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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

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

*[Filed concurrently with Declaration of Kelsey
M. Szamet and Proposed Order]*

Date: February 23, 2023

Time: 9:30 a.m.

Dept.: 2

Complaint Filed: September 1, 2021

Trial Date: None Set

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on February 23, 2023 at 9:30am in Department 2 of the above-entitled court, Plaintiff MARIA GLORIA F GUINTO will move the Court for an Order of Preliminary Approval of the Class Action and PAGA Settlement Agreement (“Agreement”), a copy of which is filed concurrently herewith.

By this Motion, Plaintiff requests that the Court:

(1) Grant preliminary approval of the fully-executed Class Action and PAGA Settlement Agreement (“Settlement” or “Agreement”). A true and correct copy of the Agreement is attached hereto as Exhibit “1”;

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

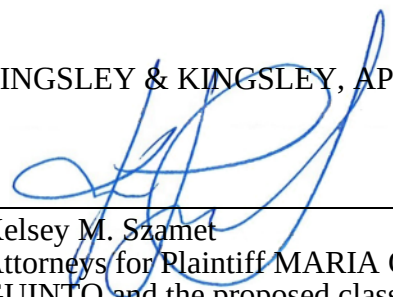
(3) Schedule a hearing on final approval of the proposed Settlement and Plaintiff’s counsel’s application for an award of attorney’s fees and litigation costs at which Class Members may be heard (“Final Approval Hearing”).

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

The Motion will be based on this Notice of Motion, the attached Memorandum of Points and Authorities, the Declaration of Kelsey M. Szamet, the Agreement and Release, all other papers and records on file in this action, and on such oral and documentary evidence as may be presented at the hearing on this Motion.

DATED: January 30, 2023

KINGSLEY & KINGSLEY, APC

By: 

Kelsey M. Szamet
Attorneys for Plaintiff MARIA GLORIA F
GUINTO and the proposed class

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff MARIA GLORIA F GUINTO (“Plaintiff” or “Class Representative”) submits this
4 Memorandum of Points and Authorities in support of Plaintiff’s Motion for Preliminary Approval
5 of the Class Action and PAGA Settlement Agreement reached between Plaintiff and Defendant C
6 & K Market, Inc. (“Defendant”) (Plaintiff and Defendant together, the “Parties”).

7 By this Motion, Plaintiff requests that the Court:

8 (1) Grant preliminary approval of the fully-executed Class Action and PAGA
9 Settlement Agreement (“Settlement” or “Agreement”). A true and correct copy of the Agreement
10 is attached hereto as Exhibit “1”;

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

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

17 **II. FACTUAL BACKGROUND**

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

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

1 civil penalties for the California Labor Code violations above. (*Id.*)

2 On January 7, 2022, Plaintiff filed a First Amended Class and Representative Action
3 Complaint adding an additional cause of action for penalties pursuant to California Labor Code
4 section 2699, *et seq.* based upon the same alleged California Labor Code violations at issue in the
5 Complaint. (the “Amended Complaint”). (Szamet Decl. ¶5.)

6 Defendant filed a notice of removal on or around October 15, 2021, removing the state
7 action to the United States District for the Eastern District of California, Sacramento Courthouse,
8 Case No. 2:21-CV-01925-TLN-DMC (hereafter, the “Action”). (Szamet Decl. ¶6.) The Parties
9 stipulated to remand and now present the proposed Settlement to the Court for preliminary
10 approval. (Szamet Decl. ¶7.)

11 B. The Discovery Process and Mediation

12 On September 19, 2022, the Parties participated in an all-day mediation presided over by
13 Daniel J. Buckley which led to an agreement to settle the Action on a class-wide and representative
14 basis, subject to Court approval. (Szamet Decl. ¶8.) In preparation for mediation, Defendant
15 informally produced Plaintiff’s personnel file and a sampling of time and pay data, among other
16 necessary records, for members of the Class on or around September 12, 2022 for mediation
17 purposes only. (Szamet Decl. ¶9.) Plaintiff worked with an expert to review and analyze these
18 records. (Szamet Decl. ¶10.)

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

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

representative action trial on the merits, and numerous potential appellate issues. (Szamet Decl. ¶12.) Although Defendant denies any liability, Defendant is agreeing to this Agreement solely to avoid the cost of litigation. (*Id.*) Accordingly, the Parties and their counsel desire to fully, finally, and forever settle, compromise and discharge all disputes and claims arising from or relating to the Action on the terms set forth here. (*Id.*)

III. THE PROPOSED SETTLEMENT CLASS SHOULD BE CERTIFIED FOR SETTLEMENT PURPOSES

Originally creatures of equity, class actions have been statutorily embraced by the Legislature whenever “the question [in a case] is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court” (Code Civ. Proc. § 382; *see, e.g., Fireside Bank v. Sup. Court* (2007) 40 Cal.4th 1069, 1078.) They serve an important function by “establishing a technique whereby the claims of many individuals can be resolved at the same time” thereby “eliminat[ing] the possibility of repetitious litigation and provid[ing] small claimants with a method of obtaining redress.” (*Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 469.) Public policy supports the use of class actions to enforce wage and overtime laws for the benefit of workers. (*See Sav-on Drug Stores, Inc. v. Sup. Court* (2004) 34 Cal.4th 319, 340.)

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

The California Supreme Court has identified three certification requirements: (1) “the existence of an ascertainable and sufficiently numerous class”; (2) “a well-defined community of interest”; and, (3) “substantial benefits from certification that render proceeding as a class superior to the alternatives.” (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.) The “community of interest” requirement includes three additional requirements: (1) common

1 questions of law or fact predominant over individual questions; (2) the class representatives have
2 claims or defenses typical of the class; and (3) the class representatives can adequately represent
3 the class. (*Ibid*, citing *Fireside Bank*, *supra*, 40 Cal.4th at 1089.)

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

7 A. Plaintiff Contends That The Proposed Class Is Ascertainable and Sufficiently Numerous

8 1. Ascertainability

9 Putative class members are deemed “ascertainable” when they may be “readily identified
10 without unreasonable expense or time by reference to official records.” (*Rose v. City of Hayward*
11 (1981) 126 Cal.App.3d 926, 932.) In determining whether a class is ascertainable, a court
12 scrutinizes the class definition, the size of the class and the means of identifying class members.
13 (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.)

14 Here, Plaintiff maintains that the proposed settlement Class is ascertainable for several
15 reasons: First, Defendant has agreed in the Agreement to provide a class list to the Administrator
16 containing the name, last known mailing address, social security number, and number of Class
17 Settlement Period Workweeks and PAGA Pay Periods for all putative class members after issuance
18 of the preliminary approval order. (Szamet Decl. ¶13; Ex. 1 at ¶1.8.) Second, the Class consists
19 of Defendant’s employees, and Defendant is required to keep records of its employees’ names,
20 home addresses, and social security numbers. (See Wage Order 7-2001, subsection 7(c); Szamet
21 Decl. ¶14.) Third and finally, Defendant informally produced Plaintiff’s personnel file and
22 sampling time and pay data for members of the Class containing class member contact information,
23 which confirms that all Class members may be readily identified based on Defendant’s records.
24 (Szamet Decl. ¶15.)

25 2. Numerosity

26 There is no set number that is required as a matter of law to maintain a class action. (See,
27 e.g., *Rose v. City of Hayward*, *supra*, 126 Cal.App.3d at p. 934.) Here, the proposed settlement
28 class contains, based upon information and belief, approximately 1,024 employees in the State of

California. (Ex. 1 at ¶4.1.) Therefore, Plaintiff is confident she will be able to establish that the proposed settlement Class is ascertainable and sufficiently numerous. (Szamet Decl. ¶16.)

B. Plaintiff Contends That There Is a Well-Defined Community of Interest

1. There Are Predominant Questions of Law and Fact

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

Here, 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. (Szamet Decl. ¶17.) 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.

(Szamet Decl. ¶18.)

Plaintiff’s challenge to Defendant’s uniform policies and practices involves common factual and legal issues that are amenable to class treatment. (Szamet Decl. ¶19.) As the California Supreme Court has emphasized, “[c]laims alleging that a uniform policy consistently applied to a

1 group of employees is in violation of the wage and hour laws are of the sort routinely, and properly,
2 found suitable for class treatment.” (*Brinker, supra*, 53 Cal.4th at 1033; *see also Bradley v.*
3 *Networkers International, LLC* (2012) 211 Cal.App.4th 1129, 1141-1146.) Moreover, a class of
4 similarly situated employees may be certified based on common questions of fact or law, even if
5 each employee has to establish the amount of his or her damages. (*See Bell v. Farmers Ins. Exch.*
6 (2004) 115 Cal.App.4th 715, 741; *Sav-On Drug Stores, Inc. v. Superior Court, supra*, 34 Cal.4th
7 at 340.)

8 Here, Plaintiff maintains that the proposed settlement Class suffered the same injuries, in
9 the same manner: (1) Class members were not properly paid all wages/overtime; (2) Class
10 members were not provided accurate itemized wage statements; (3) Class members were not
11 reimbursed for business-related expenses; and (4) Class members were not paid all wages owed
12 upon termination/resignation. (Szamet Decl. ¶20.) Plaintiff alleges that Class members worked in
13 the same capacity for the same employer and were subject to the same employment policies and
14 practices, the questions of fact and claims regarding the status of these employees are the same for
15 each member of the settlement Class. Accordingly, for purposes of settlement, certification for
16 settlement purposes is appropriate. (Szamet Decl. ¶21.)

17 2. The Class Representative Has Claims Typical of the Proposed Class

18 A putative class representative’s claim must be “typical,” but not necessarily identical, to
19 the claims of other class members. The test of typicality “is whether other members have the same
20 or similar injury, whether the action is based on conduct which is not unique to the Class
21 Representatives, and whether other class members have been injured by the same course of
22 conduct.” (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502.) Thus, it is sufficient
23 that the representative is similarly situated so that he or she will have the motive to litigate on
24 behalf of all class members. (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502.) Thus,
25 it is sufficient that the representative is similarly situated so that he or she will have the motive to
26 litigate on behalf of all class members. (*See, e.g., Classen v. Weller* (1983) 145 Cal.App.3d 27,
27 45.) It is not necessary that the class representative have personally incurred all of the damages
28 suffered by each of the other class members. (*Wershba v. Apple Computer, Inc.* (2001) 91

1 Cal.App.4th 224, 238.)

2 Plaintiff worked as a supermarket employee for Defendant from approximately August
3 2020 through September 2020, earning \$13/hour, including non-discretionary bonus pay. (Szamet
4 Decl. ¶22.) Plaintiff alleges that she: (1) worked without being paid all wages and/or overtime as
5 a result of Defendant's failure to blend non-discretionary compensation into the regular rate of pay
6 for the purpose of determining the correct overtime rate; (2) without being reimbursed for costs
7 associated with personal cell-phone usage; (3) worked without being provided accurate itemized
8 wage statements that share the same alleged defect of failing to account for the unpaid wages,
9 overtime, and correctly blended rate; and (4) worked without being paid all wages due upon
10 separation. She also alleges that she experienced derivative claims for unfair business competition
11 (B&P Code §17200) and Labor Code §2699, *et seq.* (Szamet Decl. ¶23.) Plaintiff also contends
12 that her claims are typical of those of the settlement Class. (Szamet Decl. ¶24.)

13 3. As The Class Representative, Plaintiff Has and Will Fairly Represent the
14 Interests of the Settlement Class

15 A putative class representative must show that she can adequately represent the class.
16 (*Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.App.4th 1096, 1104.) The representative,
17 through qualified counsel, must be capable of "vigorously and tenaciously" protecting the interests
18 of the class members. (*Simons v. Horowitz* (1984) 151 Cal.App.3d 834, 846.)

19 Plaintiff believes that she is capable of fairly representing and adequately protecting the
20 interests of the proposed Settlement Class Members. (Szamet Decl. ¶25.) Plaintiff's interests in
21 this litigation are coextensive with the interests of the proposed Settlement Class Members. The
22 members of the proposed settlement class all worked for Defendant during the relevant time period
23 and incurred the same type of alleged damages with regard to Defendant's alleged violations of
24 the law. (Szamet Decl. ¶26.) Moreover, Plaintiff has agreed to serve as Class Representative and
25 has retained qualified Counsel who is experienced in prosecuting wage and hour class actions.
26 (Szamet Decl. ¶27.) This demonstrates her commitment to bringing about the best possible results
27 for the benefit of the proposed settlement class. (Szamet Decl. ¶28.) Plaintiff has provided her
28 Counsel with all necessary and pertinent information. (Szamet Decl. ¶29.) She has been a very

1 active participant in the litigation including having frequent contact with Settlement Class
2 Members and working closely with Class Counsel to develop the theories of liability. (Szamet
3 Decl. ¶30.) Plaintiff has provided her Counsel with all necessary and pertinent information.
4 (Szamet Decl. ¶31.) 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. (Szamet Decl. ¶32.) Plaintiff has provided her Counsel with all
7 necessary and pertinent information. (Szamet Decl. ¶33.)

8 C. Plaintiff Contends That The Class Action Vehicle Is Superior to the Alternatives

9 “The ultimate question in every case of this type is whether . . . the issues which may be
10 jointly tried, when compared with those requiring separate adjudication, are so numerous or
11 substantial that the maintenance of a class action would be advantageous to the judicial process
12 and to the litigants.” (*Lockheed Martin, supra*, 29 Cal.App.4th at 1104–1105.) The California
13 Supreme Court has directed the courts to utilize the class action device to fashion “an effective
14 and inclusive group remedy.” (*Richmond v. Dart Indus., Inc.* (1981) 29 Cal.3d 462, 469.)
15 Normally, in making its class certification decision, the Court must determine that a class action
16 would be superior to alternate means for a fair and efficient adjudication. If the causes of action
17 may be adjudicated in a single proceeding, thereby saving time, reducing waste, and limiting
18 duplication of effort, class certification is superior to individual litigation. (*See, e.g., Vasquez v.*
19 *Superior Court* (1971) 4 Cal.3d 800, 816.) Since the Parties agreed to a settlement in principal
20 and now seek Court approval of that Settlement, Plaintiff submits that there is not as much need
21 as there would be in an ordinary motion for class certification for the Court to determine that the
22 case can be manageably tried.

23 Plaintiff maintains that class treatment would be the superior method of managing this case.
24 A class action is superior to individual litigation “when numerous parties suffer injury of
25 insufficient size to warrant individual action and when denial of class relief would result in unjust
26 advantage to the wrongdoer.” (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.) In
27 cases such as this, where individual damages may be small, the class action device is the most
28 feasible method of recovery. (*See, e.g. Lockheed Martin, supra*, 29 Cal.4th at 1131.) In this regard,

the superiority of class treatment is evident here because individual pursuit of class members' claims may not be economically viable. (Szamet Decl. ¶34.) The only alternative to certification would be to force over 1,024 employees to join this action, file individual, uniform actions, or abandon their legal rights altogether. (Szamet Decl. ¶35.) Plaintiff maintains that this economic reality would result in a windfall for Defendant if this case were not certified. (Szamet Decl. ¶36.)

IV. THE PROPOSED SETTLEMENT

A. The Settlement Class

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

“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” (“Class”).

(Szamet Decl. ¶37; Agreement, Ex. 1 at ¶1.5.)

The Class Settlement Period is September 1, 2017 through September 19, 2022. (Szamet Decl. ¶38; Ex. 1 at ¶1.12.) Based on documents and other information produced by Defendant, there are approximately 1,024 members in the Class. (Szamet Decl. ¶39; Ex. 1 at ¶4.1.)

B. Aggrieved Employees

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

“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” (“Aggrieved Employee” or “PAGA Member”).

(Szamet Decl. ¶40; Agreement, Ex. 1 at ¶1.4.)

The PAGA Settlement Period is September 1, 2020 through September 19, 2022. (Szamet Decl. ¶41; Ex. 1 at ¶1.31.) Based on documents and other information produced by Defendant, there are approximately 1,024 Aggrieved Employees. (Szamet Decl. ¶42.)

C. Gross Settlement Amount

As detailed fully in the Agreement, the Settlement provides for Defendant to pay a Gross Settlement Amount of \$750,000.00, which includes the sum of the Individual Class Payments, the Class Representative service award, the Class Counsel Award, PAGA Payment, and the Settlement Administration Costs. (Szamet Decl. ¶43; Ex. 1 at ¶¶1.22, 3.1.)

1 The Net Settlement Amount is the Gross Settlement Amount, less Class Counsel Award,
2 Class Representative Enhancement, PAGA Payment, and Settlement Administration Costs.
3 (Szamet Decl. ¶44; Ex. 1 at ¶1.28.)

4 The Parties estimate the amount of the Net Settlement Amount as follows:

5	Gross Settlement Amount:	\$	750,000.00
6	Less Class Representative Enhancement:	\$	10,000.00
7	Less Class Counsel's Fees:	\$	250,000.00
8	Less Class Counsel's Costs:	\$	15,000.00
9	Less PAGA Payment:	\$	25,000.00
			<i>(\$18,750.00 to the LWDA and \$6,250.00 to Aggrieved Employees)</i>
	<u>Less Administrator Costs:</u>	\$	<u>15,000.00</u>

10 Anticipated Net Settlement Amount \$ 435,000.00
11 (Ex. 1 at ¶3.)

12 D. Individual Settlement Payments

13 The amount of each Participating Class Member's Individual Class Payment is an
14 individualized amount that is based on the number of compensable Workweeks worked by the
15 Participating Class Member during the Class Settlement Period. (Ex. 1 at ¶¶1.23, 3.2.4; *see also*
16 Ex. A to the Agreement at pp. 1, 5, 7 [Class Notice].) This individual amount shall be determined
17 according to the settlement payment formula set forth in the Agreement. (*Ibid.*) The Agreement
18 provides for a specific and detailed Work Week dispute process. (*See* Ex. 1 at ¶8.6; Ex. A to the
19 Agreement at pp. 7 [Class Notice].)

20 The individual PAGA settlement amount of each PAGA Member will be paid from the
21 twenty-five percent (25%) of the PAGA Payment of \$25,000.00 and is an individualized amount
22 that is based on the number of PAGA Settlement Period Pay Periods worked by the PAGA Member
23 during the PAGA Period. (*See* Ex. 1 at § 1, ¶3.2.5.1.) Such payments will be treated as non-wage
24 penalties and liquidated damages, to be reported on an IRS Form 1099-MISC and will not be
25 subject to FICA and FUTA withholding taxes.

26 E. Process for Administering Settlement after Preliminary Approval

27 The detailed Notice Procedure established by the Agreement will efficiently and accurately
28 ensure that Notice is provided to the Settlement Class Members. (Ex. 1 at ¶8.) The Parties have
agreed to use a reputable third-party claims administrator, Xpand Legal, to administer the

1 Agreement. (Ex. 1 at ¶1.2.)

2 F. Process for Settlement Class Members to Respond to Class Notice

3 As detailed in the Agreement, members of the Class will have an opportunity to request
4 exclusion from the Agreement (i.e. opt out) and to object to the Agreement at the Final Approval
5 Hearing. (See Ex. 1 at ¶¶8.5, 8.7; see also Ex. A to the Agreement at pp. 2-5, 8-9 [Class Notice].)

6 The Agreement and Class Notice contain details about the process to request exclusion or object.

7 (*Ibid.*)

8 PAGA Members will not be provided with the opportunity to opt out of the PAGA
9 Settlement. If the Court approves the PAGA Payment, the Administrator will mail out checks and
10 the PAGA Letter, which shall explain the PAGA Payment, to the PAGA Members at the same
11 time the Class members are mailed their Individual Class Payments.

12 G. The Release

13 The Released Class Claims are defined as: “any and all claims, debts, liabilities, demands,
14 obligations, penalties, guarantees, costs, expenses, attorney’s fees, damages, action or causes of
15 action of whatever kind or nature, whether known or unknown, contingent or accrued, that are
16 alleged, or that reasonably could have arisen out of the same facts alleged in the Action, including:

17 (1) failure to pay wages and/or overtime under California Labor Code sections 510, 1194, and
18 1199; (2) failure to reimburse business-related expenses under Labor Code section 2802; (3) failure
19 to provide accurate itemized wage statements pursuant to Labor Code section 226(a); (4) waiting
20 time penalties pursuant to Labor Code section 203; (5) violation of Business & Professions Code
21 section 17200; and (6) penalties pursuant to Labor Code section 2699 (collectively, the “Released
22 Class Claims”) during the Class Settlement Period. Except as set forth in Section 6.3 of this
23 Agreement, Participating Class Members do not release any other claims, including claims for
24 vested benefits, wrongful termination, violation of the Fair Employment and Housing Act,
25 unemployment insurance, disability, social security, workers’ compensation, or claims based on
26 facts occurring outside the Class Settlement Period.” (Ex. 1 at ¶6.2.)

27 The PAGA Members will release and discharge all Released Parties, finally, forever all
28 claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the

1 PAGA Settlement Period facts stated in the Operative Complaint the PAGA Notice and ascertained
2 in the course of the Action including, any and all claims involving any alleged failure to pay unpaid
3 wages, minimum wages, regular wages, overtime and double time wages, unpaid reimbursements
4 and expenses, wage statement violations, separation pay violations, and PAGA penalties
5 (collectively, the “Released PAGA Claims”) during the PAGA Settlement Period. (Ex. 1 at ¶6.3.)

6 Plaintiff will also execute a general release of any and all claims, known or unknown, in
7 favor of the Released Parties. (Ex. 1 at ¶6.1 - 6.1.1.)

8 **V. ARGUMENT**

9 **A. Plaintiff Requests Approval of This Class Action Settlement**

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

17 The proposed settlement satisfies each of these factors. Class Counsel conducted extensive
18 informal discovery before entering into meaningful settlement negotiations in this matter. (*Id* at
19 Szamet Decl. ¶¶8-12.) This discovery permitted Class Counsel to fairly evaluate the strength of
20 the case and the risks associated with ongoing litigation. (Szamet Decl. ¶45.) Class Counsel is
21 experienced in handling wage and hour class actions and, after weighing all of the following
22 factors, supports this Agreement. (Szamet Decl. ¶46.)

23 **1. The Strength of Plaintiff’s Case**

24 **a) The Risks Associated with Minimum Wage/Overtime Claim**

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

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

9 Here, Plaintiff maintains that she and the members of the Class earned non-discretionary
10 bonus pay, which appear on the paystubs as "Sun1" and "BON2". (Szamet Decl. ¶47.) Plaintiff
11 contends that Defendant failed to include Plaintiff’s and the Class’s non-discretionary bonus pay
12 in the regular rate calculation thus Defendant underpaid Plaintiff and the Class members whenever
13 they worked overtime and earned non-discretionary bonus pay in the same pay period. (Szamet
14 Decl. ¶48.) As a result of this alleged failure to properly blend, Plaintiff maintains that Defendant
15 underpaid Plaintiff and Class Members in pay periods when they worked overtime and also earned
16 non-discretionary bonus pay in the same pay period. (Szamet Decl. ¶49.) Plaintiff contends that
17 Defendant owes unpaid overtime wages to Plaintiff and the Class members as a result . (Szamet
18 Decl. ¶50.) Because this claim can be readily analyzed from Defendant’s time and pay records,
19 Plaintiff felt confident that this claim was certifiable and that she would likely prevail on the merits
20 at trial. (Szamet Decl. ¶51.) However, Defendant argued that it did properly blend, but to the
21 extent that a trier of fact found that it did not, the core wage exposure was quite minimal because
22 any alleged failure to blend would only result in only a few dollars being owed to any given Class
23 Member during a specific pay period when they worked overtime and also earned non-
24 discretionary bonus pay in the same pay period. (Szamet Decl. ¶52.)

25 b) The Risks Associated with the Reimbursement Claim

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

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

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

9 Plaintiff contends that despite these written policies, Defendant had a practice of requiring
10 Class members to use their cell phones without reimbursement. (Szamet Decl. ¶54.) Defendant
11 vehemently denied this claim. (Szamet Decl. ¶55.) Defendant argued that Plaintiff was not
12 required to use her cellphone for work purposes and that, in fact, Defendant had a written policy
13 that cellphones were not permitted to be used at work by Plaintiff or any Class Members. (Szamet
14 Decl. ¶56.) As such, Plaintiff had to acknowledge that there was significant risk associated with
15 this claim. (Szamet Decl. ¶57.) Defendant would argue that because there was no common policy
16 permitting (or requiring) cellphone use at work, that Plaintiff would have to inquire of each
17 individual Class Member whether they ever used their cellphones for work purposes, and if so
18 why. (Szamet Decl. ¶58.) Such an inquiry, Defendant would argue, would necessitate individual
19 inquiries thereby defeating class certification. (Szamet Decl. ¶59.) Were the claim to proceed to
20 trial, Defendant would argue that it would devolve into a series of mini-trials as to each Class
21 Member's experience with cellphones at work and if Defendant were to succeed the value of the
22 claim would be \$0. (Szamet Decl. ¶60.) Based on this risk, Plaintiff believes it was appropriate
23 to discount this claim for settlement purposes. (Szamet Decl. ¶61.)

24 c) The Risks Associated with the Inaccurate Wage Statement Claim

25 Labor Code §226(a) requires Defendant to provide its employees with an accurate,
26 itemized written wage statement that shows, in relevant part, all applicable hourly rates and the
27 corresponding number of hours worked. An employee "suffering injury," like Plaintiff and Class
28 members, can recover penalties for an employer's "knowing and intentional failure" to comply

1 with California Labor Code §226(a). See California Labor Code § 226(e)(1). Under the statute,
2 an employee is deemed to “suffer injury” if the employer does not provide accurate and complete
3 information required by California Labor Code § 226(a) and the employee cannot “promptly and
4 easily determine” from the wage statement alone the amount of gross wages or net wages paid to
5 the employee or other information specified by California Labor Code § 226(a). See California
6 Labor Code § 226(e)(2)(B).

7 Plaintiff maintains that Defendant issued wage statements that allegedly violate Labor
8 Code §§ 226(a)(2) and (9). (Szamet Decl. ¶62.) Labor Code § 226(a) specifically requires that the
9 employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her
10 employees, an accurate itemized statement in writing showing all applicable hourly rates in effect
11 during the pay period and the corresponding number of hours worked at each hourly rate by the
12 employee. Plaintiff alleges that she and Class Members are issued wage statements that do not
13 accurately show the applicable overtime rate and the number of hours worked at the corresponding
14 rate based on Defendant’s alleged failure to blend discussed above. (Szamet Decl. ¶63.) However,
15 Plaintiff has to recognize that this is a derivative claim. (Szamet Decl. ¶64.) Plaintiff does not
16 argue that Defendant failed to show any of the required information on the paystubs it issued to
17 Class Members, only that the paystubs do not *accurately* show the information. (Szamet Decl.
18 ¶65.) While plaintiff believes this claim is easily certifiable, Plaintiff has to acknowledge that this
19 is a more difficult argument to prevail on when it comes to assessing liability. (Szamet Decl. ¶66.)

20 d) The Risks Associated with the Waiting Time Penalty Claim

21 This claim alleges that Defendant failed to pay all wages due and owing upon termination
22 or resignation. Labor Code § 203(a) provides:

23 If an employer willfully fails to pay ... any wages of an employee
24 who is discharged or who quits, the wages of the employee shall
25 continue as a penalty from the due date thereof at the same rate until
26 paid or until an action therefor is commenced; but the wages shall
27 not continue for more than 30 days.

26 Under Labor Code § 203, a “‘willful’ failure to pay wages ... occurs when an employer
27 intentionally fails to pay wages to an employee when those wages are due.” Cal. Code Regs., tit.
28 8, § 13520; see also *Diaz v. Grill Concepts Services, Inc.* (2018) 23 Cal.App.5th 859 (“willful”

1 simply means that “the employer intentionally failed or refused to perform an act which was
2 required to be done[.] Willful ... does not necessarily imply anything blameable, or any malice or
3 wrong toward the other party”).

4 Here, Plaintiff contends that Defendant failed to include non-discretionary bonus pay in
5 the regular rate calculation whenever Plaintiff and Class members worked overtime and earn non-
6 discretionary bonus pay in the same pay period. The risk analysis for the section 203 claim flows
7 from the risk analysis for the underlying wage claim discussed above. (Szamet Decl. ¶67.) If
8 Defendant could prove, that class members were properly paid for all hours worked at the
9 appropriate overtime rate, there would be no recovery of wages and no waiting time penalties that
10 flow therefrom at all. (Szamet Decl. ¶68.)

11 The bigger risk that Plaintiff analyzed, however, is that to establish liability for waiting
12 time penalties, Plaintiff would have to establish not only that the underlying violations occurred,
13 but also that Defendant’s conduct was “willful.” (Labor Code § 203; Szamet Decl. ¶69.) If
14 Defendant could establish that any alleged failure to blend was the result of mistake or oversight
15 and not “willful”, then it is possible that Plaintiff would not be able to recover penalties for this
16 claim. (Szamet Decl. ¶70.) Because of this risk, Plaintiff determined that accepting a discount for
17 settlement purposes was appropriate (Szamet Decl. ¶71.)

18 e) The Risks Associated with the PAGA Claim

19 California’s Private Attorneys General Act (“PAGA”), Labor Code § 2698, *et seq.*, permits
20 private litigants to recover civil penalties for violations of the Labor Code. PAGA provides that
21 plaintiffs may recover previously established civil penalties (section 2699(a)) or, if none were
22 established, plaintiffs may recover default penalties provided in section 2699(f) in the amount of
23 \$100 per employee per pay period for the initial violation and \$200 for subsequent violations.

24 Plaintiff discounted the PAGA claim for multiple reasons. First, the aggrieved employees’
25 PAGA claims are derivative of all the foregoing class claims. Second, a court has discretion to
26 award less than the maximum penalty. Labor Code § 2699(e)(2) (“a court may award a lesser
27 amount than the maximum civil penalty amount specified by this part if, based on the facts and
28 circumstances of the particular case, to do otherwise would result in an award that is unjust,

arbitrary and oppressive, or confiscatory”). *See e.g., Carrington v. Starbucks Corporation* (2018) 30 Cal.App.5th 504, 241 Cal.Rptr.3d 647, 669 (affirming award of 10% of maximum PAGA penalty). Finally, the settlement Class is arguably compensated for these violations in the proposed Settlement Agreement, and thus any PAGA recovery for these same violations could be deemed duplicative. As such, Plaintiff believes that the Agreement’s contemplated PAGA payment of \$25,000.00 is appropriate. (Szamet Decl. ¶72.) *See Nordstrom Commissions Cases*, 186 Cal.App.4th 576, 589 (2010) (affirming settlement allocating \$0 of \$6.4 million settlement to PAGA penalties).

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

There is significant expense associated with the class certification process, which the Parties can avoid by entering into the contemplated Agreement now. (Szamet Decl. ¶73.) If the Court did eventually certify a class, trial of a case involving approximately 1,024 Class members would require the retention of expensive expert witnesses, the accrual of extensive litigation costs, and a significant time overlay by the parties. (Szamet Decl. ¶74.) Moreover, given the complexity and unsettled nature of the issues in this case it is likely that any outcome at trial would have resulted in a lengthy and costly appeal. (Szamet Decl. ¶75.) An appeal would result in further delay for the Class members who are waiting for a resolution in this matter. (*Id.*)

3. The Risk of Maintaining Class Action Status through Trial

This case has not been certified to be tried as a class action. (Szamet Decl. ¶76.) 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. (*Id.*) In attempting to certify a class, the parties would need to conduct multiple depositions, including of the Class Representative and of several person(s) most knowledgeable regarding Defendant’s wage policies. (*Id.*) There is a risk for both sides as to what these depositions will reveal and whether they will support class certification to the extent expected. (*Id.*)

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///

1 4. The Amount Offered in Settlement

2 It was very difficult for the Parties to reach this Settlement of \$750,000.00. (Szamet Decl.
3 ¶77.) This Settlement is the result of adversarial, non-collusive, and arms-length negotiations.
4 (Szamet Decl. ¶78.) The Parties arrived at it after extensive investigation and discovery, careful
5 evaluation of the law, risks, and all information substantiating the amount of penalties reasonably
6 likely to be awarded to the class were the trier of fact to find Defendant liable, and the assistance
7 of an experienced mediator, Daniel J. Buckley. (*Id.*)

8 a. Plaintiff's Assessment of Defendant's Maximum Exposure

9 Working with an expert to analyze the time and pay data, Plaintiff assessed the full value
10 of the Minimum Wage/Overtime claim, without any discount, at approximately \$16,304. (Szamet
11 Decl. ¶79.) This calculation was based on the time and pay data for Class Members and examined
12 only the allegedly unpaid wages resulting from Defendant's alleged failure to blend the regular
13 rate for the purposes of determining the correct overtime rate as discussed above. (Szamet Decl.
14 ¶80.) The data shows that the average hourly rate of pay for the Class was \$14.73 during the
15 overall Class Period and \$16.99 in 2022. (Szamet Decl. ¶81.)

16 With regard to the Reimbursement Claim analysis, Plaintiff believed that it was reasonable
17 to value the potential reimbursement at \$25 per month, per employee, for reimbursement of
18 personal cell phone usage. This brought the damages for this claim to \$668,025 (\$25 per month x
19 26,721 months in the Class Period = \$668,025). (Szamet Decl. ¶82.)

20 Plaintiff valued the Wage Statement Claim, without discount, at \$1,871,900. (Szamet Decl.
21 ¶83.) Plaintiff used \$50 for the initial wage statement and \$100 for each wage statement issued
22 thereafter for 18,969 pay periods in the wage statement covered period (Szamet Decl. ¶84.) As
23 noted, this claim is derivative of the alleged failure to pay all wages/overtime discussed above.
24 (Szamet Decl. ¶85.)

25 Plaintiff valued the Waiting Time Claim, without any discount, at \$3,033,669. (Szamet
26 Decl. ¶86.) This claim is also derivative of the alleged failure to pay all wages/overtime discussed
27 above, and considering the derivative nature of Labor Code §203 and the dispute over whether class
28 members were owed any wages, Plaintiff determined that accepting a discount on this claim for

1 purposes of Settlement was appropriate. (Szamet Decl. ¶87.)

2 Finally, Plaintiff calculated the value of the PAGA claim at \$722,800 for Class members
3 (using \$100 per pay period). (Szamet Decl. ¶88.) Plaintiff felt the strongest claim was the regular
4 rate claim and the number of pay periods worked by aggrieved employees during the PAGA period
5 with potential regular rate claims was 7,228 (7,228 pay periods x \$100 per pay period = \$722,800).
6 (Szamet Decl. ¶89.) The main risk taken into account with PAGA is the discretionary nature of
7 the penalty award. A judge can award the statutory maximum of \$100 for the initial violation and
8 \$200 thereafter or – in theory – one cent per wage statement. (Szamet Decl. ¶90.) While there is
9 a dearth of available authority, in Plaintiff’s view, were she to succeed on any of the underlying
10 Labor Code violations, it is not likely that a Judge would also award a large amount of penalties
11 of top of any damages recovered. (Szamet Decl. ¶91) (*And see e.g., Carrington v. Starbucks*
12 *Corporation, supra*, 30 Cal.App.5th 504; *see also Nordstrom Commissions Cases, supra*, 186
13 Cal.App.4th 576, 589.

14 Per Plaintiff’s assessment, the maximum potential value of all of Plaintiff’s and the Class
15 members’ claims were she to succeed on the merits of all claims, was approximately \$6,312,698.
16 (Szamet Decl. ¶92.) However, as a result of the forgoing risks on the merits, Class Counsel
17 believes the Gross Settlement Amount of \$750,000.00 is fair and reasonable. (Szamet Decl. ¶93.)

18 5. The Experience and Views of Counsel

19 Finally, counsel’s experience and success in similar class actions also weigh in favor of
20 preliminary approval. *See Wershba, supra*, 91 Cal.App.4th at 245. Kingsley & Kingsley, APC is
21 very experienced in prosecuting complex employment litigation, and the firm has focused its
22 practice since the year 2000 on complex wage, hour, and working condition violations. (Szamet
23 Decl. ¶¶94-96.) The firm is well versed in class action litigation and has diligently and aggressively
24 pursued this action. (*Id.*) Kingsley & Kingsley, APC currently serves as Class Counsel for dozens
25 of pending class action lawsuits in Northern, Central, and Southern California. (*Id.*) A list of
26 representative cases that Kingsley & Kingsley, APC has handled is included in the accompanying
27 declaration of Kelsey M. Szamet. (*Id.*) After factoring in the risks explained above, Class Counsel
28 believes that the proposed settlement is fair and reasonable. (Szamet Decl. ¶97.)

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

2 Plans of allocation are subject to the same standard of review as class action settlements;
3 they must be “fair, adequate and reasonable.” (*See, e.g., Officers for Justice v. Civil Service*
4 *Comm’n* (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the proposed plan of allocation
5 compensates Class members pro rata based on the number of compensable Work Weeks worked
6 by the Class member during the Class Settlement Period. The lump sum payment to each Class
7 member not excluding him/ herself will be determined on an individualized basis based upon the
8 compensable Work Weeks worked by the Class member. (Ex. 1 at ¶3.2.4.) This allocation
9 distributes Agreement funds proportionally to each Class member’s potential damages and should
10 therefore be approved as fair, adequate, and reasonable. (Szamet Decl. ¶98.)

11 7. The Proposed Notice Fairly Apprises the Class Members of the Terms of the
12 Settlement and of the Class Members’ Rights under the Settlement

13 Plaintiff requests that the Court approve the proposed plan and form of Class Notice. The
14 standard for determining the adequacy of notice is whether the notice has “a reasonable chance of
15 reaching a substantial percentage of the class members.” (*Cartt v. Superior Court* (1975) 50
16 Cal.App.3d 960, 974.) Pursuant to the Agreement, the Notice will be sent to the last known address
17 of all Class members, or to an updated address if one is located in the National Change of Address
18 Database. (Ex. 1 at ¶¶1.10, 4.4.1, 8.4.2). If any Notices are returned as undeliverable, the
19 Administrator will undertake another reasonable address verification measure to locate a valid
20 mailing address and will promptly send the Notice to the new address. (*Ibid.*) As such, the Notice
is likely to reach most, if not all, Class members.

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

27 Here, the Notice clearly explains the proposed Agreement and the options to opt out of the
28 Settlement or object to it at the Final Approval Hearing. (Ex. 1 at ¶8.5, 8.7; *see also* Ex. A to the

Agreement at pp. 2-5, 8-9 [Class Notice].) In short, the Court should approve the proposed Class Notice because it describes the proposed settlement with enough specificity to allow members of the Class to make an informed choice regarding whether to participate.

VI. THE SERVICE AWARD TO THE NAMED PLAINTIFF

The Class Representative is entitled to an enhancement for her valiant effort and time expended in this matter. (Szamet Decl. ¶99.) 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. (*Id.*) 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. (Ex. 1 at ¶3.2.1.) As set forth in the Agreement, Plaintiff will also be entering into a general release of liability pursuant to Civil Code Section 1542. (Szamet Decl. ¶100; Ex. 1 at ¶6.1-6.1.1.)

Class Counsel considers this to be a fair and reasonable enhancement. (Szamet Decl. ¶101.) 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. (*Id.*) Plaintiff will provide a detailed declaration with the Final Approval Motion detailing her participation and further justification for the enhancement. (*Id.*)

VII. SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY

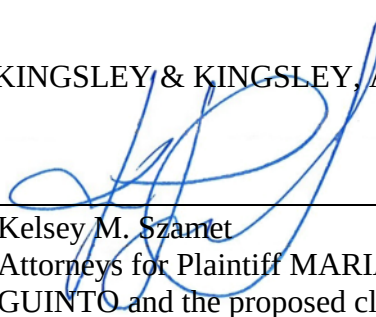
As indicated on the Proof of Service, Plaintiff’s Motion for Approval of Class Action Settlement (“Motion”) will be concurrently uploaded to the Labor and Workforce Development Agency’s (“LWDA”) website on the date this Motion is filed as required by statute. Proof of submission of Plaintiff’s Motion, all related documents, and copy of the email from the LWDA confirming receipt is attached to the Declaration of Kelsey M. Szamet as Exhibit “2.” (Szamet Decl. ¶102.)

1 **VIII. CONCLUSION**

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

9
10 DATED: January 30, 2023

KINGSLEY & KINGSLEY, APC

11
12 By: 

13 Kelsey M. Szamet
14 Attorneys for Plaintiff MARIA GLORIA F
GUINTO and the proposed class

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

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On January 30, 2023, I served all interested parties in this action the following documents described as: **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

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

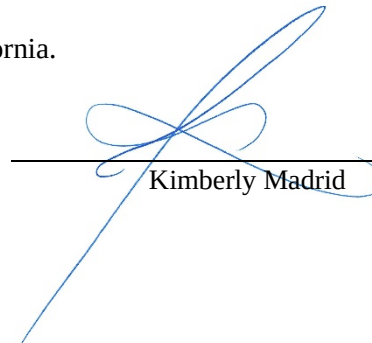
Gregory L. Blueford
gblueford@fisherphillips.com
FISHER & PHILLIPS LLP
621 Capitol Mall, Suite 1400
Sacramento, California 95814

[] (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.

[XX] BY ELECTRONIC MAIL TRANSMISSION: I caused the document to be send to the persons at the e-mail address(es) listed on the attached service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. A pdf copy of which was sent via email to the below email address(es).

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

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



Kimberly Madrid