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Attorneys for Plaintiff and the proposed class

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

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

PLAINTIFF,

v.

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

DEFENDANTS.

CASE NO. SCCV-CVCV-2021-0964

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

*[Filed concurrently with Declaration of Eric B.
Kingsley; Declaration of Diane Karpman; and
Proposed Supplemental Amended Order
Granting Preliminary Approval]*

Date: October 12, 2023
Time: 9:30 a.m.
Dept.: 2

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

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

2 **PLEASE TAKE NOTICE** that on October 12, 2023 at 9:30 a.m. in Department 2 of the
3 above-entitled court, the certified Settlement Class and Class Counsel will and hereby does move
4 the Court for a Supplemental Amended Order Granting Preliminary Approval of the Class Action
5 Settlement, a copy of which is filed concurrently herewith.

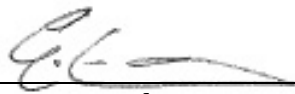
6 By this Motion, Plaintiff also requests that the Court reschedule the hearing on final
7 approval of the proposed Settlement and Class Counsel's application for an award of attorney's
8 fees and litigation costs at which Settlement Class Members may be heard ("Final Approval
9 Hearing").

10 The Motion to supplement the Amended Order Granting Preliminary Approval will be
11 made on the grounds that the proposed Settlement Agreement remains fair, adequate, reasonable,
12 and in the best interest of the Class and the Parties.

13 The Motion to supplement the Amended Order Granting Preliminary Approval will be
14 based on this Notice of Motion, the attached Memorandum of Points and Authorities, the
15 Declaration of Eric B. Kingsley, Declaration of Diane Karpman, the Settlement Agreement
16 and Release, all other papers and records on file in this action, and on such oral and
17 documentary evidence as may be presented at the hearing on this Motion.

18
19 DATED: September 18, 2023

KINGSLEY & KINGSLEY, APC

20
21 By: 

Eric B. Kingsley
Attorneys for Plaintiff and the proposed class

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The certified Settlement Class and Class Counsel submit this Memorandum of Points and
4 Authorities in support of Plaintiff's Motion for Supplemental Order Granting Preliminary
5 Approval of the Class Action and PAGA Settlement Agreement reached between Plaintiff MARIA
6 GLORIA F GUINTO and Defendant C & K Market, Inc. ("Defendant") (Plaintiff and Defendant
7 together, the "Parties").

8 By this Motion, Plaintiff requests that the Court:

9 (1) Supplement the Amended Order Granting Preliminary Approval of Class Action
10 Settlement ("Amended Preliminary Approval Order") signed by this Court on May 4, 2023. A
11 true and correct copy of the preliminarily-approved Class Action and PAGA Settlement
12 Agreement and Class Notice and Amendment to Class Action and PAGA Settlement Agreement
13 and Class Notice ("Settlement Agreement") is attached to the concurrently filed Declaration of
14 Eric B. Kingsley ("Kingsley Decl.") as Exhibit "1", a true and correct copy of the signed Amended
15 Order Granting Preliminary Approval of Class Action Settlement is attached thereto as Exhibit
16 "2", and a true and correct copy of the redlined Supplemental Amended Order Granting
17 Preliminary Approval of Class Action Settlement is attached thereto as Exhibit "3" for ease of the
18 Court's review to see the changes made to the Amended Order Granting Preliminary Approval of
19 Class Action Settlement signed by the Court on May 4, 2023; and

20 (2) Reschedule the hearing on final approval of the proposed Settlement and Class
21 Counsel's application for an award of attorney's fees and litigation costs at which Settlement Class
22 Members may be heard ("Final Approval Hearing") currently set for October 12, 2023 to February
23 22, 2024 to permit time to disseminate the Class Notice.

24 **II. RELEVANT FACTUAL BACKGROUND**

25 A. Litigation Overview and Procedural History

26 On September 1, 2021, Plaintiff filed a Class Action Complaint against Defendant in the
27 Superior Court for the State of California, County of Siskiyou, Case No. SCCVCV21-0964,
28 seeking recovery for: (1) failure to pay wages and/or overtime under California Labor Code

1 sections 510, 1194, and 1199; (2) failure to reimburse expenses pursuant to California Labor Code
2 section 2802; (3) failure to provide accurate itemized wage statements pursuant to California Labor
3 Code section 226(a); (4) penalties pursuant to California Labor Code section 203; and, (5) violation
4 of Business & Professions Code section 17200 (hereafter, the “Complaint”). (Kingsley Decl. ¶4.)
5 Also on September 1, 2021, Plaintiff sent a notice letter, pursuant to California Labor Code § 2699,
6 *et seq.*, the Private Attorneys General Act (“PAGA”), to the California Labor Workforce
7 Development Agency (“LWDA”) regarding her intent to seek civil penalties for the California
8 Labor Code violations above. (*Id.*)

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

13 B. Mediation and Preliminary Approval

14 On September 19, 2022, the Parties participated in an all-day mediation presided over by
15 Judge Daniel J. Buckley (Ret.) which led to an agreement to settle the Action on a class-wide and
16 representative basis, subject to Court approval. (Kingsley Decl. ¶6; see Ex. 1.)

17 On January 31, 2023, Plaintiff submitted the Settlement Agreement to the Court by way of
18 a Motion for Preliminary Approval. After holding three hearings on the matter,¹ the Court signed
19 the Amended Preliminary Approval Order on May 4, 2023.² (Kingsley Decl. ¶7; see Ex. 2)

20 ///

23 ¹ The Motion originally came before this Court on February 23, 2023 and was continued to April
6, 2023 and May 4, 2023.

24 ² The Supplemental Declaration of Kelsey M. Szamet filed on April 6, 2023 attached a fully-
25 executed Amendment to Class Action and PAGA Settlement Agreement and Class Notice.
26 (Kingsley Decl. ¶8.) The Amendment reflected that the Parties agreed that Plaintiff would be
27 permitted to request Court approval of a Class Representative Service Payment of up to
28 \$80,000. (Kingsley Decl. ¶9.) The Court considered this request and ultimately awarded
\$20,000 to Plaintiff Guinto as a Class Representative Service Payment. (Kingsley Decl. ¶10.)
The Amended Order Granting Preliminary Approval of Class Action Settlement signed by the
Court was “Amended” to reflect the Court’s order and the change in the amount of the Class
Representative Service Payment from the order originally submitted to the Court with the
Motion for Preliminary Approval on January 31, 2023. (Kingsley Decl. ¶11.)

1 C. Change in Circumstances

2 After the Court signed the Amended Preliminary Approval Order on May 4, 2023, Plaintiff
3 Maria Gloria F. Guinto decided to terminate her relationship with Class Counsel. (Kingsley Decl.
4 ¶12.) Any necessary details can be disclosed to the Court *in camera*, should the Court have any
5 questions. (Kingsley Decl. ¶13.) Due to this change in circumstances, Class Counsel determined
6 that it was not appropriate to disseminate the Class Notice without notifying the Court regarding
7 the change and seeking the opinion of an experienced ethicist. (Kingsley Decl. ¶14.) Having been
8 retained by Class Counsel, Diane Karpman, Esq. has rendered a declaration regarding the issues
9 at hand. (See Declaration of Diane Karpman concurrently filed herewith).

10 **III. ARGUMENT**

11 A. The Proposed Settlement Class Was Certified for Settlement Purposes

12 In its May 4, 2023 Amended Preliminary Approval Order, the Court certified the Class for
13 settlement purposes. (Kingsley Decl. ¶15; see Ex. 2.)³ As detailed in the Karpman Declaration,
14 this order significantly changed the nature of Class Counsel's position with respect to the
15 Settlement Class and its duties thereto. (Kingsley Decl. ¶16.)

16 B. Class Counsel Requests that the Court Enter a Supplemental Order Granting
17 Preliminary Approval

18 The relief Class Counsel seeks is entry of a Supplemental Amended Order Granting
19 Preliminary Approval of Class Action Settlement. (Kingsley Decl. ¶17). Class Counsel seeks to
20 update the Court on the change circumstances, provide any necessary information to the Court *in*
21 *camera*, and disseminate the already preliminarily-approved Class Notice. (Kingsley Decl. ¶18).

22 ///

23 ///

24
25 ³ To preserve the Court's time and resources, the details of the Settlement Agreement set forth
26 in the Motion for Preliminary Approval will not be repeated here. That said, the key terms of
27 the Settlement Agreement provide for Defendant to pay a Gross Settlement Amount of
28 \$750,000.00 to a Settlement Class 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 from September 1, 2017 through September 19, 2022. (Ex.
1 at ¶1.12.) Based on documents and other information produced by Defendant, there are
approximately 1,024 members in the Settlement Class. (Ex. 1 at ¶4.1.)

1 C. The Terms Shall Remain Unchanged

2 Class Counsel does not seek to alter or change any of the term of the preliminarily-
3 approved Settlement Agreement. (Kingsley Decl. ¶19)

4 **IV. THE SERVICE AWARD TO THE NAMED PLAINTIFF**

5 Class Counsel believe that the preliminary-approved Class Representative Service
6 Payment of \$20,000 remains appropriate as it was ordered by the Court to fairly compensate
7 Plaintiff Guinto for her contribution to the case. (Kingsley Decl. ¶20).

8 **V. SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY**

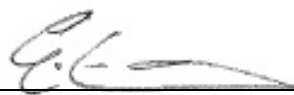
9 As indicated on the Proof of Service, this Motion will be concurrently uploaded to the
10 Labor and Workforce Development Agency's ("LWDA") website on the date this Motion is filed
11 as required by statute. Proof of submission of this Motion, all related documents, and copy of the
12 email from the LWDA confirming receipt is attached to the Kingsley Declaration as Exhibit "3."
13 (Kingsley Decl. ¶21)

14 **VI. CONCLUSION**

15 Class Counsel respectfully requests that (1) the Court enter the Supplemental Amended
16 Order Granting Preliminary Approval of Class Action Settlement to confirm that it has been made
17 aware of the change in circumstances; finds that the Settlement Agreement remains fair, adequate,
18 reasonable, and in the best interest of the Class members; and the Class Notice should be
19 disseminated without delay; and (2) reschedule the hearing on final approval of the Settlement
20 Agreement and Class Counsel's application for an award of attorney's fees and litigation costs for
21 February 22, 2024.

22
23 DATED: September 18, 2023

KINGSLEY & KINGSLEY, APC

24 By: 

25 Eric B. Kingsley
26 Attorneys for Plaintiff and the proposed class
27
28

(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 September 18, 2023, I served all interested parties in this action the following documents described as: **NOTICE OF MOTION AND MOTION FOR SUPPLEMENTAL ORDER GRANTING 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
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
396 East Lake St
Weed, CA 96094
mguinto8668@gmail.com
Via electronic mail transmission and U.S. mail

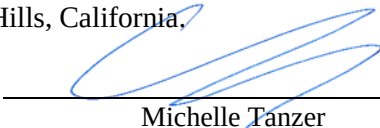
[XX] (BY MAIL) I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage fully prepaid at Encino, California in the ordinary course of business. I am aware 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 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 September 18, 2023, at Woodland Hills, California.



Michelle Tanzer