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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

[Case Assigned for All Purposes to Dept. 2]

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

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

Date: December 12, 2024

Time: 9:30 A.M.

Dept.: Courtroom 2

Complaint Filed: September 1, 2021

Trial Date: None Set

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on December 12, 2024 at 9:30 A.M. in Department 2 of the above-entitled court, Class Counsel for the Settlement Class will, and hereby does, move the Court for an Order Granting Final Approval of the Class Settlement in this case. Class Counsel moves the Court for an order:

1. Granting final approval of the settlement in the case pursuant to the Class Action and PAGA Settlement Agreement (“Agreement”), a copy of which is attached to the concurrently-filed Declaration of Kelsey M. Szamet as Exhibit “1”;

2. Affirming Kingsley Szamet & Ly (formerly Kingsley & Kingsley, APC), as Class Counsel;

3. Affirming Maria Gloria F Guinto as Class Representative and awarding an enhancement award of \$20,000.00;

4. Awarding Xpand Legal claims administration fees of 15,000.00 for its services as Administrator; and,

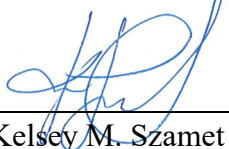
5. Entering judgment.

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

The Motion will be based on this Notice of Motion, the attached Memorandum of Points and Authorities, the Declarations of Kelsey M. Szamet, Jonathan Paul, 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: November 18, 2024

KINGSLEY SZAMET & LY

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 Class Counsel submits this Motion for Final Approval of Class Settlement and requests
4 that the Court:

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

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

10 3. Award Xpand Legal claims administration fees of \$15,000.00 for its services as
11 Administrator;

12 4. Affirm named Plaintiff Maria Gloria F Guinto as Class Representative and award
13 a Class Representative payment of \$20,000.00; and

14 5. Enter judgment.

15 **II. FACTUAL BACKGROUND**

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

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

1 On January 7, 2022, by and through Class Counsel, Plaintiff filed a First Amended Class
2 and Representative Action Complaint adding an additional cause of action for penalties pursuant
3 to California Labor Code section 2699, et seq. based upon the same alleged California Labor Code
4 violations at issue in the Complaint. (the “Amended Complaint”). (Szamet Decl. ¶6.)

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

10 B. The Discovery Process and Mediation

11 On September 19, 2022, the Parties participated in an all-day mediation presided over by
12 Daniel J. Buckley which led to an agreement to settle the Action on a class-wide and representative
13 basis, subject to Court approval. (Szamet Decl. ¶9.) In preparation for mediation, Defendant
14 informally produced Plaintiff’s personnel file and a sampling of time and pay data, among other
15 necessary records, for members of the Class on or around September 12, 2022 for mediation
16 purposes only. (Szamet Decl. ¶10.) Class Counsel worked with an expert to review and analyze
17 these records. (Szamet Decl. ¶11.)

18 Defendant denies any liability or wrongdoing of any kind associated with the claims
19 alleged in the Action, disputes the damages and penalties claimed by Plaintiff, and further contends
20 that, for any purpose other than settlement, Plaintiff’s claims are not appropriate for class or
21 representative action treatment. (Szamet Decl. ¶12.) Defendant contends, among other things, that,
22 at all times, it has complied with the California Labor Code, and the Industrial Wage Commission
23 Orders. (*Id.*)

24 Based on their own independent investigation and evaluation, Class Counsel is of the
25 opinion that the Agreement with Defendant is fair, reasonable and adequate, and in the best interest
26 of the settlement classes in light of all known facts and circumstances, including the risk of
27 significant delay, defenses asserted by Defendant, uncertainties regarding a class and
28 representative action trial on the merits, and numerous potential appellate issues. (Szamet Decl.

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

C. Preliminary Approval

On January 11, 2024, the Court issued a Supplemental Amended Order Granting Preliminary Approval Of Class Action Settlement in this case, approving the proposed Class Notice, ordering that the Administrator send notice to the Class, and setting a date for the Final Approval and Fairness Hearing. (Szamet Decl. ¶14.) The Final Approval hearing was later moved, by way of stipulation and order and thereon, to allow for the resolution of some Class Data discrepancies by the Settlement Administrator. (Szamet Decl. ¶15.) The Class Notice was disseminated pursuant to the Settlement Agreement and order of the Court. (Szamet Decl. ¶16.)

III. THE PRELIMINARILY APPROVED SETTLEMENT

A. The Settlement Class

For purposes of settlement, the 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”). (Agreement, Ex. 1 at ¶1.5, Szamet Decl. ¶17.)

The final Settlement Class contains 1,024 individuals. (Paul Decl. ¶13.)

The Class Settlement Period is September 1, 2017 through September 19, 2022. (Szamet Decl. ¶18; Ex. 1 at ¶1.12.)

B. Aggrieved Employees

For purposes of the 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”). (Agreement, Ex. 1 at ¶1.4, Szamet Decl. ¶19.).

1 The PAGA Settlement Period is September 1, 2020 through September 19, 2022. (Szamet
2 Decl. ¶20; Ex. 1 at ¶1.31.) Based on documents and other information produced by Defendant,
3 there are approximately 1,024 Aggrieved Employees. (Szamet Decl. ¶21.)

4 C. Settlement Payments

5 As detailed fully in the Settlement Agreement, Defendant shall pay a Gross Settlement
6 Amount of \$750,000.00, which includes the sum of the Individual Class Payments, the Class
7 Representative service award, the Class Counsel Award, PAGA Payment, and the Settlement
8 Administration Costs. (Szamet Decl. ¶22; Ex. 1 at ¶¶1.22, 3.1.)

9 Class Counsel now requests final approval of the allocation of the Gross Settlement
10 Amount to determine the Net Settlement Amount for distribution to the Class as follows:

11	Gross Settlement Amount:	\$	750,000.00
12	Less Class Representative Enhancement:	\$	20,000.00
13	Less Class Counsel's Fees:	\$	250,000.00
14	Less Class Counsel's Costs:	\$	15,000.00
15	Less PAGA Payment:	\$	25,000.00
			<i>(\$18,750 to the LWDA; \$6,250.00 to remain in the Net Settlement Amount)</i>
16	Less Administrator Costs:	\$	<u>15,000.00</u>
17	Net Settlement Amount:	\$	431,250.00

18 D. Individual Settlement Payments

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

26 The individual PAGA settlement amount of each PAGA Member will be paid from the
27 twenty-five percent (25%) of the PAGA Payment of \$25,000.00 and is an individualized amount
28 that is based on the number of PAGA Settlement Period Pay Periods worked by the PAGA Member

1 during the PAGA Period. (See Ex. 1 at § 1, ¶3.2.5.1.) Such payments will be treated as non-wage
2 penalties and liquidated damages, to be reported on an IRS Form 1099-MISC and will not be
3 subject to FICA and FUTA withholding taxes.

4 Based on these calculations, the average potential recovery is \$415.03 per Settlement Class
5 Member. (Paul Decl. ¶14.)

6 E. Class Notice

7 The Court approved the proposed Class Notice and directed the mailing of the Notice by
8 first-class mail to Settlement Class Members in accordance with the proposed implementation
9 schedule. (Szamet Decl. ¶23.) The Implementation Schedule was later adjusted by way of
10 stipulation and order thereon to permit the Parties to resolve some Class Data discrepancies with
11 the Settlement Administrator. (Szamet Decl. ¶24.) The procedures for giving notice to the
12 Settlement Class Members have now been fully and properly carried out. (Paul Decl. ¶4.)

13 To date, Xpand Legal received zero (0) request to be excluded (“opt-outs”) from the
14 proposed Agreement and zero (0) objections. (Paul Decl. ¶¶6-7.)

15 F. Check Mailed Settlement – No Reversion

16 The Parties agreed to, and the Court preliminary approved, a checks-mailed settlement
17 without the possibility of reversion of settlement funds to Defendant. Under the Agreement, every
18 Class Member will receive a settlement check and Class Members do not need to submit a claim
19 in order to receive a settlement check. Any funds that remain uncashed after 120 days shall be
20 turned over by the Administrator, with information for each Class Member who failed to timely
21 cash his/her settlement check, to the State of California Controller’s Office Unclaimed Property
22 Fund. (Ex. 1 at § 4, ¶4.4.3.)

23 **IV. THE COURT SHOULD ORDER FINAL APPROVAL OF THE SETTLEMENT**

24 Pursuant to California Code of Civil Procedure § 1781(f), “a class action shall not be
25 dismissed or compromised without the approval of the court, and notice of the proposed dismissal
26 or compromise shall be given to all members of the Class in such manner as the court directs”
27 In deciding whether to grant final approval to a proposed class action settlement under Code of
28 Civil Procedure § 382, the court’s overriding concern is whether the proposed settlement is “fair,

adequate, and reasonable.” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.)

A. The Settlement is Entitled to a Presumption of Fairness

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

As to the first *Dunk* factor, this settlement is the result of adversarial, non-collusive, and arm’s-length negotiations. All settlement discussions were made by experienced and informed counsel, who believe that this settlement represents a favorable resolution for the Settlement Class Members. (Szamet Decl. ¶25.) The settlement negotiations have been, at all times, adversarial and non-collusive, and no self-dealing or other type of misconduct by either side has taken place. (Szamet Decl. ¶26.)

Second, the Parties engaged in informal discovery that permitted Class Counsel to fairly evaluate the strength of the case and the risks associated with ongoing litigation. In addition, Defendant produced additional data and documents informally for purposes of settlement. This included a sampling of time and pay data for the class and Plaintiff’s personnel file. (Szamet Decl. ¶27.) Receipt of appropriate discovery allowed Class Counsel to fairly evaluate the exposure and risks associated with each claim alleged in the lawsuit. (Szamet Decl. ¶28.)

Third, Class Counsel have significant experience in cases of this type, including several years prosecuting wage, hour, and working condition violations. (Szamet Decl. ¶29.) Class Counsel is thus qualified to evaluate the class claims and viability of the defenses. Class Counsel believes that the settlement is fair, reasonable, adequate, and in the best interests of the class and that the average recovery for each Settlement Class Member of \$415.03 is substantial, given the risks inherent in litigation and the defenses asserted. (Szamet Decl. ¶30.)

Finally, the fourth *Dunk* factor considers the percentage of objectors. Here, there were zero (0) requests to be excluded and no objectors. (Paul Decl. ¶¶6-7.) As all of the *Dunk* factors are satisfied, this settlement is entitled to a presumption of fairness.

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

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

10 The proposed settlement satisfies each of these factors. (Szamet Decl. ¶31.) Class Counsel
11 conducted extensive informal discovery before entering into meaningful settlement negotiations
12 in this matter. (*Id* at Szamet Decl. ¶¶9-13.) This discovery permitted Class Counsel to fairly
13 evaluate the strength of the case and the risks associated with ongoing litigation. (Szamet Decl.
14 ¶32.) Class Counsel is experienced in handling wage and hour class actions and, after weighing all
15 of the following factors, supports this Agreement. (Szamet Decl. ¶33.)

16 1. The Strength of Plaintiff's Case

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

18 Under the law, overtime compensation is based on an employee's 'regular rate' of pay.
19 (*Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal.App.4th 893, 902.) "California
20 Labor Code section 510, subdivision (a) provides, as relevant here, [that] an employee is entitled
21 to overtime pay at one and one-half times the 'regular rate' for work in excess of eight hours in
22 one day and twice the 'regular rate' for work in excess of 12 hours in one day." (*Ibid.*) For hourly
23 employees, the regular rate is generally the employee's straight-time hourly rate. (*Huntington*,
24 *supra*, 131 Cal.App.4th at p. 905.) However, in any pay period where an hourly employee earns
25 other includable compensation in addition to hourly wages—such as a non-discretionary bonus,
26 commission, or shift differential—her or his regular rate is computed by dividing the employee's
27 total compensation in the period in which the other compensation is earned by the total hours
28 worked in that period. (*Marin v. Costco Wholesale Corp.* (2008) 169 Cal.App.4th 804, 807.)

1 Here, Plaintiff maintains that she and the members of the Class earned non-discretionary
2 bonus pay, which appear on the paystubs as "Sun1" and "BON2". (Szamet Decl. ¶34.) Plaintiff
3 contends that Defendant failed to include Plaintiff's and the Class's non-discretionary bonus pay
4 in the regular rate calculation thus Defendant underpaid Plaintiff and the Class members whenever
5 they worked overtime and earned non-discretionary bonus pay in the same pay period. (Szamet
6 Decl. ¶35.) As a result of this alleged failure to properly blend, Plaintiff maintains that Defendant
7 underpaid Plaintiff and Class Members in pay periods when they worked overtime and also earned
8 non-discretionary bonus pay in the same pay period. (Szamet Decl. ¶36.) Plaintiff contends that
9 Defendant owes unpaid overtime wages to Plaintiff and the Class members as a result. (Szamet
10 Decl. ¶37.) Because this claim can be readily analyzed from Defendant's time and pay records,
11 Class Counsel felt confident that this claim was certifiable and that she would likely prevail on the
12 merits at trial. (Szamet Decl. ¶38.) However, Defendant argued that it did properly blend, but to
13 the extent that a trier of fact found that it did not, the core wage exposure was quite minimal
14 because any alleged failure to blend would only result in only a few dollars being owed to any
15 given Class Member during a specific pay period when they worked overtime and also earned non-
16 discretionary bonus pay in the same pay period. (Szamet Decl. ¶39.)

17 b) The Risks Associated with the Reimbursement Claim

18 Under California Labor Code§ 2802(a) an employer "shall indemnify his or her employee
19 for all necessary expenditures or losses incurred by the employee in direct consequence of the
20 discharge of his or her duties, or of his or her obedience to the directions of the employer." An
21 employee acts in "discharge of his duties," for purposes of this Section when the employee acts
22 within the "course and scope of employment." *See O'Hara v. Teamsters Union Local No. 856*,
23 C.A.9 (Cal.)1998, 151 F.3d 1152.

24 Plaintiff further alleges that Class members incurred the cost of cell phone service in
25 performing their work duties. (Szamet Decl. ¶40.) Plaintiff asserts that as a condition of work for
26 Defendant, Defendant requires its alleged employees to view their schedules and clock in and out
27 of their scheduled shifts on their personal cell phones. (*Id.*) Plaintiff contends that Settlement Class
28 members were never reimbursed for these necessary business expenses. (*Id.*)

1 Plaintiff contends that despite these written policies, Defendant had a practice of requiring
2 Class members to use their cell phones without reimbursement. (Szamet Decl. ¶41.) Defendant
3 vehemently denied this claim. (Szamet Decl. ¶42.) Defendant argued that Plaintiff was not required
4 to use her cellphone for work purposes and that, in fact, Defendant had a written policy that
5 cellphones were not permitted to be used at work by Plaintiff or any Class Members. (Szamet Decl.
6 ¶43.) As such, Class Counsel had to acknowledge that there was significant risk associated with
7 this claim. (Szamet Decl. ¶44.) Defendant would argue that because there was no common policy
8 permitting (or requiring) cellphone use at work, that it would be entitled to inquire of each
9 individual Class Member whether they ever used their cellphones for work purposes, and if so
10 why. (Szamet Decl. ¶45.) Such individualized inquiries, Defendant would argue, would therefore
11 easily defeat class certification of this claim. (Szamet Decl. ¶46.) Were the claim to proceed to
12 trial, Defendant would argue that it would devolve into a series of mini-trials as to each Class
13 Member's experience with cellphones at work and if Defendant were to succeed the value of the
14 claim would be \$0. (Szamet Decl. ¶47.) Based on this risk, Class Counsel believes it was
15 appropriate to discount this claim for settlement purposes. (Szamet Decl. ¶48.)

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

17 Labor Code §226(a) requires Defendant to provide its employees with an accurate,
18 itemized written wage statement that shows, in relevant part, all applicable hourly rates and the
19 corresponding number of hours worked. An employee "suffering injury," like Plaintiff and Class
20 members are alleged to have suffered, can recover penalties for an employer's "knowing and
21 intentional failure" to comply with California Labor Code §226(a). See California Labor Code §
22 226(e)(1). Under the statute, an employee is deemed to "suffer injury" if the employer does not
23 provide accurate and complete information required by California Labor Code § 226(a) and the
24 employee cannot "promptly and easily determine" from the wage statement alone the amount of
25 gross wages or net wages paid to the employee or other information specified by California Labor
26 Code § 226(a). See California Labor Code § 226(e)(2)(B).

27 Plaintiff alleges that Defendant issued wage statements that allegedly violate Labor Code
28 §§ 226(a)(2) and (9). (Szamet Decl. ¶49.) Labor Code § 226(a) specifically requires that the

1 employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her
2 employees, an accurate itemized statement in writing showing all applicable hourly rates in effect
3 during the pay period and the corresponding number of hours worked at each hourly rate by the
4 employee. Plaintiff alleges that she and Class Members are issued wage statements that do not
5 accurately show the applicable overtime rate and the number of hours worked at the corresponding
6 rate based on Defendant's alleged failure to blend discussed above. (Szamet Decl. ¶50.) However,
7 Plaintiff has to recognize that this is a derivative claim. (Szamet Decl. ¶51.) Plaintiff does not
8 allege that Defendant failed to show any of the required information on the paystubs it issued to
9 Class Members, only that the paystubs do not accurately show the information. (Szamet Decl.
10 ¶52.) While Class Counsel believes this claim is easily certifiable, it has to acknowledge that this
11 is a more difficult argument to prevail on when it comes to assessing liability. (Szamet Decl. ¶53.)

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

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

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

19 Under Labor Code § 203, a “‘willful’ failure to pay wages ... occurs when an employer
20 intentionally fails to pay wages to an employee when those wages are due.” Cal. Code Regs., tit.
21 8, § 13520; *see also Diaz v. Grill Concepts Services, Inc.* (2018) 23 Cal.App.5th 859 (“willful”
22 simply means that “the employer intentionally failed or refused to perform an act which was
23 required to be done[.] Willful ... does not necessarily imply anything blameable, or any malice or
24 wrong toward the other party”).

25 Here, Plaintiff alleges that Defendant failed to include non-discretionary bonus pay in the
26 regular rate calculation whenever Plaintiff and Class members worked overtime and earn non-
27 discretionary bonus pay in the same pay period. (Szamet Decl. ¶54.) The risk analysis for the
28 Section 203 claim flows from the risk analysis for the underlying wage claim discussed above.
(Szamet Decl. ¶55.) If Defendant could prove that class members were properly paid for all hours
worked at the appropriate overtime rate, there would be no recovery of wages and no waiting time

1 penalties that flow therefrom at all. (Szamet Decl. ¶56.)

2 The bigger risk that Class Counsel analyzed, however, is that to establish liability for
3 waiting time penalties, Plaintiff would have to establish not only that the underlying violations
4 occurred, but also that Defendant's conduct was "willful." (Labor Code § 203; Szamet Decl. ¶57.)
5 If Defendant could establish that any alleged failure to blend was the result of mistake or oversight
6 and not "willful", then it is possible that Plaintiff would not be able to recover penalties for this
7 claim. (Szamet Decl. ¶58.) Because of this risk, Class Counsel determined that accepting a
8 discount for settlement purposes was appropriate. (Szamet Decl. ¶59.)

9 e) The Risks Associated with the PAGA Claim

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

15 Class Counsel determined that it was appropriate to discount the PAGA claim for multiple
16 reasons. (Szamet Decl. ¶60.) First, the aggrieved employees' PAGA claims are derivative of all
17 the foregoing class claims. (*Id.*) Second, a court has discretion to award less than the maximum
18 penalty. (*Id.*) Labor Code § 2699(e)(2) ("a court may award a lesser amount than the maximum
19 civil penalty amount specified by this part if, based on the facts and circumstances of the particular
20 case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or
21 confiscatory"). See e.g., *Carrington v. Starbucks Corporation* (2018) 30 Cal.App.5th 504, 241
22 Cal.Rptr.3d 647, 669 (affirming award of 10% of maximum PAGA penalty). Finally, the
23 settlement Class is arguably compensated for these violations in the proposed Settlement
24 Agreement, and thus any PAGA recovery for these same violations could be deemed duplicative.
25 (*Id.*) As such, Class Counsel believes that the Agreement's contemplated PAGA payment
26 of \$25,000.00 is appropriate. (Szamet Decl. ¶61.) See *Nordstrom Commissions Cases*, 186
27 Cal.App.4th 576, 589 (2010) (affirming settlement allocating \$0 of \$6.4 million settlement to
28 PAGA penalties).

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

2 There is significant expense associated with the class certification process, which the
3 Parties can avoid by entering into the contemplated Agreement now. (Szamet Decl. ¶62.) If the
4 Court did eventually certify a class, trial of a case involving approximately 1,024 Class members
5 would require the retention of expensive expert witnesses, the accrual of extensive litigation costs,
6 and a significant time overlay by the parties. (Szamet Decl. ¶63.) Moreover, given the complexity
7 and unsettled nature of the issues in this case it is likely that any outcome at trial would have
8 resulted in a lengthy and costly appeal. (Szamet Decl. ¶64.) An appeal would result in further delay
9 for the Class members who are waiting for a resolution in this matter. (*Id.*)

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

11 This case has not been certified to be tried as a class action. (Szamet Decl. ¶65.) While
12 Class Counsel believes there is strong evidence to support certification of several possible
13 subclasses certification is always hard fought and subject to judicial discretion. Moreover, in class
14 actions, decertification is always a possibility. (*Id.*) In attempting to certify a class, the parties
15 would need to conduct multiple depositions, including of the Class Representative and of several
16 person(s) most knowledgeable regarding Defendant's wage policies. (*Id.*) There is a risk for both
17 sides as to what these depositions will reveal and whether they will support class certification to
18 the extent expected. (*Id.*)

19 4. The Amount Offered in Settlement

20 It was very difficult for the Parties to reach this Settlement of \$750,000.00. (Szamet Decl.
21 ¶66.) This Settlement is the result of adversarial, non-collusive, and arms-length negotiations.
22 (Szamet Decl. ¶67.) The Parties arrived at it after extensive investigation and discovery, careful
23 evaluation of the law, risks, and all information substantiating the amount of penalties reasonably
24 likely to be awarded to the class were the trier of fact to find Defendant liable, and the assistance
25 of an experienced mediator, Daniel J. Buckley. (*Id.*)

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

2 Working with an expert to analyze the time and pay data, Class Counsel assessed the full
3 value of the Minimum Wage/Overtime claim, without any discount, at approximately \$16,304.
4 (Szamet Decl. ¶68.) This calculation was based on the time and pay data for Class Members and
5 examined only the allegedly unpaid wages resulting from Defendant's alleged failure to blend the
6 regular rate for the purposes of determining the correct overtime rate as discussed above. (Szamet
7 Decl. ¶69.) The data shows that the average hourly rate of pay for the Class was \$14.73 during the
8 overall Class Period and \$16.99 in 2022. (Szamet Decl. ¶70.)

9 With regard to the Reimbursement Claim analysis, Class Counsel believed that it was
10 reasonable to value the potential reimbursement at \$25 per month, per employee, for
11 reimbursement of personal cell phone usage. (Szamet Decl. ¶71.) This brought the damages for
12 this claim to \$668,025 (\$25 per month x 26,721 months in the Class Period = \$668,025). (*Id.*)

13 Class Counsel valued the Wage Statement Claim, without discount, at \$1,871,900 using
14 \$50 for the initial wage statement and \$100 for each wage statement issued thereafter for 18,969
15 pay periods in the wage statement covered period. (Szamet Decl. ¶72.) As noted, this claim is
16 derivative of the alleged failure to pay all wages/overtime discussed above. (Szamet Decl. ¶73.)

17 Class Counsel valued the Waiting Time Claim, without any discount, at \$3,033,669.
18 (Szamet Decl. ¶74.) This claim is also derivative of the alleged failure to pay all wages/overtime
19 discussed above and considering the derivative nature of Labor Code §203 and the dispute over
20 whether class members were owed any wages, Class Counsel determined that accepting a discount
21 on this claim for purposes of Settlement was appropriate. (Szamet Decl. ¶75.)

22 Finally, Class Counsel calculated the value of the PAGA claim at \$722,800 for Class
23 members (using \$100 per pay period). (Szamet Decl. ¶76.) Class Counsel felt the strongest claim
24 was the regular rate claim and the number of pay periods worked by aggrieved employees during
25 the PAGA period with potential regular rate claims was 7,228 (7,228 pay periods x \$100 per pay
26 period = \$722,800). (Szamet Decl. ¶77.) The main risk taken into account with PAGA is the
27 discretionary nature of the penalty award. A judge can award the statutory maximum of \$100 for
28 the initial violation and \$200 thereafter or – in theory – one cent per wage statement. (Szamet Decl.

¶78.) While there is a dearth of available authority, in Class Counsel's view, were Plaintiff to succeed on any of the underlying Labor Code violations, it is not likely that a Judge would also award a large amount of penalties of top of any damages recovered. (Szamet Decl. ¶79.) (*See e.g., Carrington v. Starbucks Corporation, supra*, 30 Cal.App.5th 504; *see also Nordstrom Commissions Cases, supra*, 186 Cal.App.4th 576, 589.

Per Class Counsel's assessment, the maximum potential value of the core damages for regular the rate claim and the business expense claim was \$684,329 (\$16,304 + \$668,025). When adding in the penalty claims at issue, were Plaintiff and the Class to succeed on the merits of all claims, the total is approximately \$6,312,698. (Szamet Decl. ¶80.) Thus, Class Counsel believes the Gross Settlement Amount of \$750,000.00 is certainly fair and reasonable in light of the core damages exposure and, when taking into account the forgoing risks on the merits, it is fair and reasonable to discount the penalty claims. (Szamet Decl. ¶81.)

5. The Extent of Discovery Completed and Stage of the proceedings

As outlined above, Class Counsel conducted a thorough investigation into the facts of the claims alleged. (Szamet Decl. ¶82.) The agreement to settle did not occur until Class Counsel exchanged and possessed sufficient information to make an informed judgement regarding the likelihood of success on the merits and the results that could be obtained through further litigation. (*Id.*)

6. The Experience and Views of Counsel

Kingsley Szamet & Ly is very experienced in prosecuting employment litigation, and the firm has focused its practice since 2000 on wage, hour, and working condition violations. (Szamet Decl. ¶¶83-84.) The firm is well versed in class action litigation and has diligently and aggressively pursued this action. (*Ibid.*) Kingsley Szamet & Ly currently serves as Class Counsel for dozens of pending class action lawsuits in Northern, Central, and Southern California. (*Ibid.*) A list of representative cases that Kingsley Szamet & Ly has handled is included in the accompanying declaration of Kelsey M. Szamet. (*Ibid.*) After factoring in the risks explained above, Class Counsel believes that the proposed settlement is fair and reasonable. (Szamet Decl. ¶85.)

1 7. The Presence of a Governmental Participant

2 There is no governmental participant in this action. (Szamet Decl. ¶86.)

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

4 Plans of allocation are subject to the same standard of review as class action settlements;
5 they must be “fair, adequate and reasonable.” (See, e.g., *Officers for Justice v. Civil Service*
6 *Comm’n* (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the proposed plan of allocation
7 compensates Class members pro rata based on the number of compensable Work Weeks worked
8 by the Class member during the Class Settlement Period. The lump sum payment to each Class
9 member not excluding him/ herself will be determined on an individualized basis based upon the
10 compensable Work Weeks worked by the Class member. (Ex. 1 at ¶3.2.4.) This allocation
11 distributes Agreement funds proportionally to each Class member’s potential damages and should
12 therefore be approved as fair, adequate, and reasonable. (Szamet Decl. ¶87.)

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

14 To date, there are zero (0) requests to be excluded from the proposed Agreement and zero
15 (0) objections. (Paul Decl. ¶¶6-7.) Such indicates that the reaction of Settlement Class Members
16 on the whole is positive and weighs in favor of approval.

17 **V. ENHANCEMENT TO PLAINTIFF**

18 Class Counsel request an enhancement of \$20,000.00 to the Class Representative Maria
19 Gloria F Guinto for her work on behalf of the Class. (Szamet Decl. ¶136.) “Courts routinely
20 approve incentive awards to compensate named plaintiffs for the services they provide and the
21 risks they incurred during the course of the class action litigation.” *Ingram v. The Coca-Cola*
22 *Company*, 200 F.R.D. 685, 694 (N.D. Ga 2001) (internal quotations and citations omitted); *see*
23 *also Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995). In *Coca-*
24 *Cola*, the Court approved service awards of \$300,000 to each named plaintiff in recognition of the
25 services they provided to the class by responding to discovery, participating in the mediation
26 process, and taking the risk of stepping forward on behalf of the class. *Coca-Cola*, 200 F.R.D. at
27 694; *see also, e.g. Van Vranken*, 901 F. Supp. at 299 (approving \$50,000 participation award to
28 plaintiffs); *Glass v. UBS Financial Services, Inc.*, Case No. C-06-4068 MMC, 2007 WL 227862,

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

2 Here, Class Counsel requests an enhancement for Ms. Guinto's effort and time expended
3 in this matter. The time spent by Maria Gloria F Guinto is significant and includes retaining
4 competent counsel; providing information to Class Counsel regarding the nature of the work at
5 Defendant; compiling relevant documents; helping to develop the theories of liability and martial
6 relevant evidence; discussing the status of the case with Class Counsel; and responding promptly
7 to Class Counsel's communications regarding settlement. (Szamet Decl. ¶138.)

8 Class Counsel considers this to be a fair and reasonable enhancement. (Szamet Decl. ¶144.)
9 The enhancement takes into consideration the time, effort, and expense incurred by Ms. Guinto in
10 coming forward to litigate this matter on behalf of all Settlement Class Members. (Szamet Decl.
11 ¶145.) Additionally, the Class Representative was at risk for paying for Defendant's legal fees
12 and costs in the event that Defendant prevailed at trial. (Szamet Decl. ¶146.)

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

14 As indicated on the Proof of Service, Plaintiff's Motion for Final Approval of Class Action
15 Settlement ("Motion") will be concurrently uploaded to the Labor and Workforce Development
16 Agency's ("LWDA") website on the date this Motion is filed as required by statute. Proof of
17 submission of Plaintiff's Motion, all related documents, and copy of the email from the LWDA
18 confirming receipt is attached to the Declaration of Kelsey M. Szamet as Exhibit "6." (Szamet
19 Decl. ¶147.)

20 **VII. CONCLUSION**

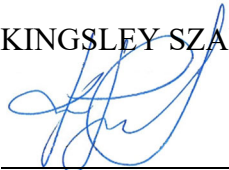
21 Class Counsel respectfully submits that the proposed Agreement is fair, adequate,
22 reasonable, and in the best interest of the Settlement Class Members. Therefore, Counsel
23 respectfully requests that the Court (1) grant Final Approval of the Agreement and all of its terms;
24 (2) award attorneys' fees and costs in the amount detailed in the concurrently filed Motion for
25 Attorneys' Fees and Costs; (3) award Xpand Legal claims administration fees of \$15,000.00; and
26 (4) award the Class Representative an enhancement of \$20,000.00 and (5) enter judgment.

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1 DATED: November 18, 2024

KINGSLEY SZAMET & LY

2
3 By: 

4 Kelsey M. Szamet
5 Attorneys for Plaintiff Maria Gloria F
6 Guinto and the proposed class
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(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 November 18, 2024, I served all interested parties in this action the following documents described as: **NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

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

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

Maria Gloria F Guinto
508 Evergreen Lane, Unit 11
Yreka, CA 96097
mguinto8668@gmail.com
Via electronic mail transmission

[XX] BY ELECTRONIC SERVICE: I caused a true and correct copy thereof to be electronically filed using the Labor and Workforce Development Agency Electronic Filing ("EF") System (<https://dir.tfaforms.net/315>) and service was completed by electronic means by transmittal of the documents referenced herein on the EF System.

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

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

Executed on November 18, 2024, at Woodland Hills, California.



Michelle Tanzer