payment to each Settlement Class Member not excluding him/ herself will be determined on an individualized basis based upon the compensable pay periods worked by the Settlement Class Member. (Ex. 1 at ¶3.2.4.) This allocation distributes Agreement funds proportionally to each class member's potential damages and should therefore be approved as fair, adequate, and reasonable. (Kingsley Decl. ¶77.)

9. <u>The Reaction of the Class Members to the Proposed Settlement</u>

To date, there is one (1) request to be excluded from the proposed Agreement and no objections. (Gonzalez Decl. ¶¶11-12.) Such indicates that the reaction of Settlement Class Members on the whole is positive and weighs in favor of approval.

V. ENHANCEMENT TO PLAINTIFF

Plaintiff's Counsel request an enhancement of $7,500.00 to the Class Representative FIDEL PEREZ for his work on behalf of the Class. (Kingsley Decl. ¶122.) "Courts routinely approve incentive awards to compensate named plaintiffs for the services they provide and the risks they incurred during the course of the class action litigation." *Ingram v. The Coca-Cola Company*, 200 F.R.D. 685, 694 (N.D. Ga 2001) (internal quotations and citations omitted); *see also Van Vranken v. Atlantic Richfiled Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995). In *Coca-Cola*, the Court approved service awards of $300,000 to each named plaintiff in recognition of the services they provided to the class by responding to discovery, participating in the mediation process, and taking the risk of stepping forward on behalf of the class. *Coca-Cola*, 200 F.R.D. at 694; *see also*, *e.g. Van Vranken*, 901 F. Supp. at 299 (approving $50,000 participation award to plaintiffs); *Glass v. UBS Financial Services, Inc.*, Case No. C-06-4068 MMC, 2007 WL 227862, at *17 (N.D. Cal. Jan. 26, 2007) (approving $25,00 enhancement to each named plaintiff).

Mr. Perez is an adequate class representative because he has diligently, adequately and fairly represented the Class and has not placed his interests above any member of the Class. (*see* Declaration of FIDEL PEREZ ("Perez Decl.") ¶¶4-14.)

Here, Class Counsel requests an enhancement for Mr. Perez's valiant effort and time expended in this matter. The time spent by Plaintiff Fidel Perez is significant and includes researching and retaining competent counsel; providing information to Class Counsel regarding the nature of the work at Defendant; compiling relevant documents; working closely with Class

Counsel to develop the theories of liability and martial relevant evidence; regularly discussing the status of the case with Class Counsel; discussing the case via telephone with many Settlement Class Members; making himself available for a full-day of mediation and deposition; and responding promptly to Class Counsel's communications regarding discovery, his deposition, and settlement. (Kingsley Decl. ¶123; Perez Decl. ¶¶4-14.) As set forth in the Agreement, Plaintiff will also be entering into a general release of liability pursuant to Civil Code Section 1542. (Kingsley Decl. ¶124; Ex. 1 at ¶5.1.1.)

Class Counsel considers this to be a fair and reasonable enhancement. (Kingsley Decl. ¶125.) The enhancement takes into consideration the time, effort, and expense incurred by Mr. Perez in coming forward to litigate this matter on behalf of all Settlement Class Members. (Kingsley Decl. ¶126.) Additionally, the Class Representative was at risk for paying for Defendant's legal fees and costs in the event that Defendant prevailed at trial. (Kingsley Decl. ¶127.)

VI. SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY

As indicated on the Proof of Service, Plaintiff's Motion for Final Approval of Class Action Settlement ("Motion") 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 Eric B. Kingsley as Exhibit "6." (Kingsley Decl. ¶129.)

VII. CONCLUSION

Plaintiff respectfully submits that the proposed Agreement is fair, adequate, reasonable, and in the best interest of the Settlement Class Members. Therefore, Plaintiff respectfully requests that the Court (1) grant Final Approval of the Agreement and all of its terms; (2) award attorneys' fees and costs in the amount detailed in the concurrently filed Motion for Attorneys' Fees and Costs; (3) award Phoenix Class Action Administration Solutions claims administration fees of $8,750.00; and (4) award the Class Representative an enhancement of $7,500.00; and (5) enter judgment.

DATED: May 28, 2026

KINGSLEY SZAMET EMPLOYMENT LAWYERS

By: ______________________

Eric B. Kingsley
Kelsey M. Szamet
Jessi Bulaon
Attorneys for Plaintiff FIDEL PEREZ 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 May 28, 2026, 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:

ED GREGORY LAW OFFICE
Ed Gregory
1528 Marion Drive
Email: edgregorylaw@outlook.com

FAM, LLC
Colleen O'Brien
Nicolas Calzado
5553-B Bandini Blvd.
Bell, CA 90201
Email: cobrien@fambrands.com
ncalzado@fambrands.com

[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 May 28, 2026, at Los Angeles, California.

____
Kimberly Madrid