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Attorneys for Plaintiff and the proposed class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SISKIYOU

MARIA GLORIA F GUINTO, an individual,
on behalf of herself and others similarly
situated,

PLAINTIFF,

v.

C & K MARKET, INC.; and DOES 1 thru 50,
inclusive,

DEFENDANTS.

CASE NO. SCCV-CVCV-2021-0964

**DECLARATION OF KELSEY M.
SZAMET IN SUPPORT OF PLAINTIFF'S
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

*[Filed concurrently with Motion for
Preliminary Approval of Settlement and
[Proposed] Order Thereon]*

Date: February 23, 2023
Time: 9:30 a.m.
Dept.: 2

Complaint Filed: September 1, 2021
Trial Date: None Set

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I, Kelsey M. Szamet, state and declare as follows:

1. I am an attorney admitted before all courts of the State of California and a partner in law firm of Kingsley & Kingsley, APC, counsel of record for Plaintiff in this action. I am personally familiar with the present litigation, including the pleadings, discovery, and filings made in this matter. I make this Declaration from my own personal knowledge, and, if called upon, could and would competently testify to the following.

2. I graduated cum laude from the University of California, San Diego in 2004 with a degree in Human Development. I graduated from the University of California, Los Angeles School of Law in 2008. I am admitted to practice before the following Courts: United States District Court, Northern, Eastern, Southern and Central Districts of California; all California State Courts.

3. I make this Declaration in support of Plaintiff's Motion for Preliminary Approval of the Proposed Class Action Settlement in the above-captioned case.

RELEVANT PROCEDURAL HISTORY

4. On September 1, 2021, Plaintiff filed a Class Action Complaint against Defendant Superior Court for the State of California, County of Siskiyou, Case No. SCCVCV21-0964, seeking recovery for: (1) failure to pay wages and/or overtime under California Labor Code sections 510, 1194, and 1199; (2) failure to reimburse expenses pursuant to California Labor Code section 2802; (3) failure to provide accurate itemized wage statements pursuant to California Labor Code section 226(a); (4) penalties pursuant to California Labor Code section 203; and, (5) violation of Business & Professions Code section 17200 (hereafter, the “Complaint”). Also on September 1, 2021, Plaintiff sent a notice letter, pursuant to California Labor Code § 2699, *et seq.*, the Private Attorneys General Act (“PAGA”), to the California Labor Workforce Development Agency (“CLWD”) regarding her intent to seek civil penalties for the California Labor Code violations.

5. On January 7, 2022, Plaintiff filed a First Amended Class and Representative Complaint adding an additional cause of action for penalties pursuant to California Labor

1 Code section 2699, *et seq.* based upon the same alleged California Labor Code violations at issue
2 in the Complaint. (the “Amended Complaint”).)

3 6. Defendant filed a notice of removal on or around October 15, 2021, removing the
4 state action to the United States District for the Eastern District of California, Sacramento
5 Courthouse, Case No. 2:21-CV-01925-TLN-DMC (hereafter, the “Action”).

6 7. The Parties stipulated to remand and now present the proposed Settlement to the
7 Court for preliminary approval.

8 **THE DISCOVERY PROCESS AND MEDIATION**

9 8. Buckley which led to an agreement to settle the Action on a class-wide and
10 representative basis, subject to Court approval.

11 9. In preparation for mediation, Defendant informally produced Plaintiff’s personnel
12 file and a sampling of time and pay data, among other necessary records, for members of the Class
13 on or around September 12, 2022 for mediation purposes only.

14 10. Plaintiff worked with an expert to review and analyze these records.

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

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

CERTIFICATION FOR SETTLEMENT PURPOSES

13. Plaintiff maintains that the proposed settlement Class is ascertainable for several reasons: First, Defendant has agreed in the Agreement to provide a class list to the Administrator containing the name, last known mailing address, social security number, and number of Class Settlement Period Workweeks and PAGA Pay Periods for all putative class members after issuance of the preliminary approval order.

14. The Class consists of Defendant's employees, and Defendant is required to keep records of its employees' names, home addresses, and social security numbers.

15. Defendant informally produced Plaintiff's personnel file and sampling time and pay data for members of the Class containing class member contact information, which confirms that all Class members may be readily identified based on Defendant's records.

16. Plaintiff is confident she will be able to establish that the proposed settlement Class is ascertainable and sufficiently numerous.

17. Plaintiff argues that there are questions of law and fact common to the proposed settlement Class that predominate over any questions affecting only individual Class members.

18. These common questions include:

- 1) Whether Defendant failed to pay all wages and/or overtime compensation;
- 2) Whether Defendant failed to reimburse business-related expenses;
- 3) Whether Defendant failed to provide accurate itemized wage statements;
- 4) Whether Defendant failed to pay compensation due and owing upon termination of employment;
- 5) Whether Defendant engaged in unfair competition; and,
- 6) Whether Defendant violated § 2699, et seq. of the Labor Code by engaging in the acts previously alleged.

19. Plaintiff's challenge to Defendant's uniform policies and practices involves common factual and legal issues that are amenable to class treatment.

20. Plaintiff maintains that the proposed settlement Class suffered the same injuries, in

the same manner: (1) Class members were not properly paid all wages/overtime; (2) Class members were not provided accurate itemized wage statements; (3) Class members were not reimbursed for business-related expenses; and (4) Class members were not paid all wages owed upon termination/resignation.

21. Accordingly, for purposes of settlement, certification for settlement purposes is appropriate.

22. Plaintiff worked as a supermarket employee for Defendant from approximately August 2020 through September 2020, earning \$13/hour, including non-discretionary bonus pay.

23. Plaintiff alleges that she: (1) worked without being paid all wages and/or overtime as a result of Defendant's failure to blend non-discretionary compensation into the regular rate of pay for the purpose of determining the correct overtime rate; (2) without being reimbursed for costs associated with personal cell-phone usage; (3) worked without being provided accurate itemized wage statements that share the same alleged defect of failing to account for the unpaid wages, overtime, and correctly blended rate; and (4) worked without being paid all wages due upon separation. She also alleges that she experienced derivative claims for unfair business competition (B&P Code §17200) and Labor Code §2699, *et seq.*

24. Plaintiff also contends that her claims are typical of those of the settlement Class.

25. Plaintiff believes that she is capable of fairly representing and adequately protecting the interests of the proposed Settlement Class Members.

26. The members of the proposed settlement class all worked for Defendant during the relevant time period and incurred the same type of alleged damages with regard to Defendant's alleged violations of the law.

27. Plaintiff has agreed to serve as Class Representative and has retained qualified Counsel who is experienced in prosecuting wage and hour class actions.

28. This demonstrates her commitment to bringing about the best possible results for the benefit of the proposed settlement class.

29. Plaintiff has provided her Counsel with all necessary and pertinent information.

30. She has been a very active participant in the litigation including having frequent

1 contact with Settlement Class Members and working closely with Class Counsel to develop the
2 theories of liability.

3 31. Plaintiff has provided her Counsel with all necessary and pertinent information.

4 32. She also was informed of and involved in all of the Settlement negotiations.
5 Therefore, Plaintiff believes that she has and will continue to adequately represent the proposed
6 Settlement Class Members.

7 33. Plaintiff has provided her Counsel with all necessary and pertinent information.

8 34. Plaintiff contends the superiority of class treatment is evident here because
9 individual pursuit of class members' claims may not be economically viable.

10 35. The only alternative to certification would be to force over 1,024 employees to join
11 this action, file individual, uniform actions, or abandon their legal rights altogether.

12 36. Plaintiff maintains that this economic reality would result in a windfall for
13 Defendant if this case were not certified.

14 **THE PROPOSED SETTLEMENT**

15 37. For purposes of Settlement, the settlement class is defined as:

16 "All individuals who are employed or have been employed as an hourly
17 employee by C&K MARKET, INC., in the State of California who worked
18 one or more pay periods during the Class Settlement Period" ("Class").

19 38. The Class Settlement Period is September 1, 2017 through September 19, 2022.

20 39. Based on documents and other information produced by Defendant, there are
21 approximately 1,024 members in the Class.

22 40. For purposes of Settlement, the aggrieved employees are defined as:

23 "All individuals who are employed or have been employed as an hourly
24 employee by C&K MARKET, INC., in the State of California who worked
25 one or more pay periods during the PAGA Settlement Period" ("Aggrieved
26 Employee" or "PAGA Member").

27 41. The PAGA Settlement Period is September 1, 2020 through September 19, 2022.

28 42. Based on documents and other information produced by Defendant, there are
approximately 1,024 Aggrieved Employees.

43. As detailed fully in the Agreement, the Settlement provides for Defendant to pay a

1 Gross Settlement Amount of \$750,000.00, which includes the sum of the Individual Class
2 Payments, the Class Representative service award, the Class Counsel Award, PAGA Payment, and
3 the Settlement Administration Costs.

4 44. The Net Settlement Amount is the Gross Settlement Amount, less Class Counsel
5 Award, Class Representative Enhancement, PAGA Payment, and Settlement Administration Costs

6 **KULLAR ANALYSIS**

7 45. The discovery conducted in this lawsuit permitted Class Counsel to fairly evaluate
8 the strength of the case and the risks associated with ongoing litigation.

9 46. Class Counsel is experienced in handling wage and hour class actions and, after
10 weighing all of the following factors, supports this Agreement.

11 47. Plaintiff maintains that she and the members of the Class earned non-discretionary
12 bonus pay, which appear on the paystubs as "Sun1" and "BON2".

13 48. Plaintiff contends that Defendant failed to include Plaintiff's and the Class's non-
14 discretionary bonus pay in the regular rate calculation thus Defendant underpaid Plaintiff and the
15 Class members whenever they worked overtime and earned non-discretionary bonus pay in the
16 same pay period.

17 49. As a result of this alleged failure to properly blend, Plaintiff maintains that
18 Defendant underpaid Plaintiff and Class Members in pay periods when they worked overtime and
19 also earned non-discretionary bonus pay in the same pay period.

20 50. Plaintiff contends that Defendant owes unpaid overtime wages to Plaintiff and the
21 Class members as a result.

22 51. Because this claim can be readily analyzed from Defendant's time and pay records,
23 Plaintiff felt confident that this claim was certifiable and that he would likely prevail on the merits
24 at trial.

25 52. Defendant argued that it did properly blend, but to the extent that a trier of fact
26 found that it did not, the core wage exposure was quite minimal because any alleged failure to
27 blend would only result in only a few dollars being owed to any given Class Member during a
28 specific pay period when they worked overtime and also earned non-discretionary bonus pay in

1 the same pay period.

2 53. Plaintiff further alleges that Class members incurred the cost of cell phone service
3 in performing their work duties. Plaintiff asserts that as a condition of work for Defendant,
4 Defendant requires its alleged employees to view their schedules and clock in and out of their
5 scheduled shifts on their personal cell phones. Plaintiff contends that Settlement Class members
6 were never reimbursed for these necessary business expenses.

7 54. Plaintiff contends that despite these written policies, Defendant had a practice of
8 requiring Class members to use their cell phones without reimbursement.

9 55. Defendant vehemently denied this claim.

10 56. Defendant argued that Plaintiff was not required to use her cellphone for work
11 purposes and that, in fact, Defendant had a written policy that cellphones were not permitted to be
12 used at work by Plaintiff or any Class Members.

13 57. Plaintiff had to acknowledge that there was significant risk associated with this
14 claim.

15 58. Defendant would argue that because there was no common policy permitting (or
16 requiring) cellphone use at work, that Plaintiff would have to inquire of each individual Class
17 Member whether they ever used their cellphones for work purposes, and if so why.

18 59. Such an inquiry, Defendant would argue, would necessitate individual inquiries
19 thereby defeating class certification.

20 60. Were the claim to proceed to trial, Defendant would argue that it would devolve
21 into a series of mini-trials as to each Class Member's experience with cellphones at work and if
22 Defendant were to succeed the value of the claim would be \$0.

23 61. Based on this risk, Plaintiff believes it was appropriate to discount this claim for
24 settlement purposes.

25 62. Plaintiff maintains that Defendant issued wage statements that allegedly violate
26 Labor Code §§ 226(a)(2) and (9).

27 63. Plaintiff alleges that she and Class Members are issued wage statements that do not
28 accurately show the applicable overtime rate and the number of hours worked at the corresponding

1 rate based on Defendant's alleged failure to blend discussed above.

2 64. Plaintiff has to recognize that this is a derivative claim.

3 65. Plaintiff does not argue that Defendant failed to show any of the required
4 information on the paystubs it issued to Class Members, only that the paystubs do not *accurately*
5 show the information.

6 66. While plaintiff believes this claim is easily certifiable, Plaintiff has to acknowledge
7 that this is a more difficult argument to prevail on when it comes to assessing liability.

8 67. The risk analysis for the section 203 claim flows from the risk analysis for the
9 underlying wage claim discussed above.

10 68. If Defendant could prove, that class members were properly paid for all hours
11 worked at the appropriate overtime rate, there would be no recovery of wages and no waiting time
12 penalties that flow therefrom at all.

13 69. The bigger risk that Plaintiff analyzed, however, is that to establish liability for
14 waiting time penalties, Plaintiff would have to establish not only that the underlying violations
15 occurred, but also that Defendant's conduct was "willful."

16 70. If Defendant could establish that any alleged failure to blend was the result of
17 mistake or oversight and not "willful", then it is possible that Plaintiff would not be able to recover
18 penalties for this claim.

19 71. Because of this risk, Plaintiff determined that accepting a discount for settlement
20 purposes was appropriate.

21 72. Plaintiff believes that the Agreement's contemplated PAGA payment of
22 \$25,000.00 is appropriate.

23 73. There is significant expense associated with the class certification process, which
24 the Parties can avoid by entering into the contemplated Agreement now.

25 74. If the Court did eventually certify a class, trial of a case involving approximately
26 1,024 Class members would require the retention of expensive expert witnesses, the accrual of
27 extensive litigation costs, and a significant time overlay by the parties.

28 75. 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. An appeal would result in further delay for the Class members who are waiting for a resolution in this matter.

76. This case has not been certified to be tried as a class action. While Plaintiff believes there is strong evidence to support certification of several possible subclasses certification is always hard fought and subject to judicial discretion. Moreover, in class actions, decertification is always a possibility. 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 wage policies. 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.

77. It was very difficult for the Parties to reach this Settlement of \$750,000.00.

78. This Settlement is the result of adversarial, non-collusive, and arms-length negotiations. 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, Daniel J. Buckley.

79. Working with an expert to analyze the time and pay data, Plaintiff assessed the full value of the Minimum Wage/Overtime claim, without any discount, at approximately \$16,304.

80. This calculation was based on the time and pay data for Class Members and examined only the allegedly unpaid wages resulting from Defendant's alleged failure to blend the regular rate for the purposes of determining the correct overtime rate as discussed above.

81. The data shows that the average hourly rate of pay for the Class was \$14.73 during the overall Class Period and \$16.99 in 2022.

82. This brought the damages for this claim to \$668,025 (\$25 per month x 26,721 months in the Class Period = \$668,025).

83. Plaintiff valued the Wage Statement Claim, without discount, at \$1,871,900.

84. Plaintiff used \$50 for the initial wage statement and \$100 for each wage statement issued thereafter for 18,969 pay periods in the wage statement covered period.

85. This claim is derivative of the alleged failure to pay all wages/overtime discussed

1 above.

2 86. Plaintiff valued the Waiting Time Claim, without any discount, at \$3,033,669.

3 87. This claim is also derivative of the alleged failure to pay all wages/overtime
4 discussed above, and considering the derivate nature of Labor Code §203 and the dispute over
5 whether class members were owed any wages, Plaintiff determined that accepting a discount on
6 this claim for purposes of Settlement was appropriate.

7 88. Plaintiff calculated the value of the PAGA claim at \$722,800 for Class members
8 (using \$100 per pay period).

9 89. Plaintiff felt the strongest claim was the regular rate claim and the number of pay
10 periods worked by aggrieved employees during the PAGA period with potential regular rate claims
11 was 7,228 (7,228 pay periods x \$100 per pay period = \$722,800).

12 90. The main risk taken into account with PAGA is the discretionary nature of the
13 penalty award. A judge can award the statutory maximum of \$100 for the initial violation and \$200
14 thereafter or – in theory – one cent per wage statement.

15 91. While there is a dearth of available authority, in Plaintiff's view, were she to
16 succeed on any of the underlying Labor Code violations, it is not likely that a Judge would also
17 award a large amount of penalties of top of any damages recovered. (*And see e.g., Carrington v.*
18 *Starbucks Corporation, supra*, 30 Cal.App.5th 504; *see also Nordstrom Commissions Cases,*
19 *supra*, 186 Cal.App.4th 576, 589.

20 92. Per Plaintiff's assessment, the maximum potential value of all of Plaintiff's and the
21 Class members' claims were she to succeed on the merits of all claims, was approximately
22 \$6,312,698.

23 93. As a result of the risks on the merits, Class Counsel believes the Gross Settlement
24 Amount of \$750,000.00 is fair and reasonable.

25 **ATTORNEY COMPETENCE**

26 94. Kingsley & Kingsley is very experienced in prosecuting employment litigation, and
27 since 2000 we have focused our practice on wage, hour, and working condition violations. My
28 firm is extremely well versed in class action litigation and has diligently and aggressively pursued

1 this action. Kingsley & Kingsley currently serves as class counsel for several dozens of pending
2 class action lawsuits in Northern, Central, Eastern, and Southern California in both State and
3 Federal Court. Below is a small, but representative sampling of wage and hour cases handled by
4 my firm:

- 5 a. *Goodman v. Crystal Ventures, Inc.* (No. BC245561, L.A. Super. Ct.) In January
6 2002, Hon. Anthony Mohr granted final approval of settlement in the gross amount
7 of \$255,000 and the court approved the attorneys' fee request of 33 1/3%.
- 8 b. *Johnston v. The Cheesecake Factory* (No. BC316180, L.A. Super. Ct.) In
9 December 2005, Honorable Rita Miller granted final approval of Settlement in the
10 gross amount of \$4,000,000 and the court granted attorneys' fees request of 30%.
- 11 c. *Tumino v. HOB Entertainment* (No. BC327962, L.A. Super. Ct.) In May 2006, the
12 Honorable Conrad R. Aragon granted final approval of Settlement in the gross
13 amount of \$1,000,000 and the court granted attorneys' fees request of 30%.
- 14 d. *Ryan v. Hilton Hotels Corporation*, (No. BC364260, L.A. Super. Ct.) In March
15 2008, the Honorable Mary Thornton House granted final approval of Settlement in
16 the gross amount of \$1,675,000.00 and the court granted attorneys' fees request of
17 33 1/3%.
- 18 e. *Gerritson v. Styles For Less, Inc.*, (No. BC402921, L.A. Super. Ct.) In September
19 2010, the Hon. Kenneth R. Freeman granted final approval of Settlement in the
20 gross amount of \$2,000,000.00, and the court granted attorneys' fees request of
21 33.3%.
- 22 f. *Lewis v. Collabrus, Inc., et al.*, (No. 109CV-142927, Santa Clara Super. Ct.) In
23 March 2012, the Honorable James P. Kleinberg granted final approval of
24 Settlement in the gross amount of \$2,000,000.00, and the court granted attorneys'
25 fees request of 33.3%.
- 26 g. *Hirschinger v. Blue Cross of California*, Los Angeles Superior Court (No.
27 BC402739, L.A. Super. Ct.) In June 2013, the Honorable Lee Smally Edmund
28 granted final approval of Settlement in the gross amount of \$4,700,000.00, and the

1 court granted attorneys' fees request of 38%.

2 h. *Anderson v. Total Renal Care, Inc.*, (No. BC388335, L.A. Super. Ct.) In January
3 2014, the Honorable William F. Highberger granted final approval of Settlement in
4 the gross amount of \$1,500,000.00 and the court granted attorneys' fees request of
5 33.33%.

6 i. *Rojas, et al. v. Sunview Vineyards of California, Inc.*, Eastern District (1:09-cv-
7 00705 AWIJLT). This certified class action was approved for final settlement by
8 the Honorable Anthony W. Ishii in October 2015, in the gross amount of
9 \$4,550,000.00, with attorneys' fees approved in the amount of \$1,137,500.00.

10 j. *Westbrook v. International Surfacing Systems*, (No. RG10510015, Alameda Super.
11 Ct.) In August 2015, the Hon. Wynne Carvill granted final approval of Settlement
12 in the gross amount of \$995,000.00, and the court granted attorney's fees request
13 of 33.33%.

14 k. *Kane et al. v. Valley Slurry Seal*, (No. CV08-2483, Yolo Super. Ct.) In March 2016
15 after a class trial with a verdict in the class's favor, the Honorable Daniel P.
16 Maguire, awarded Kingsley & Kingsley and co-counsel \$996,232.72 in attorney's
17 fees.

18 l. *Aparacio v. Abercrombie & Fitch Stores, Inc.*, (No. BC499281, L.A. Super. Ct.) In
19 June 2016, the Hon. Kenneth Freeman granted final approval of Settlement in the
20 gross amount of \$2,000,000.00, and the court granted attorney's fees request of
21 33.33%.

22 m. *Isaguirre v. Guess?, Inc., Los Angeles Superior Court (BC357631)*. The matter was
23 proposed for final settlement by the Honorable Richard L. Fruin on February 19,
24 2016, in the gross amount of \$5,250,000.

25 n. *Hirschinger v. Blue Cross of California*, Los Angeles Superior Court (BC402739).
26 The matter was approved for final settlement by the Honorable Lee Smally Edmund
27 in June 2013, in the gross amount of \$4,700,000.00, with attorney's fees request of
28 38%.

- 1 o. *Munoz, et al. v. Giumarra Vineyards Corporation*, United States District Court for
2 the Eastern District of California (Case No.: 1:09-cv-00703 - AWI – JLT). The
3 matter was approved for final settlement by the Honorable Anthony W. Ishii in
4 November 2017, in the gross amount of \$6,100,000.00, plus interest, with
5 attorney’s fees benchmark award of \$1,525,000.
- 6 p. *Pineda, et al. v. Grimmway Enterprises, Inc.*, Kern County Superior Court (BCV-
7 15-101333). The matter was approved for final settlement before the Hon. Stephen
8 D. Schuett, Dept. 10, in January 2018, in the gross amount of \$9,000,000 with
9 attorneys’ fees request of 33.33%.
- 10 95. Kingsley & Kingsley, APC filed its first class certification motion in the year 2000
11 and since that time has been appointed class counsel on dozens of wage and hour class actions that
12 have been approved for class certification. Since 2012, Kingsley & Kingsley, APC has moved for
13 class certification in 15 matters and has successfully obtained class certification in 15 of those
14 cases. A brief sampling of which includes:
- 15 a. *Lewis v. Collabrus, Inc., Santa Clara County Superior Court (109CV-142927)*,
16 *approved for Class Certification in 2011.*
- 17 b. *Melendrez v. JK Communications*, No. BC497692, (L.A. Super. Ct., filed
18 December 19, 2012) (court granted contested class certification and appointed
19 Kingsley & Kingsley as class counsel).
- 20 c. *Amaro, et al v. Gerawan Farming, Inc.*, No. 1:14-cv-00147-DAD-SAB (E.D. Cal.,
21 filed February 3, 2014) (court granted contested class certification and appointed
22 Kingsley & Kingsley as class counsel).
- 23 d. *Suarez v. Mazatlan, Inc.*, No. 37-2015-00002978-CU-OE-CTL (S.D. Super. Ct.,
24 filed January 27, 2015) (court granted contested class certification and appointed
25 Kingsley & Kingsley as class counsel).
- 26 e. *Ruiz v. Daniel C. Salas Harvesting, Inc.*, Kings County Superior Court (16 C 0214).
27 contested class certification granted in June 2020.
- 28 f. *Weldon v. Geo Corrections & Detentions, LLC*, Kern County Superior Court

(BCV-16-102833), contested class certification granted in 2018.

g. *Patton v. Skyler Electric*, Nevada County Superior Court, (CU17-082544), contested class certification granted in June 2020.

h. *Hameister v. Jaco Oil Company*, Kern County Superior Court (BCV-17-102876), contested class certification granted in August 2020.

96. Class Counsel is experienced in the handling of wage and hour class actions and supports this Settlement. Based on its analysis, Class Counsel believes that this settlement is fair and reasonable and in the best interest of the Class.

97. After factoring in the risks explained above, Class Counsel believes that the proposed settlement is fair and reasonable.

98. This allocation distributes Agreement funds proportionally to each Class member's potential damages and should therefore be approved as fair, adequate, and reasonable.

SERVICE AWARD TO THE NAMED PLAINTIFF

99. The Class Representative is entitled to an enhancement for her valiant effort and time expended in this matter. The time spent by MARIA GLORIA F GUINTO 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; and responding promptly to Class Counsel's communications regarding settlement.

100. Thus, in addition to the sums paid to Class members, Plaintiff requests a proposed litigation enhancement in the amount of \$10,000.00, to be paid from the Gross Settlement Amount. As set forth in the Agreement, Plaintiff will also be entering into a general release of liability pursuant to Civil Code Section 1542.

101. Class Counsel considers this to be a fair and reasonable enhancement. The enhancement takes into consideration the time, effort, and expense incurred by Plaintiff in coming forward to litigate this matter on behalf of all Class members. Plaintiff will provide a detailed

1 declaration with the Final Approval Motion detailing her participation and further justification for
2 the enhancement.

3 102. Proof of submission of Plaintiff's Motion, all related documents, and copy of the
4 email from the LWDA confirming receipt is attached hereto as Exhibit "2."

5 **EXHIBITS**

6 103. Attached hereto as Exhibit "1" is a true and correct copy of the fully-executed Class
7 Action and PAGA Settlement Agreement ("Settlement" or "Agreement").

8 104. Attached hereto as Exhibit "2" is a true and correct copy of the proof of submission
9 of Plaintiff's Motion, all related documents, and copy of the email from the LWDA confirming
10 receipt.

11 I declare under penalty of perjury under the laws of the State of California that the
12 foregoing is true and correct.

13 This Declaration was executed this 30th day of January, 2023, in Altadena, California.

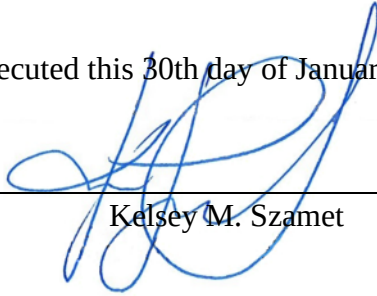
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EXHIBIT "1"

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff MARIA GLORIA F. GUINTO (“Plaintiff”) and defendant C&K MARKET, INC. (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against Defendant captioned *MARIA GLORIA F. GUINTO v. C&K MARKET, INC.*, Case No. SCCV-CVCV-2021-0964 initiated on September 1, 2021 and pending in Superior Court of the State of California, County of Siskiyou.
- 1.2. “Administrator” means Xpand Legal, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4. “Aggrieved Employee” or “PAGA Member” means all individuals who are employed or have been employed as an hourly employee by C&K MARKET, INC., in the State of California who worked one or more pay periods during the PAGA Settlement Period.
- 1.5. “Class” means all individuals who are employed or have been employed as an hourly employee by C&K MARKET, INC., in the State of California who worked one or more pay periods during the Class Settlement Period.
- 1.6. “Class Counsel” means Kingsley & Kingsley, APC.
- 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.8. “Class Data” means Class Member identifying information in Defendant’s possession including the Class Member’s name, last-known mailing address, Social Security number, and number of Class Settlement Period Workweeks and PAGA Pay Periods.
- 1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).

- 1.10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.
- 1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.12. “Class Settlement Period” means the period from September 1, 2017 to September 19, 2022.ⁱ
- 1.13. “Class Representative” or “Plaintiff” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.14. “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.15. “Court” means the Superior Court of California, County of Siskiyou.
- 1.16. “Defendant” means named Defendant C&K MARKET, INC.
- 1.17. “Defense Counsel” means Fisher & Phillips LLP.
- 1.18. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.
- 1.19. “Final Approval” means the Court’s order granting final approval of the Settlement.
- 1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.21. “Final Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.
- 1.22. “Gross Settlement Amount” means \$750,000.00 which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 10 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual

PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator's Expenses.

- 1.23. "Individual Class Payment" means the Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Settlement Period.
- 1.24. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Settlement Period.
- 1.25. "Judgment" means the judgment entered by the Court based upon the Final Approval.
- 1.26. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.27. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.28. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.29. "Non-Participating Class Member" means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.30. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Settlement Period.
- 1.31. "PAGA Settlement Period" means the period from September 1, 2020 to September 19, 2022.ⁱⁱ
- 1.32. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.33. "PAGA Notice" means Plaintiff's September 1, 2021 letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.34. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$6,250.00) and the 75% to LWDA (\$18,750.00) in settlement of PAGA claims.
- 1.35. "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.

- 1.36. "Plaintiff" means MARIA GLORIA F. GUINTO, the named plaintiff in the Action.
- 1.37. "Preliminary Approval" means the Court's Order Granting Preliminary Approval of the Settlement.
- 1.38. "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.
- 1.39. "Released Class Claims" means the claims being released as described in Paragraph 6.2 below.
- 1.40. "Released PAGA Claims" means the claims being released as described in Paragraph 6.3 below.
- 1.41. "Released Parties" means: Defendant C&K MARKET, INC., its parents, subsidiaries, affiliates, insurers, related entities and divisions, and its and their respective; (i) predecessors, successors, and assigns, and (ii) current and former agents, heirs, executors, administrators, principals, officers, directors, shareholders, exempt employees, founders, members, assigns, insurers, attorneys, and all others claiming through or by any of them.
- 1.42. "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.43. "Response Deadline" means 60 days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.
- 1.44. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.
- 1.45. "Workweek" means any week during which a Class Member worked for Defendant for at least one day, during the Class Settlement Period.ⁱⁱⁱ

2. RECITALS.

- 2.1. On September 1, 2021, Plaintiff commenced this Action by filing a Complaint, alleging causes of action against Defendant for 1) Failure to Pay Wages and/or Overtime Under Labor Code Sections 510, 1194, and 1199; 2) Failure to Reimburse Expenses Pursuant to Labor Code § 2802; 3) Violation of Labor Code Section 226(a); 4) Penalties Pursuant to Labor Code Section 203; and 5) Violation of Business & Professions Code Section 17200, in the California Superior Court County of Siskiyou, Case No. SCCV-

CVCV-2021-0964. On January 7, 2022, Plaintiff filed a First Amended Complaint, alleging an additional cause of action against Defendant for penalties pursuant to the Private Attorney General Act of 2004 (“PAGA”) (Lab. Code § 2699, *et seq.*). The First Amended Complaint is the operative complaint in the Action (the “Operative Complaint”). Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint and denies any and all liability for the causes of action alleged.

- 2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice.
- 2.3. On September 19, 2022, the Parties participated in an all-day mediation presided over by Daniel J. Buckley which led to this Agreement to settle the Action.
- 2.4. Prior to mediation negotiating the Settlement, Plaintiff obtained, through informal discovery, pertinent documents and data for the Class and PAGA Members so that the Parties could fully investigate the claims at issue and understand their strengths and weaknesses. Plaintiff’s investigation was sufficient 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*”).
- 2.5. The Court has not granted class certification.
- 2.6. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

- 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 10 below, Defendant promises to pay \$750,000.00 and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement.^{iv} The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.
- 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:
 - 3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative of not more than \$10,000.00 (in addition to any Individual Class

Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Defendant will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court does not approve, or approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment. Plaintiff is entering into a separate general release agreement.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 33-1/3%, which is currently estimated to be \$250,000.00 and a Class Counsel Litigation Expenses Payment of not more than \$15,000.00. Defendant will not oppose requests for these payments provided that they do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$15,000.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$15,000.00, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Settlement Period and (b) multiplying the result by each Participating Class Member's Workweeks.

3.2.4.1. Tax Allocation of Individual Class Payments. 15% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject

to tax withholding and will be reported on an IRS W-2 Form. The 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion").^v The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$25,000.00 to be paid from the Gross Settlement Amount, with 75% (\$18,750.00) allocated to the LWDA PAGA Payment and 25% (\$6,250.00) allocated to the Individual PAGA Payments.

3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$6,250.00) by the total number of PAGA Settlement Period Pay Periods worked by all Aggrieved Employees during the PAGA Settlement Period and (b) multiplying the result by each Aggrieved Employee's PAGA Settlement Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendant estimates there are 1,024 individuals who collectively worked a total of 106,884 Workweeks.

4.2. Class Data. Not later than 15 days after the Court grants Preliminary Approval of the Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any

extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

- 4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than 20 days after the Effective Date.
- 4.4. Payments from the Gross Settlement Amount. Within 15 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.
 - 4.4.1. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 120 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.
 - 4.4.2. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.
 - 4.4.3. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the

Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). If the Court does not approve of such, the Parties will agree upon a cy pres recipient within the meaning of CCP §384.

4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

6. RELEASES OF CLAIMS. Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as follows:

6.1 Plaintiff's Release. Plaintiff and his or her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the Class Settlement Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiff's PAGA Notice, or ascertained during the Action and released under 6.2, below. ("Plaintiff's Release.") Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Settlement Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

6.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or Released Party.

6.2 Release by Participating Class Members Who Are Not Aggrieved Employees: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns,

release Released Parties from (i) any and all claims, debts, liabilities, demands, obligations, penalties, guarantees, costs, expenses, attorney's fees, damages, action or causes of action of whatever kind or nature, whether known or unknown, contingent or accrued, that are alleged, or that reasonably could have arisen out of the same facts alleged in the Action, including: (1) failure to pay wages and/or overtime under California Labor Code sections 510, 1194, and 1199; (2) failure to reimburse business-related expenses under Labor Code section 2802; (3) failure to provide accurate itemized wage statements pursuant to Labor Code section 226(a); (4) waiting time penalties pursuant to Labor Code section 203; (5) violation of Business & Professions Code section 17200; and (6) penalties pursuant to Labor Code section 2699 (collectively, the "Released Class Claims") during the Class Settlement Period. Except as set forth in Section 6.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Settlement Period.

- 6.3 Release by Non-Participating Class Members Who Are Aggrieved Employees: All Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Settlement Period facts stated in the Operative Complaint the PAGA Notice and ascertained in the course of the Action including, any and all claims involving any alleged failure to pay unpaid wages, minimum wages, regular wages, overtime and double time wages, unpaid reimbursements and expenses, wage statement violations, separation pay violations, and PAGA penalties (collectively, the "Released PAGA Claims") during the PAGA Settlement Period.

7. **MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly prepare and file a motion for preliminary approval ("Motion for Preliminary Approval") that complies with the Court's current checklist for Preliminary Approvals.

- 7.1 Defendant's Declaration in Support of Preliminary Approval. Within 14 days of the full execution of this Agreement, Defendant will prepare and deliver to Class Counsel a signed Declaration from Defendant and Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator. In their Declarations, Defense Counsel and Defendant shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.
- 7.2 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order

Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, and/or the Administrator; (v) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); and all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator and/or the Cy Pres Recipient. In their Declarations, Plaintiff and Class Counsel Declaration shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

7.3 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court’s Preliminary Approval to the Administrator.

7.4 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court’s concerns.

8. SETTLEMENT ADMINISTRATION.

8.1 Selection of Administrator. The Parties have jointly selected Xpand Legal to serve as the Administrator and verified that, as a condition of appointment, Xpand agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

- 8.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports to state and federal tax authorities.
- 8.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section 468B-1.
- 8.4 Notice to Class Members.
- 8.4.1 No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Workweeks, and Pay Periods in the Class Data.
- 8.4.2 Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice [with Spanish translation, if applicable] substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.
- 8.4.3 Not later than 3 business days after the Administrator’s receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.
- 8.4.4 The deadlines for Class Members’ written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.
- 8.4.5 If the Administrator, Defendant or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons

will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.

8.5 Requests for Exclusion (Opt-Outs).

8.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.

8.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

8.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 6.2 and 6.3 of this Agreement, regardless whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

8.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 6.3 of this Agreement and are eligible for an Individual PAGA Payment.

8.6 Challenges to Calculation of Workweeks. Each Class Member shall have 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks

and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination of the challenges.

8.7 Objections to Settlement.

8.7.1 Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

8.7.2 Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 60 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

8.7.3 Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

8.8 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

8.8.1 Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

- 8.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).
- 8.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include provide the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.
- 8.8.4 Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.
- 8.8.5 Administrator’s Declaration. Not later than 14 days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.
- 8.8.6 Final Report by Settlement Administrator. Within 10 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 15 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all

payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

- 9. CLASS SIZE ESTIMATES AND ESCALATOR CLAUSE** Based on its records, Defendant estimates that, as of the date of this Settlement Agreement, (1) there are 1,024 Class Members and 106,884 total Compensable Work Weeks during the Class Settlement Period.^{vi}

9.1 Increase in Compensable Work Weeks. Upon receipt of the Class Data, in the event that the number of Compensable workweeks exceed this estimate by more than 5%, the Administrator shall notify the Parties. Defendant shall have the option to increase the Gross Settlement Amount by a proportionate amount. For example, if the number of pay periods increase by 7%, Defendant shall have the option to increase the Gross Settlement Amount by 2%. If Defendant elects not to increase the Gross Settlement Amount proportionately, Defendant shall notify Class Counsel of its decision in writing within ten (10) days of receiving the number of Class Members from the Settlement Administrator. Within ten (10) days of receipt of such written notice from Defendant, Plaintiff shall have the option to terminate this Settlement Agreement via written notice to Defense Counsel and the Parties will be restored to their positions prior to the Settlement and the Settlement shall be null and void.

- 10. DEFENDANT'S RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 10% of the total of all Class Members, Defendant may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendant will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendant must notify Class Counsel and the Court of its election to withdraw not later than thirty days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

- 11. MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiff shall provide drafts of these documents to Defense Counsel not later than seven days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

- 11.1 Response to Objections.** Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

- 11.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.
- 11.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.
- 11.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.
- 11.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.
- 12. AMENDED JUDGMENT.** If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

13. ADDITIONAL PROVISIONS.

- 13.1 No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendant reserves the right to contest certification of any class for any reasons, and Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).
- 13.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, any with third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 13.3 No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 13.4 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement

between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.

- 13.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 13.6 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 13.7 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 13.8 No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 13.9 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 13.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 13.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 13.12 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 13.13 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.

- 13.14 Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.
- 13.15 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 13.16 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 13.17 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

Kingsley & Kingsley, APC
Eric B. Kingsley
Kelsey M. Szamet
16133 Ventura Blvd., Suite 1200
Encino, CA 91436

To Defendant:

Fisher & Phillips LLP
Grace Y. Horoupian
2050 Main Street, Suite 1000
Irvine, CA 92614

Fisher & Phillips LLP
Gregory L. Blueford
621 Capitol Mall, Suite 1400
Sacramento, CA 95814

13.18 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

13.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

Plaintiff

Dated: January 17, 2023

DocuSigned by:



MARIA GLORIA F. GUINTO

Defendant

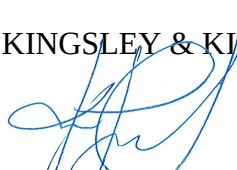
Dated: January 17, 2023

C&K MARKET, INC.

Dated: January 17, 2023

KINGSLEY & KINGSLEY, APC

By:


Eric B. Kingsley
Kelsey M. Szamet
Attorneys for Plaintiff and the Proposed Class

Dated: January 17, 2023

FISHER & PHILLIPS LLP

By:

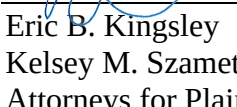

Grace Y. Horoupian
Gregory L. Blueford
Attorneys for Defendant C&K MARKET, INC.

EXHIBIT A

COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL

MARIA GLORIA F. GUINTO, an individual, on behalf of herself and others similarly situated
Plaintiff, v. C&K MARKET, INC.; and DOES 1 thru 50, inclusive, Defendants, Case No.
SCCV-CVCV-2021-0964

***The Superior Court for the State of California authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

You may be eligible to receive money from an employee class action lawsuit (“Action”) against C&K MARKET, INC. (“Defendant” or “C&K” is used herein as a placeholder) for alleged wage and hour violations. The Action was filed by a former C&K employee, MARIA GLORIA F. GUINTO (“Plaintiff”) and seeks payment of (1) back wages and other relief for all individuals who are employed or have been employed as an hourly employee by C&K MARKET, INC., in the State of California who worked one or more pay periods during the Class Settlement Period (September 1, 2017 to September 19, 2022) (“Class” or “Class Members”); and (2) penalties under the California Private Attorney General Act (“PAGA”) for all individuals who are employed or have been employed as an hourly employee by C&K MARKET, INC., in the State of California who worked one or more pay periods during the PAGA Settlement Period (September 1, 2021 to September 19, 2022) (“Aggrieved Employees” or “PAGA Members”).

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendant to fund Individual Class Payments, and (2) a PAGA Settlement requiring Defendant to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

Based on Defendant’s records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$_____ (less withholding) and your Individual PAGA Payment is estimated to be \$_____**. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Defendant’s records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Settlement Period.)

The above estimates are based on Defendant’s records showing that **you worked _____ workweeks** during the Class Settlement Period and **you worked _____ workweeks** during the PAGA Settlement Period. If you believe that you worked more workweeks during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff’s attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires Defendant to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendant.

If you worked for Defendant during the Class Settlement Period and/or the PAGA Settlement Period, you have two basic options under the Settlement:

- (1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Settlement Period wage claims and PAGA Settlement Period penalty claims against Defendant.
- (2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Settlement Period wage claims against Defendant, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

Defendant will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against Defendant that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is [date]	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendant must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or

Written Objections Must be Submitted by [date]	Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.
You Can Participate in the [date] Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on [date]. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Workweeks/Pay Periods Written Challenges Must be Submitted by [date]	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Settlement Period and how many Pay Periods you worked at least one day during the PAGA Settlement Period, respectively. The number Class Settlement Period Workweeks and number of PAGA Settlement Period Pay Periods you worked according to Defendant's records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by [date]. See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former C&K employee. The Action alleges that Defendant failed to pay wages and/or overtime under Labor Code sections 510, 1194, and 1199; reimburse expenses pursuant to Labor Code section 2802; provide accurate itemized wage statements pursuant to Labor Code section 226(a); pay waiting time penalties pursuant to Labor Code section 203; and a violation of Business & Professions Code section 17200. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, *et seq.*) ("PAGA"). Plaintiff is represented by attorneys in the Action: Kingsley & Kingsley, APC ("Class Counsel.")

Defendant strongly denies violating any laws or failing to pay any wages and contends it complied with all applicable laws.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether Defendant or Plaintiff is correct on the merits. In the meantime, Plaintiff and Defendant hired an experienced, neutral mediator in an effort to resolve the Action by negotiating an to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement ("Agreement") and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Defendant have negotiated a proposed Settlement that is subject to the Court's Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendant does not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendant has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Defendant will pay \$750,000.00 as the Gross Settlement Amount (Gross Settlement). Defendant has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel's attorney's fees and expenses, the Administrator's expenses, and penalties to be paid to the California Labor and Workforce Development Agency ("LWDA"). Assuming the Court grants Final Approval, Defendant will fund the Gross Settlement not more than 14 days after the Judgment entered by the Court become final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - A. Up to \$250,000.00 (33-1/3% of the Gross Settlement] to Class Counsel for attorneys' fees and up to \$15,000.00 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
 - B. Up to \$10,000.00 as a Class Representative Award for filing the Action, working with Class Counsel and representing the Class. A Class Representative Award will be the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.
 - C. Up to \$15,000.00 to the Administrator for services administering the Settlement.
 - D. Up to \$25,000.00 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Settlement Period Pay Periods.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the “Net Settlement”) by making Individual Class Payments to Participating Class Members based on their Class Settlement Period Workweeks.
4. Taxes Owed on Payments to Class Members. Plaintiff and Defendant are asking the Court to approve an allocation of 20% of each Individual Class Payment to taxable wages (“Wage Portion”) and 80% to interest and penalties. (“Non-Wage Portion.”) The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Defendant will separately pay employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and Defendant have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don’t cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund in your name. If the monies represented by your check is sent to the Controller’s Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.
6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than [date], that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the [date] Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member’s name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Defendant.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against Defendant based on the PAGA Settlement Period facts alleged in the Action.

7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline enter a

Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff and Defendant have agreed that, in either case, the Settlement will be void: Defendant will not pay any money and Class Members will not release any claims against Defendant.

8. Administrator. The Court has appointed a neutral company, Xpand Legal (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section 9 of this Notice.
9. Participating Class Members’ Release. After the Judgment is final and Defendant has fully funded the Gross Settlement (and separately paid all employer payroll taxes), Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant or related entities for wages based on the Class Settlement Period facts and PAGA penalties based on PAGA Settlement Period facts, as alleged in the Action and resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) any and all claims, debts, liabilities, demands, obligations, penalties, guarantees, costs, expenses, attorney’s fees, damages, action or causes of action of whatever kind or nature, whether known or unknown, contingent or accrued, that are alleged, or that reasonably could have arisen out of the same facts alleged in the Action, including: (1) failure to pay wages and/or overtime under California Labor Code sections 510, 1194, and 1199; (2) failure to reimburse business-related expenses under Labor Code section 2802; (3) failure to provide accurate itemized wage statements pursuant to Labor Code section 226(a); (4) waiting time penalties pursuant to Labor Code section 203; (5) violation of Business & Professions Code section 17200; and (6) penalties pursuant to Labor Code section 2699 (collectively, the “Released Class Claims”) during the Class Settlement Period Except as set forth in Section 6.3 of the Settlement Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Settlement Period.^{vii}.

10. Aggrieved Employees’ PAGA Release. After the Court’s judgment is final, and Defendant has paid the Gross Settlement (and separately paid the employer-side payroll taxes), all Aggrieved Employees will be barred from asserting PAGA claims against Defendant,

whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against Defendant or its related entities based on the PAGA Settlement Period facts alleged in the Action and resolved by this Settlement.

The Aggrieved Employees' Releases for Participating and Non-Participating Class Members are as follows:

All Participating and Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties, from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint the PAGA Notice and ascertained in the course of the Action including, any and all claims involving any alleged failure to pay unpaid wages, minimum wages, regular wages, overtime and double time wages, unpaid reimbursements and expenses, wage statement violations, separation pay violations, and PAGA penalties (collectively, the "Released PAGA Claims") during the PAGA Settlement Period.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$6,250.00 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Settlement Period Pay Periods worked by each individual Aggrieved Employee.
3. Workweek/Pay Period Challenges. The number of Class Workweeks you worked during the Class Settlement Period and the number of PAGA Pay Periods you worked during the PAGA Settlement Period, as recorded in Defendant's records, are stated in the first page of this Notice. You have until [date] to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Defendant's calculation of Workweeks and/or Pay Periods based on Defendant's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek and/or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate

on behalf of Participating Class Members) and Defendant's Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.
2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as MARIA GLORIA F. GUINTO v. C&K MARKET, INC., and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by [date], or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and Defendant are asking the Court to approve. At least [insert] days before the [date] Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website [need details] or the Court's website, if available [need details].

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish

to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is [date].** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action MARIA GLORIA F. GUINTO v. C&K MARKET, INC. and include your name, current address, telephone number, and approximate dates of employment for Defendant and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on [date] at [time] in Department 2 of the Siskiyou Superior Court, located at 411 Fourth Street, Yreka, CA 96097. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website [www.etc.] beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Defendant and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to the administrator's website at [URL of website]. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below.

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

Class Counsel:

Eric B. Kingsley

Kelsey M. Szamet

eric@kingsleykingsley.com

kelsey@kingsleykingsley.com

Kingsley & Kingsley, APC

16133 Ventura Blvd., Suite 1200

Encino, CA 91436

(818) 990-8300

Settlement Administrator:

[Name of Company]

[Email Address]

[Mailing Address]

[Telephone]

[Fax Number]

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void, you should consult the Unclaimed Property Fund [\[website\]](#) for instructions on how to retrieve the funds you will have no way to recover the money.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

ⁱ Whether the “date of preliminary approval” yields a fair and adequate payment to Class Members may depend on whether the Class Members, in exchange for their releases of claims, receive consideration for time worked between the date when parties reached a settlement and the date of preliminary approval. The Parties’ *Kullar* analysis must give the Court sufficient information to allow the Court to determine whether the Gross Settlement Amount “represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing the litigation.” (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 94–95, internal quotation marks omitted.)

ⁱⁱ See endnote ii above.

ⁱⁱⁱ The Parties may need to tailor this language to pay periods or shifts depending on the facts of the case.

^{iv} The Parties are free to negotiate a payment plan structure, if appropriate, and payment deadlines may fall earlier as necessary thereto.

^v Note that this is not the only possible appropriate breakdown depending on the claims at issue in the case (e.g. a settlement that is solely a Labor Code Section 226(a) claim.)

^{vi} Insert negotiated terms, if any, addressing the possibility that Defendant’s estimates of class size, Workweeks or Pay Periods turn out to be understated such as an ADR clause imposing a duty to engage in good faith negotiations or mediation or an “escalator” clause memorializing Defendant’s promise to increase the Gross Settlement Amount in an agreed upon proportion to the percentage by which the calculated class size, Workweeks, or Pay Periods exceeds Defendant’s estimates.

^{vii} Releases in Notice should track the releases in the Settlement Agreement.

EXHIBIT “B”

KINGSLEY & KINGSLEY, APC
ERIC B. KINGSLEY, Esq. (SBN 185123)
eric@kingsleykingsley.com
KELSEY M. SZAMET, Esq. (SBN 260264)
kelsey@kingsleykingsley.com
16133 Ventura Blvd., Suite 1200
Encino, CA 91436
Tel: (818) 990-8300, Fax (818) 990-2903

Attorneys for Plaintiff and the Proposed Class

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

MARIA GLORIA F. GUINTO, an individual,
on behalf of herself and others similarly
situated

PLAINTIFF,

v.

C&K MARKET, INC.; and DOES 1 thru 50,
inclusive,

DEFENDANTS.

CASE NO. SCCV-CVCV-2021-0964

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: **XX**

Time: **XX**

Room: 2

Complaint Filed: September 1, 2021

FAC Filed: January 7, 2022

Trial Date: None Set

1 The Motion for Preliminary Approval of the Class Action and PAGA Settlement
2 Agreement and Class Notice (“Agreement”), a copy of which is attached as to the Declaration of
3 Kelsey M. Szamet as Exhibit “1”, came before this Court on XXXX. The Court, having considered
4 the papers submitted in support of the motion of the parties, **HEREBY ORDERS THE**
5 **FOLLOWING:**

6 1. The Court grants preliminary approval of the Agreement and the Class based upon
7 the terms set forth in the Agreement filed herewith. The Settlement is fair, adequate, and
8 reasonable to the Class. The Court finds that: (a) the Agreement resulted from extensive arm’s
9 length negotiations; and (b) the Agreement is sufficient to warrant notice of the Settlement to
10 persons in the Class and a full hearing on the final approval of the Settlement.

11 2. “Class” means all individuals who are employed or have been employed as an
12 hourly employee by C&K MARKET, INC., in the State of California who worked one or more
13 pay periods during the Class Settlement Period.

14 3. The “Class Settlement Period” is September 1, 2017 through September 19, 2022.

15 4. “Aggrieved Employee” or “PAGA Member” means all individuals who are
16 employed or have been employed as an hourly employee by C&K MARKET, INC., in the State
17 of California who worked one or more pay periods during the PAGA Settlement Period.

18 5. The “PAGA Settlement Period” means the period from September 1, 2020 through
19 September 19, 2022.

20 6. The Settlement falls within the range of reasonableness and appears to be
21 presumptively valid, subject only to any objections that may be raised at the final fairness hearing
22 and final approval by this Court.

23 7. The Court makes the following preliminary findings for settlement purposes
24 only:

- 25 A. The Class, which consists of approximately 1,209 persons, is so numerous
that joinder of all members is impracticable;
- 26 B. There appear to be questions of law or fact common to the Class for
27 purposes of determining whether this Settlement should be approved;
- 28 C. Plaintiff’s claims appear to be typical of the claims being resolved through
the proposed settlement;

1 D. Plaintiff appears to be capable of fairly and adequately protecting the
2 interests of the Class Members in connection with the proposed settlement;

3 E. Common questions of law and fact appear to predominate over questions
4 affecting only individual persons in the Class. Accordingly, the Class
appears to be sufficiently cohesive to warrant settlement by representation;
and

5 F. Certification of the Class appears to be superior to other available methods
6 for the fair and efficient resolution of the claims of the Class.

7 8. The Court approves, as to form and content, the Notice to Class Members in
8 substantially the form attached to the Agreement as Exhibits A (Class Notice).

9 9. The Court approves the procedure for Class Members to object to the Settlement as
10 set forth in the Class Notice to Class Members.

11 10. The Court approves the procedure for Class Members to become Participating Class
12 Members as set forth in the Notice to Class Members.

13 11. The Court directs the mailing of the Notice to Class Members by first class mail to
14 the Class Members in accordance with the Implementation Schedule set forth below. The Court
15 finds that the dates selected for the mailing and distribution of the Notice, as set forth in the
16 Implementation Schedule, meet the requirements of due process and provide the best notice
17 practicable under the circumstances and shall constitute due and sufficient notice to all persons
18 entitled thereto.

19 12. The Court confirms Kingsley & Kingsley, APC as Class Counsel.

20 13. The Court confirms the named Plaintiff in the operative complaint in the Action as
21 the Class Representative.

22 14. The Court approves Xpand Legal as the Administrator.

23 15. The Court orders that pursuant to the California Private Attorneys General Act,
24 Labor Code §§ 2698, *et seq.* ("PAGA"), statutory notice of this Settlement has been and will
25 continue to be given to the Labor & Workforce Development Agency.

26 16. The Court orders the following Implementation Schedule for further proceedings:

27	a.	Preliminary Approval	XXXX
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b.	Deadline for Defendant to Provide Class Data to Administrator	15 business days from Preliminary Approval
c.	Mail Notice to Class Members	14 calendar days from Administrator's receipt of Class Data
d.	Deadline for Class Members to Postmark Any Opt-Out	60 calendar days from mailing of Notice Packet (judged by postmark date)
e.	Deadline for Class Members to Postmark Any Objection	60 calendar days from mailing of Notice Packet (judged by postmark date)
f.	Deadline for Class Counsel to file Motion for Final Approval of Class Settlement	To be determined by the Court _____
g.	Deadline for Class Counsel to file Motion for Class Counsel Award	To be determined by the Court _____
h.	Final Approval Hearing	To be determined by the Court _____

15. IT IS FURTHER ORDERED that if the Court does not execute and file an Order of Final Approval and Judgment, or if the Effective Date of Settlement, as defined in the Agreement, does not occur for any reason, the Agreement and the proposed Settlement that is the subject of this Order shall become null, void, unenforceable and inadmissible in any judicial, administrative or arbitral proceeding for any purpose, and all evidence, court orders and proceedings had in connection therewith, shall be without prejudice to the status quo ante rights of the Parties to the litigation, as more specifically set forth in the Agreement.

16. IT IS FURTHER ORDERED that, pending further Order of this Court, all proceedings in this matter except those contemplated herein and in the Agreement are hereby stayed.

17. The Court expressly reserves the right to adjourn or continue the Final Fairness

Hearing from time to time without further notice to members of the Class.

DATED: _____

JUDGE OF THE SUPERIOR COURT

EXHIBIT “C”

KINGSLEY & KINGSLEY, APC
ERIC B. KINGSLEY, Esq. (SBN 185123)
eric@kingsleykingsley.com
KELSEY M. SZAMET, Esq. (SBN 260264)
kelsey@kingsleykingsley.com
16133 Ventura Blvd., Suite 1200
Encino, CA 91436
Tel: (818) 990-8300, Fax (818) 990-2903

Attorneys for Plaintiff and the Proposed Class

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

MARIA GLORIA F. GUINTO, an individual,
on behalf of herself and others similarly
situated

PLAINTIFF,

v.

C&K MARKET, INC.; and DOES 1 thru 50,
inclusive,

DEFENDANTS.

CASE NO. SCCV-CVCV-2021-0964

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT AND ENTERING
JUDGMENT**

Date: XX

Time: XX

Room: 2

Complaint Filed: September 1, 2021

FAC Filed: January 7, 2022

Trial Date: None Set

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

2 The above captioned Action is a class action lawsuit brought by Plaintiff MARIA GLORIA
3 F. GUINTO (“Plaintiff”) against Defendant C&K MARKET, INC. (“Defendant”). The Motion
4 for Final Approval of Class Action Settlement came before this Court on XXXX.

5 **WHEREAS**, Judge XX granted preliminary approval of the Class Action and PAGA
6 Settlement Agreement and Class Notice (“Agreement”), attached to the concurrently filed
7 Declaration of Kelsey M. Szamet as Exhibit “1”, on XX.

8 **WHEREAS**, Plaintiff MARIA GLORIA F. GUINTO has applied to the Court for an order
9 granting final approval of the Agreement.

10 **WHEREAS**, the Agreement sets forth the terms and conditions of the proposed Settlement
11 and for entry of an order of final approval and entry of final judgment thereon. The Court having
12 read and considered Plaintiff’s Motion for Final Approval of Class Action Settlement; Motion for
13 Approval of Approval of Attorneys’ Fees and Costs; the Declarations of Kelsey M. Szamet, and
14 XXXX of Xpand, Legal; and the supporting documents annexed thereto, now finds:

15 **NOW THEREFORE, GOOD CAUSE APPEARING, IT IS HEREBY ORDERED:**

16 1. The Court has personal jurisdiction over all Class Members and that the Court has
17 subject matter jurisdiction to approve the Settlement;

18 2. The terms of the Settlement are fair, just, reasonable, and adequate, consistent and
19 in compliance with California Code of Civil Procedure, the California and United States
20 Constitutions (including the due process clauses), the California Rules of Court and any other
21 applicable law, and in the best interest of each of the Parties and the Class Members and is hereby
22 finally approved in all respects.

23 3. The Parties are hereby directed to perform the terms of the Settlement as described
24 in the Agreement according to its terms and provisions.

25 4. The Agreement is binding on Plaintiff and all other Class Members, except those
26 timely and properly filed Requests for Exclusions, as well as their heirs, executors, and
27 administrators, successors, and assigns.

28 5. There are XX (XX) valid requests for exclusion.

1 6. It is ordered that the Class is certified for settlement purposes only. The Court finds
2 that an ascertainable class exists and a well-defined community of interest exists in the questions
3 of law and fact involved because in the context of the Settlement: (i) there are questions of law
4 and fact common to the Class Members which, as to the Settlement and all related matters,
5 predominate over any individual questions; (ii) the Claims of Plaintiff are typical of the Claims of
6 the Class Members; and (iii) in negotiating, entering into and implementing the Settlement,
7 Plaintiff and Plaintiff's Attorneys have fairly and adequately represented and protected the interest
8 of the Class Members.

9 7. The Court finds that the Notice and notice methodology implemented pursuant to
10 this Settlement (i) constituted the best practicable notice; (ii) constituted notice that was reasonably
11 calculated, under the circumstances, to apprise Class Members of the pendency of the Action, their
12 right to object to or exclude themselves from the proposed Settlement and their right to appear at
13 the Final Settlement Hearing; (iii) were reasonable and constituted due, adequate and sufficient
14 notice to all persons entitled to receive notice; and (iv) met all applicable requirements of the
15 California Code of Civil Procedure, the California and United States Constitution (including the
16 Due Process Clause), the California Rules of Court and any other applicable law.

17 8. The Class is hereby made final. The Class is defined as: "all individuals who are
18 employed or have been employed as an hourly employee by C&K MARKET, INC., in the State
19 of California who worked one or more pay periods during the Class Settlement Period."

20 9. "Aggrieved Employee" or "PAGA Member" is defined as: "all individuals who are
21 employed or have been employed as an hourly employee by C&K MARKET, INC., in the State
22 of California who worked one or more pay periods during the PAGA Settlement Period."

23 10. The "Class Settlement Period" or "Release Period" means the period from
24 September 1, 2017 to September 19, 2022.

25 11. The "PAGA Settlement Period" means the period from September 1, 2020 to
26 September 19, 2022.

27 12. The Agreement is not an admission by Defendant, nor is this Final Order a finding
28 of the validity of any allegations or of any wrongdoing by Defendant. Neither this Final Order,

the Settlement, nor any document referred to herein, nor any action taken to carry out the Settlement, shall be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant.

13. Pursuant to the Agreement, upon entry of this Final Order, Plaintiff and each Class Member shall fully release and discharge the Released Parties pursuant to the following release, which provides:

any and all claims, debts, liabilities, demands, obligations, penalties, guarantees, costs, expenses, attorney's fees, damages, action or causes of action of whatever kind or nature, whether known or unknown, contingent or accrued, that are alleged, or that reasonably could have arisen out of the same facts alleged in the Action, including: (1) failure to pay wages and/or overtime under California Labor Code sections 510, 1194, and 1199; (2) failure to reimburse business-related expenses under Labor Code section 2802; (3) failure to provide accurate itemized wage statements pursuant to Labor Code section 226(a); (4) waiting time penalties pursuant to Labor Code section 203; (5) violation of Business & Professions Code section 17200; and (6) penalties pursuant to Labor Code section 2699 (collectively, the "Released Class Claims") during the Class Settlement Period Except as set forth in Section 6.3 of the Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Settlement Period.

14. Pursuant to the Agreement, upon entry of this Final Order, Plaintiff and each PAGA Member shall fully release and discharge the Released Parties pursuant to the following release, which provide:

all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Settlement Period facts stated in the Operative Complaint and the PAGA Notice and ascertained in the course of the Action including, any and all claims involving any alleged failure to pay unpaid wages, minimum wages, regular wages, overtime and double time wages, unpaid reimbursements and expenses, wage statement violations, separation pay violations, and PAGA penalties (collectively, the "Released PAGA Claims") during the PAGA Settlement Period.

15. Plaintiff and all Class Members who have not been timely and properly excluded from the Class, and any person acting on their behalf, are permanently barred and enjoined from: (i) filing, commencing, prosecuting, intervening in, participating in (as class members or

1 otherwise), or receiving any benefits or other relief from, any other lawsuit, in any state or federal
2 court, arbitration, or administrative, regulatory or other proceeding or order in any jurisdiction
3 based on the Released Claims; and (ii) organizing such non-excluded Class Members into a
4 separate class for purposes of pursuing as a purported class action (including by seeking to amend
5 a pending complaint to include class allegations, or by seeking class certification in a pending
6 action) any lawsuit based on or relating to the Released Claims;

7 16. The Agreement provides that the Gross Settlement Amount is Seven Hundred Fifty
8 Thousand dollars and zero cents (\$750,000.00). The Net Settlement Amount shall be determined
9 according to the terms of the Agreement.

10 17. The Court orders the calculations and the payments to be made and administered in
11 accordance with the terms of the Agreement.

12 18. The Court hereby finds that Plaintiff and Class Counsel adequately represented the
13 Class for purposes of entering into and implementing the settlement. The Court hereby confirms
14 Kingsley & Kingsley, APC as Class Counsel in the Action.

15 19. The Court hereby finds the unopposed application of Class Counsel for a costs and
16 attorneys' fees award provided for under the proposed Settlement to be fair and reasonable in light
17 of all the circumstances and is hereby granted. Of the Gross Settlement Amount, \$250,000.00
18 shall be paid for attorney fees and \$15,000.00 shall be paid for litigation costs.

19 20. The unopposed application of Class Counsel for a Class Representative Service
20 Payment is hereby granted. Of the Gross Settlement Amount, a \$10,000.00 Class Representative
21 Service Payment shall be allocated to Named Plaintiff MARIA GLORIA F. GUINTO.

22 21. The unopposed application of Class Counsel for claims administration fees to
23 Xpand Legal is hereby granted. Of the Gross Settlement Amount, \$15,000.00 shall be paid for
24 settlement administration fees.

25 22. The Court approves the PAGA Penalties in the amount of \$25,000.00. The Court
26 approves 75% of the PAGA Penalties being allocated to the LWDA in the amount of \$18,750.00.
27 The Court further directs that the remining 25% of the PAGA Penalties, in the amount of \$6,250.00
28 shall be allocated to the Participating Class Member.

23. If a Class Member does not cash his or her settlement check within 120 days, the uncashed funds shall be transmitted by the Administrator to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

24. Defendant shall have no further liability for costs, expenses, interest, attorneys' fees, or for any other charge, expense, or liability, except as provided for in the Agreement.

25. The Parties are authorized, without further approval from the Court, to agree to and to adopt such amendments, modifications and expansions of this Stipulation and all exhibits attached hereto as (i) are consistent with the Final Judgment; and (ii) do not limit the rights of Class Members under the Stipulation.

26. Pursuant to California Rule of Court Rule 3.769(h) and C.C.P. §664.4, the Court shall retain continuing jurisdiction over the Actions, the Parties, and the Class, as well as the administration and enforcement of the terms of the Settlement of this action to enforce the terms of the judgment. Without affecting the finality of the Final Judgment, the Court shall retain continuing jurisdiction over the Actions, the Parties, and the Class, as well as the administration and enforcement of the Settlement. Any disputes or controversies arising with respect to the interpretation, consummation, enforcement, or implementation of the Settlement shall be presented by motion to the Court; provided however, that nothing in this part shall restrict the ability of the Parties to exercise their rights to terminate the Settlement pursuant to the terms of the Agreement.

27. This Final Order shall constitute a final judgment.

28. The Court hereby dismisses the action (including all individual claims and Released Claims presented thereby) with prejudice, without fees or costs to any party except as provided in the Agreement.

DATED: _____

JUDGE OF THE SUPERIOR COURT

EXHIBIT "2"
(PROOF OF SUBMISSION TO THE LWDA)

(PROOF OF SERVICE)
[CCP 1013(a)(3)]

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On January 30, 2023, I served all interested parties in this action the following documents described as: **DECLARATION OF KELSEY M. SZAMET IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Grace Y. Horoupian
ghoroupian@fisherphillips.com
FISHER & PHILLIPS LLP
2050 Main Street, Suite 1000
Irvine, California 92614

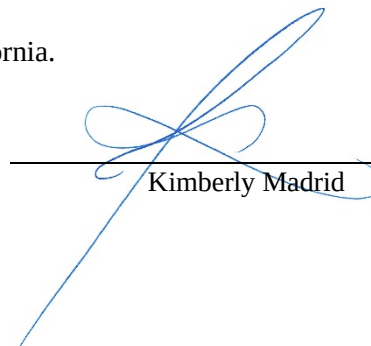
Gregory L. Blueford
gblueford@fisherphillips.com
FISHER & PHILLIPS LLP
621 Capitol Mall, Suite 1400
Sacramento, California 95814

☐ **(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.

☒ **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).

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

Executed on January 30, 2023, at Encino, California.



Kimberly Madrid