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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

NICK VASQUEZ, an individual, on behalf of
himself and others similarly situated,

PLAINTIFF,

v.

TURBINE ENGINE COMPONENTS
TECHNOLOGIES CORPORATION; and
DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO. 21STCV42670

[Case Assigned for All Purposes to Hon. Yvette
M Palazuelos in Dept. 9]

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

*[Filed concurrently with Declarations of Kelsey
M. Szamet, Nick Vasquez, Zev Abramson, and
Jodey Lawrence of Phoenix Class Action
Administration Solutions; and Proposed Order]*

Date: November 2, 2023

Time: 10:00 AM

Dept.: 9

Complaint Filed: November 19, 2021

Trial Date: None Set

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on November 2, 2023 at 10:00 AM in Department 9 of the above-entitled court, Plaintiff NICK VASQUEZ will move the Court for an Order of Preliminary Approval of the Class Action and PAGA Settlement Agreement (“Agreement” or “Settlement”), 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 Class Members in the manner set forth in the Agreement;

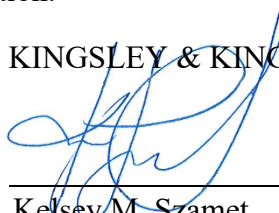
(3) Schedule a hearing on final approval of the proposed Settlement and Plaintiff’s counsel’s application for an award of attorney’s fees and litigation costs at which Class Members may be heard (“Final Approval Hearing”).

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 Declarations of Kelsey M. Szamet, Nick Vasquez, Zev Abramson, and Jodey Lawrence of Phoenix Class Action Administration Solutions, 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: September 11, 2023

KINGSLEY & KINGSLEY, APC

By: 

Kelsey M. Szamet
Attorneys for Plaintiff NICK VASQUEZ and the
proposed class

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff NICK VASQUEZ (“Plaintiff”) submits this Memorandum of Points and
4 Authorities in support of Plaintiff’s Motion for Preliminary Approval of the Class Action and
5 PAGA Settlement Agreement reached between Plaintiff and Defendant TURBINE ENGINE
6 COMPONENTS TECHNOLOGIES CORPORATION (“Defendant”) (Plaintiff and Defendant
7 together, the “Parties”).

8 By this Motion, Plaintiff requests that the Court:

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

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

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

18 **II. FACTUAL BACKGROUND**

19 A. Litigation Overview and Procedural History

20 TURBINE ENGINE COMPONENTS TECHNOLOGIES CORPORATION
21 (“Defendant”) operates throughout the United States, specializing in manufacturing and offering
22 various airfoil and blades, among other items and services. Defendant is part of the engine or
23 turbine forging industry and offers products and services to customers throughout California and
24 other states. Plaintiff worked as a “material manager” for Defendant in California from
25 approximately 1979 until 2020 when this location was shut down. Plaintiff and the Proposed Class
26 worked as non-exempt employees who earned hourly wages, including premium pay.

27 On November 19, 2021, Plaintiff NICK VASQUEZ filed a complaint entitled *NICK*

28 ¹ The Parties used the LASC Model Class Action Settlement Agreement.

1 *VASQUEZ v. TURBINE ENGINE COMPONENTS TECHNOLOGIES CORPORATION* in the Los
2 Angeles County Superior Court, case number 21STCV42670. (Declaration of Kelsey M. Szamet
3 (“Szamet Decl.”) ¶4.) (Agreement, Ex. 1 at (“Ex. 1”) § 1 ¶1.1.). In the Complaint, Plaintiff alleged
4 five causes of action for: (1) Failure to Provide Meal Periods Under Labor Code §§ 226.7 and 512;
5 (2) Failure to Pay Vested Vacation Wages Under Labor Code §§ 227.3 and 510; (3) Violation of
6 Labor Code § 226(a); (4) Penalties Pursuant to Labor Code § 203; and (5) Violation of Business
7 & Professions Code § 17200, *et seq.* (Szamet Decl. ¶5.)

8 Also on November 19, 2021, Plaintiff sent a notice letter, pursuant to Labor Code § 2699
9 *et seq.* the Private Attorneys General Act (“PAGA”), to the Labor Workforce Development
10 Agency (“LWDA”) regarding his intent to seek civil penalties for the Labor Code violations above.
11 (Szamet Decl. ¶6; Exhibit “2”.) A true and correct copy of the initial PAGA letter is attached
12 hereto as Exhibit “2”.

13 On February 2, 2022, Plaintiff filed a First Amended Complaint, adding a sixth claim for
14 penalties under the Labor Code’s Private Attorneys General Act (“PAGA”), Labor Code § 2699
15 *et seq.* (Szamet Decl. ¶7.) On June 16, 2023, Plaintiff filed a Second Amended Class and
16 Representative Action Complaint, adding a claim for violations of Labor Code § 226.7 for failure
17 to provide rest periods on behalf of a settlement class during the relevant class period. (Szamet
18 Decl. ¶8)(hereafter the “Lawsuit”). Additionally, Plaintiff sent an amended notice letter to the
19 LWDA regarding his intent to add this additional rest period claim. (*Id.*; Exhibit “3”). A true and
20 correct copy of the amended PAGA letter is attached hereto as Exhibit “3”.

21 B. The Discovery Process

22 The Parties have yet to engage in formal discovery, instead focusing their efforts on
23 resolving this case through early mediation. (Szamet Decl. ¶9.) The Parties scheduled a private
24 mediation with Francis J. Ortman III, Esq. on January 24, 2023. (Szamet Decl. ¶10.) In preparation
25 for mediation, Defendant informally produced multiple documents and provided other information
26 necessary to evaluate settlement. (Szamet Decl. ¶11.). This included Plaintiff’s personnel file and
27 time and pay records, a redacted sampling of payroll journals and ending hourly pay rates for
28 Defendant’s employees (i.e., hourly rate of pay at time of termination), and the total number of

1 Class Members and relevant work weeks at issue. (Szamet Decl. ¶12.) As such, the Parties engaged
2 in extensive informal discovery that allowed the Parties to fully investigate the claims at issue and
3 understand their strengths and weakness. (Szamet Decl. ¶13.) Plaintiff’s investigation was
4 sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.*
5 (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
6 116, 129-130 (“*Dunk/Kullar*”).

7 Defendant denies any liability or wrongdoing of any kind associated with the claims
8 alleged in the Action, disputes the damages and penalties claimed by Plaintiff, and further contends
9 that, for any purpose other than settlement, Plaintiff’s claims are not appropriate for class or
10 representative action treatment. (Szamet Decl. ¶14.) Defendant contends, among other things,
11 that, at all times, it has complied with the California Labor Code and the IWC Wage Orders. (*Id.*)

12 Based on their own independent investigation and evaluation, Class Counsel is of the
13 opinion that the Agreement with Defendant is fair, reasonable and adequate, and in the best interest
14 of the Classes in light of all known facts and circumstances, including the risk of significant delay,
15 defenses asserted by Defendant, uncertainties regarding a class and representative action trial on
16 the merits, and numerous potential appellate issues. (Szamet Decl. ¶15.) Although Defendant
17 denies any liability, Defendant is agreeing to this Agreement solely to avoid the cost of litigation.
18 (*Id.*) Accordingly, the Parties and their counsel desire to fully, finally, and forever settle,
19 compromise and discharge all disputes and claims arising from or relating to the Action on the
20 terms set forth here. (*Id.*)

21 **III. THE PROPOSED CLASS SHOULD BE CERTIFIED FOR SETTLEMENT** 22 **PURPOSES**

23 Originally creatures of equity, class actions have been statutorily embraced by the
24 Legislature whenever “the question [in a case] is one of a common or general interest, of many
25 persons, or when the parties are numerous, and it is impracticable to bring them all before the
26 court” (Code Civ. Proc. § 382; *see, e.g., Fireside Bank v. Sup. Court* (2007) 40 Cal.4th 1069,
27 1078.) They serve an important function by “establishing a technique whereby the claims of many
28 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 questions of law or fact predominant over individual questions; (2) the class representatives have claims or defenses typical of the class; and (3) the class representatives can adequately represent the class. (*Ibid, citing Fireside Bank, supra*, 40 Cal.4th at 1089.)

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

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

1. Ascertainability

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

1 Here, Plaintiff maintains that the proposed Class is ascertainable for several reasons: First,
2 Defendant has agreed in the Agreement to provide a class list to the Administrator containing the
3 name, last known mailing address, last known telephone number, social security number, and
4 number of Covered Period Workweek and PAGA Pay Periods for all putative class members after
5 issuance of the preliminary approval order. (Szamet Decl. ¶16; Ex. 1 at § 1, ¶1.8.) Second, Class
6 Members consist of Defendant's non-exempt employees, and Defendant is required to keep
7 records of such employees' names, home addresses, and social security numbers. (See Wage Order
8 1-2001, subsection 7(c); Szamet Decl. ¶17.) Third and finally, Defendant informally produced
9 Plaintiff's personnel file and pay statements; relevant policies; and a sampling of shift data, pay
10 data, and wage statements for Class Members containing class member contact information, which
11 confirms that all Class Members may be readily identified based on Defendant's records. (Szamet
12 Decl. ¶18.)

13 2. Numerosity

14 There is no set number that is required as a matter of law to maintain a class action. (See,
15 e.g., *Rose v. City of Hayward*, *supra*, 126 Cal.App.3d at p. 934.) Here, the proposed Class contains,
16 based upon information and belief, approximately 219 hourly non-exempt employees in the State
17 of California. (Ex. 1 at § 4, ¶4.1.) Therefore, Plaintiff is confident he will be able to establish that
18 the proposed Class is ascertainable and sufficiently numerous. (Szamet Decl. ¶19.)

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

20 1. Plaintiff Contends There Are Predominant Questions of Law and Fact

21 In deciding whether questions of common or general interest predominate, a court must
22 determine whether "the issues which may be jointly tried, when compared with those requiring
23 separate adjudication, are so numerous or substantial that the maintenance of a class action would
24 be advantageous to the judicial process and to the litigants." (*Collins v. Rocha* (1972) 7 Cal.3d
25 232, 238; *accord*, *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.) As a
26 general matter, if the defendant's liability can be determined by facts common to all members of
27 the class, a class will be certified even if the members must individually prove their damages."
28 (*Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 916, 107; *accord*, *Knapp v.*

1 *AT & T Wireless Services, Inc.* (2011) 195 Cal.App.4th 932, 941.)

2 Here, Plaintiff argues that there are questions of law and fact common to the proposed
3 Class that predominate over any questions affecting only individual Settlement Class Members.
4 (Szamet Decl. ¶20.) These common questions include:

- 5 1) Whether Defendant failed to provide lawfully required meal periods and/or failed
6 to compensate employees one (1) hour's wages in lieu thereof;
- 7 2) Whether Defendant failed to provide lawfully required rest periods and/or failed to
8 compensate employees one (1) hour's wages in lieu thereof;
- 9 3) Whether Defendant failed to provided vested vacation wages;
- 10 4) Whether Defendant failed to provide accurate itemized wage statements;
- 11 5) Whether Defendant failed to pay compensation due and owing upon termination
12 of employment;
- 13 6) Whether Defendant engaged in unfair competition; and,
- 14 7) Whether Defendant violated § 2699, et seq. of the Labor Code by engaging in the
15 acts previously alleged.

16 (Szamet Decl. ¶21.)

17 Plaintiff's challenge to Defendant's uniform policies and practices involves common
18 factual and legal issues that are amenable to class treatment. (Szamet Decl. ¶22.) As the California
19 Supreme Court has emphasized, "[c]aims alleging that a uniform policy consistently applied to a
20 group of employees is in violation of the wage and hour laws are of the sort routinely, and properly,
21 found suitable for class treatment." (*Brinker, supra*, 53 Cal.4th at 1033; *see also Bradley v.*
22 *Networkers International, LLC* (2012) 211 Cal.App.4th 1129, 1141-1146.) Moreover, a class of
23 similarly situated employees may be certified based on common questions of fact or law, even if
24 each employee has to establish the amount of his or her damages. (*See Bell v. Farmers Ins. Exch.*
25 (2004) 115 Cal.App.4th 715, 741; *Sav-On Drug Stores, Inc. v. Sup. Court*, 34 Cal.4th at 340.)

26 Here, Plaintiff maintains that the proposed Class Members suffered the same injuries, in
27 the same manner: (1) Class Members did not receive their meal and rest periods as required; (2)
28 Class Members did not receive their vested vacation wages as required; (3) Class Members were

not provided accurate itemized wage statements; and (4) Class Members were not paid all wages owed upon termination/resignation. (Szamet Decl. ¶23.) Plaintiff alleges that Class Members worked in the same capacity for the same employer and were subject to the same employment policies and practices, the questions of fact and claims regarding the status of these employees are the same for each member of the Class. Accordingly, for purposes of settlement, certification for settlement purposes is appropriate. (Szamet Decl. ¶24.)

2. Plaintiff Contends That He Has Claims Typical of the Proposed Class

A putative class representative's claim must be "typical," but not necessarily identical, to the claims of other class members. The test of typicality "is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the Class Representatives, and whether other class members have been injured by the same course of conduct." (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502.) Thus, it is sufficient that the representative is similarly situated so that he or she will have the motive to litigate on behalf of all class members. (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502.) Thus, it is sufficient that the representative is similarly situated so that he or she will have the motive to litigate on behalf of all class members. (*See, e.g., Classen v. Weller* (1983) 145 Cal.App.3d 27, 45.) It is not necessary that the class representative have personally incurred all of the damages suffered by each of the other class members. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 238.)

Plaintiff worked as an hourly "material manager" for Defendant in California that has since been shut down. (Szamet Decl. ¶25.) Plaintiff contends that he: (1) worked without being provided meal and rest periods as required by law; (2) worked without being provided vested vacation wages; (3) worked without being provided accurate itemized wage statements; and (4) worked without being paid all wages due upon separation. He also alleges that he experienced derivative claims for unfair business competition (B&P Code §17200) and Labor Code §2699, et seq. (Szamet Decl. ¶26.) Plaintiff also contends that his claims are typical of those of the Class. (Szamet Decl. ¶27.)

3. Plaintiff Contends That As The Class Representative He Has and Will

1 Fairly Represent the Interests of the Class Members

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

6 Plaintiff believes that he is capable of fairly representing and adequately protecting the
7 interests of the proposed Class Members. (Szamet Decl. ¶28.) Plaintiff’s interests in this litigation
8 are coextensive with the interests of the proposed Class Members. The members of the proposed
9 Class all worked for Defendant during the relevant time period and incurred the same type of
10 alleged damages with regard to Defendant’s alleged violations of the law. (Szamet Decl. ¶29.)
11 Moreover, Plaintiff has agreed to serve as Class Representative and has retained qualified Counsel
12 who is experienced in prosecuting wage and hour class actions. (Szamet Decl. ¶30.) This
13 demonstrates his commitment to bringing about the best possible results for the benefit of the
14 proposed Class. (Szamet Decl. ¶31.) Plaintiff has provided his Counsel with all necessary and
15 pertinent information. (Szamet Decl. ¶32.) Plaintiff has been a very active participant in the
16 litigation including having frequent contact with Class Members, working closely with Class
17 Counsel to develop the theories of liability, and providing his Counsel with all necessary and
18 pertinent information. (Szamet Decl. ¶33.) He also made himself available for the full-day
19 mediation in this matter and was informed of and involved in all of the Settlement negotiations.
20 (*Id.*) Therefore, Plaintiff believes that he has and will continue to adequately represent the proposed
21 Class Members. (Szamet Decl. ¶34.) Plaintiff has provided his Counsel with all necessary and
22 pertinent information. (Szamet Decl. ¶35.)

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

24 “The ultimate question in every case of this type is whether . . . the issues which may be
25 jointly tried, when compared with those requiring separate adjudication, are so numerous or
26 substantial that the maintenance of a class action would be advantageous to the judicial process
27 and to the litigants.” (*Lockheed Martin, supra*, 29 Cal.App.4th at 1104–1105.) The California
28 Supreme Court has directed the courts to utilize the class action device to fashion “an effective

1 and inclusive group remedy.” (*Richmond v. Dart Indus., Inc.* (1981) 29 Cal.3d 462, 469.)
2 Normally, in making its class certification decision, the Court must determine that a class action
3 would be superior to alternate means for a fair and efficient adjudication. If the causes of action
4 may be adjudicated in a single proceeding, thereby saving time, reducing waste, and limiting
5 duplication of effort, class certification is superior to individual litigation. (*See, e.g., Vasquez v.*
6 *Superior Court* (1971) 4 Cal.3d 800, 816.) Since the Parties agreed to a settlement in principal
7 and now seek Court approval of that Settlement, Plaintiff submits that there is not as much need
8 as there would be in an ordinary motion for class certification for the Court to determine that the
9 case can be manageably tried.

10 Plaintiff maintains that class treatment would be the superior method of managing this case.
11 A class action is superior to individual litigation “when numerous parties suffer injury of
12 insufficient size to warrant individual action and when denial of class relief would result in unjust
13 advantage to the wrongdoer.” (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.) In
14 cases such as this, where individual damages may be small, the class action device is the most
15 feasible method of recovery. (*See, e.g. Lockheed Martin, supra*, 29 Cal.4th at 1131.) In this regard,
16 the superiority of class treatment is evident here because individual pursuit of class members’
17 claims may not be economically viable. (Szamet Decl. ¶36.) The only alternative to certification
18 would be to force over 219 employees to join this action, file individual, uniform actions, or
19 abandon their legal rights altogether. (Szamet Decl. ¶37.) Plaintiff maintains that this economic
20 reality would result in a windfall for Defendant if this case were not certified. (Szamet Decl. ¶38.)

21 **IV. THE PROPOSED SETTLEMENT**

22 **A. The Settlement Class**

23 For purposes of Agreement, the Class is defined as: “all current and former non-exempt
24 employees of Defendant in the State of California including all temporary employees supplied by
25 Defendant by any staffing agency at any time between November 19, 2017 through January 24,
26 2023.” (“Class”) (Szamet Decl. ¶39; Ex. 1 at § 1, ¶1.5.) The “Class Members” shall not include
27 any person who submits a timely and valid Request for Exclusion as provided in this Agreement,
28 or any person who previously released the Released Claims under a separate agreement. (Szamet

Decl. ¶40; Agreement, Ex. 1 at § 1, ¶1.5.)

The Class Period is November 19, 2017 through January 24, 2023. (Szamet Decl. ¶41; Ex. 1 at § 1, ¶1.12.) As of January 24, 2023 (the date of mediation) and based on documents and other information produced by Defendant, there are approximately 219 Class Members. (Szamet Decl. ¶42; Ex. 1 at § 4, ¶4.1.) The Class Period cuts off at the date of mediation.

B. The Aggrieved Employees

For purposes of the Agreement, the Aggrieved Employees are defined as: “all current and former non-exempt employees of Defendant in the State of California, including all temporary employees supplied to Defendant by any staffing agency at any time between November 19, 2020, through the end of the Class Period.” (“Aggrieved Employees” or “PAGA Members”) (Szamet Decl. ¶43; Settlement, Ex. 1 at § 1, ¶1.4.)

The PAGA Period is November 19, 2020 through January 24, 2023. Szamet Decl. ¶44; Ex. 1 at § 1, ¶1.31.)

D. Gross Settlement Amount

As detailed fully in the Agreement, the Settlement provides for Defendant to pay a Gross Settlement Amount of \$650,000.00, 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. ¶45; Ex. 1 at § 1, ¶1.22.)

The Net Settlement Amount is the Gross Settlement Amount, less Class Counsel Award, Class Representative Enhancement, PAGA Payment, and Settlement Administration Costs. (Szamet Decl. ¶46; Ex. 1 at § 1, ¶1.28.)

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

Gross Settlement Amount:	\$	650,000.00
Less Class Representative Enhancement:	\$	5,000.00
Less Class Counsel’s Fees:	\$	216,666.67
Less Class Counsel’s Costs:	\$	25,000.00
Less PAGA Payment:	\$	25,000.00
		<i>(\$18,750.00 to the LWDA and \$6,250.00 to remain in the Net Settlement Amount)</i>
Less Administrator Costs:	\$	8,000.00
Anticipated Net Settlement Amount	\$	376,583.33

(Ex. 1 at § 3.)

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D. Individual Settlement Payments

The amount of each Participating Class Member's Individual Class Payment is an individualized amount that is based on the number of compensable workweeks worked by the Participating Class Member during the Class Period. (Ex. 1 at § 1, ¶1.23; *see also* Ex. A to the Agreement at pp. 1 [Class Notice].) This individual amount shall be determined according to the settlement payment formula set forth in the Agreement. (*See* Ex. 1 at § 3, ¶3.2.4 *Id.* at Ex. A to the Agreement at pp. 1[Class Notice].) The Agreement provides for a specific and detailed dispute process. (*See* Ex. 1 at § 8, ¶8.6.)

The Individual PAGA Payment will be an individualized amount that is based on the number of PAGA Period Pay Periods worked by each PAGA Member during the PAGA Period. It shall be calculated as follows: twenty-five percent (25%) of the PAGA Payment (or \$6,250.00) divided by the total number of PAGA Period Pay Periods worked by all PAGA Members during the PAGA Period and multiplying the result by each PAGA Member's PAGA Period Pay Periods" (section 3, par..). (*See* Ex. 1 at § 3, ¶3.2.5.1.)

E. Process for Administering Settlement after Preliminary Approval

The detailed Notice Procedure established by the Agreement will efficiently and accurately ensure that Notice is provided to the Class Members. (Ex. 1 at § 8, ¶8.4.) The Parties have agreed to use a reputable third-party claims administrator, Phoenix, to administer the Agreement. (Ex. 1 at § 8, ¶8.1.)

F. Process for Class Members to Respond to Class Notice

As detailed in the Agreement, Class Members will have an opportunity to request exclusion from the Agreement (i.e. opt out) and to object to the Agreement at the Final Approval Hearing. (*See* Ex. 1 at § 8, ¶¶8.5;8.7; *see also* Ex. A to the Agreement at pp. 2-3, 7-8 [Class Notice].)² The Agreement and Class Notice contain details about the process to request exclusion or object. (*Id.*

² The Class Notice will be sent in English and Spanish as reflected in the administration bid. *See* Ex. "B" to the Declaration of Jodey Lawrence of Phoenix.

at Ex. 1 at § 8, ¶¶8.5;8.7; *see also* Ex. A to the Agreement at pp. 2-3, 7-8 [Class Notice].)

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

G. The Proposed Settlement Fully Resolves Plaintiff's and the Class' Claims at Issue in the Operative Complaint

The Release goes into effect on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments (Ex. 1 at § 6). Defendant shall fully fund 20 days after the Effective Date. (Ex. 1 at § 4.2). The "Effective Date" is 61 calendar days after notice of entry of the Court's Judgment. (Ex. 1 at § 1.18)

The Release by Participating Class Members Who Are Not PAGA Members are defined as: any and all claims, debts, liabilities, demands, obligations, penalties, premium pay, guarantees, costs, expenses, attorney's fees, damages, actions or causes of action of whatever kind or nature, whether known or unknown, contingent or accrued, and irrespective of theory of recovery, that were or could have been brought based on the facts or claims alleged in any version of the complaints filed in the Action, the PAGA Notice or in any letters submitted to the LWDA in connection with the Action, arising during the Class Period. The released claims include, but are not limited to, claims for failure to pay vacation pay, failure to provide meal periods, failure to authorize and permit rest periods, short/late meal and rest periods, failure to relieve of all duties during meal and rest periods, failure to pay or properly compensate meal or rest break premiums, failure to furnish accurate wage statements, failure to pay final wages upon separation of employment, claims related to pay wages based on failure to properly calculate the regular rate of pay, claims derivative and/or related to these claims, liquidated damages, conversion of wages, claims for penalties for violation of the California Labor Code Private Attorneys General Act ("PAGA"), and claims under the UCL (Business and Professions Code Section 17200 et seq.). Except as set forth in Section 6.3 of Settlement Agreement, Participating Class Members do not

1 release any other claims, including claims for vested benefits, wrongful termination, violation of
2 the Fair Employment and Housing Act, unemployment insurance, disability, social security,
3 workers' compensation, or claims based on facts occurring outside the Class Period. (Ex. 1 at §
4 6, ¶6.2.)

5 The Release by Non-Participating Class Members Who Are PAGA Members is defined
6 as: all claims for PAGA penalties that were alleged, or reasonably could have been alleged during
7 the PAGA Period, based on the facts stated in the Operative Complaint, the PAGA Notices, or
8 ascertained in the course of the Action, irrespective of the theory of recovery, including, but not
9 limited to, claims for failure to pay vacation pay, failure to provide meal periods, failure to
10 authorize and permit rest periods, short/late meal and rest periods, failure to relieve of all duties
11 during meal and rest periods, failure to pay or properly compensate meal or rest break premiums,
12 failure to furnish accurate wage statements, failure to pay final wages upon separation of
13 employment, claims related to pay wages based on failure to properly calculate the regular rate of
14 pay, claims derivative and/or related to these claims, liquidated damages, conversion of wages,
15 claims for penalties for violation of the PAGA, and claims under the UCL (Business and
16 Professions Code Section 17200 et seq.) (Ex. 1 at § 6, ¶6.3.)

17 **V. ARGUMENT**

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

19 California Rule of Court ("Rule"), Rule 3.769 requires litigants to obtain court approval of class
20 action settlements. Approval occurs in two steps: (1) an early "preliminary" review by the trial court; and
21 (2) a subsequent "final" review after notice of the settlement has been distributed to class members for their
22 comments and objections. Cal. R. Ct. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th
23 1110, 1118 (2010) (the court first "preliminarily approves the settlement" and later "conducts a final
24 approval hearing to inquire into the fairness of the proposed settlement"). The motion for preliminary
25 approval must be accompanied by (1) the settlement agreement, (2) proposed notice to the class, and (3)
26 the proposed order. *Id.* at 3.769(c). The motion must also identify any agreement concerning the payment
27 of attorneys' fees. *Id.* at 3.769(b).

28 If the trial court grants preliminary approval of a settlement, Rule 3.769(f) requires the court to (1)

1 schedule a final approval hearing and (2) approve the method by which the parties are to provide notice to
2 the class of the hearing and “an explanation of the proposed settlement.” The court must also approve a
3 procedure for class members to file objections to the settlement. *Id.* at 3.769(f). At the final approval
4 hearing, the court must conduct an inquiry into the fairness of the proposed settlement. *Id.* at 3.769(g).

5 Although Rule 3.769 does not provide detail as to the scope of review of the proposed settlement,
6 preliminary approval is warranted if the settlement falls within a “reasonable range.” *See North County*
7 *Contractor’s Assn., Inc. v. Touchstone Ins. Services*, 27 Cal. App. 4th 1085, 1089-90 (1994); Conte &
8 Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002) (“Newberg”).

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

16 The proposed settlement satisfies each of these factors. (Szamet Decl. ¶47.) Class Counsel
17 conducted extensive informal discovery before entering into meaningful settlement negotiations
18 in this matter. (*Id.* at Szamet Decl. ¶¶9-15.) This discovery permitted Class Counsel to fairly
19 evaluate the strength of the case and the risks associated with ongoing litigation. (Szamet Decl.
20 ¶48.) Class Counsel is experienced in handling wage and hour class actions and, after weighing
21 all of the following factors, supports this Agreement. (Szamet Decl. ¶49.)

22 1. The Strength of Plaintiff’s Case

23 a) The Risks Associated with the Meal Break Claim

24 California law requires employers to provide employees a duty-free, uninterrupted thirty
25 (30) minute meal period when an employee works more than five (5) hours in a workday, and it
26 must be provided within the first five (5) hours the employee works. Lab. Code 512; IWC Wage
27 Order 1-2001, §11(A) and (C); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th
28 1004. Employers must also provide employees with a second duty-free, uninterrupted thirty (30)

1 minute meal period when an employee works more than (10) hours in a workday, and it must be
2 provided before the end of the 10th hour of work. *Ibid.* Meal periods can be waived, but only
3 under the following circumstances: (1) if an employee's total work period in a day is over five (5)
4 hours but no more than six (6) hours, the required meal period may be waived by mutual consent
5 of the employer and employee, and (2) if an employee's total work period in a day is over ten (10)
6 hours but no more than twelve (12) hours, the required second meal period may be waived by
7 mutual consent of the employer and employee, but only if the first meal period was not waived.
8 *Ibid.*

9 Employers covered by Industrial Welfare Commission ("IWC") Wage Order 1-2001 have
10 an obligation to both (1) relieve their employees for at least one meal period for shifts over five
11 hours (see above), and (2) to record having done so. If the employer fails to properly record a
12 valid meal period, it is presumed that no meal period was provided. IWC Wage Order 1-2001,
13 §7(A)(3) ("Meal periods . . . shall also be recorded"); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053,
14 citing §7(A)(3) ("If an employer's records show no meal period for a given shift over five hours,
15 a rebuttable presumption arises that the employee was not relieved of duty and no meal period was
16 provided").

17 Employers must pay employees an additional hour of wages at the employees' regular rate
18 of pay for each missed or improper (e.g., less than 30 minutes, interrupted meal period, first meal
19 period provided after 5 hours, second meal period provided after 10 hours) meal period. Lab. Code
20 §226.7; IWC Wage Order 1-2001, §11(B) ("If an employer fails to provide an employee a meal
21 period in accordance with the applicable provisions of this order, the employer shall pay the
22 employee one (1) hour of pay at the employee's regular rate of compensation for each workday
23 that the meal period is not provided"); *Brinker, supra*, 53 Cal.4th 1004.

24 Plaintiff and the Class Members consistently worked shifts over five (5) hours. (Szamet
25 Decl. ¶50.) Plaintiff contends that Defendant failed to provide Plaintiff and the Class Members
26 with proper meal periods of not less than thirty (30) minutes as required by the Labor Code during
27 the relevant time period. Indeed, due to the hectic nature of their job, Plaintiff alleged that was
28 often unable to take a meal break and when he was able, meal breaks were sometimes

uninterrupted, late or short (less than 30 minutes). (Szamet Decl. ¶51.) Further, Plaintiff alleged that Defendant violated California’s meal period laws by not paying Plaintiff and the other similarly situated Class Members one (1) hour of pay at the employees’ regular rate of compensation for each workday that the first meal period was not provided within the first five (5) hours of the shift. (Szamet Decl. ¶52.)

Defendant vehemently denies the alleged meal break claim. Defendant maintains that it maintained a valid written meal period policy during the Class Period and had compliant practices during the Class Period. (Szamet Decl. ¶53.) Defendant contends that Plaintiff and all Class Members were provided with all required meal periods and that Defendant paid meal period premiums when necessary. (Szamet Decl. ¶54.) This presented a significant risk on the meal period claim that Plaintiff considered when evaluating this settlement. (Szamet Decl. ¶55.) As an initial matter, Defendant meets *Brinker’s* “provide” standard by maintaining a valid written policy and not doing anything to interfere with the taking of lawful meal periods. (Szamet Decl. ¶56.) Second, Plaintiff worked with an expert to analyze Defendant’s time and pay records. (Szamet Decl. ¶57.) The records show that there are first meal periods recorded for shifts greater than 5 hours in 92.8% of shifts. (Szamet Decl. ¶58.) However, Plaintiff contends that the records show that of these recorded meal periods for shifts greater than five hours, 59.9% of them occur after the end of the 5th hour of work (i.e late meal periods). (Szamet Decl. ¶59.) This can be a tough claim to prove on a classwide basis, however, because Defendant will argue it is an individualized inquiry that requires questioning of each and every Class Member as to each and every late meal period in the records as to why the break was late – was it “provided” but the person chose to take the meal period later or was the person prohibited from taking it timely by Defendant. (Szamet Decl. ¶60.) Such an inquiry, Defendant would argue, necessarily defeats class certification. (Szamet Decl. ¶61.) Based on this significant risk, Class Counsel contends it was appropriate to discount the full value of this claim for settlement purposes. (Szamet Decl. ¶62.)

b) The Risks Associated with the Rest Break Claim

Labor Code section 226.7, subdivision (c), requires an employer to pay an additional hour of compensation for each workday the employer fails to provide a rest period according to law.

1 Employees are entitled to a paid ten (10) minute rest break for every four (4) hours worked, or
2 major fraction thereof. (Cal. Code Regs., tit. 8, § 11050, subd. 12(A).)

3 Plaintiff and the Proposed Class’s rest period claims arise from an alleged common course
4 of conduct wherein Defendant did not provide employees with the opportunity to take a 10-minute
5 rest break during their shifts in compliance with California law. (Szamet Decl. ¶63.) The California
6 Supreme Court has held: “Employees are entitled to 10 minutes’ rest for shifts from three and one-
7 half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes
8 for shifts of more than 10 hours up to 14 hours, and so on.” (*Brinker Rest. Corp. v. Superior Court*,
9 *supra*, 53 Cal.4th at 1029.) In an eight-hour workday, being denied the two paid rest breaks in a
10 day is “essentially perform[ing] 20 minutes of ‘free’ work.” (*Murphy v. Kenneth Cole Productions*,
11 *Inc.* (2007) 40 Cal.4th 1094, 1104.)

12 The Court also clarified what steps an employer has to take to “make available” rest breaks
13 to its employees. Under *Brinker*,

14 An employer is required to authorize and permit the amount of rest
15 break time called for under the wage order for its industry. If it does
16 not—if, for example, it adopts a uniform policy authorizing and
17 permitting only one rest break for employees working a seven-hour
18 shift when two are required—it has violated the wage order and is
liable. No issue of waiver ever arises for a rest break that was
required by law but never authorized; if a break is not authorized, an
employee has no opportunity to decline to take it.

19 (*Brinker Rest. Corp. v. Superior Court*, *supra*, 53 Cal.4th at 1033 (emphasis added).)

20 Employers must authorize and permit a net ten-minute paid rest period for every four hours,
21 or major fraction thereof, of work for its employees. If an employer does not, then the employer
22 must pay the employee one hour of pay at the employee’s regular rate of pay for each workday
23 that the rest period is not provided. (Cal. Code Regs., tit. 8, § 11050, subd. 12(B).)

24 Plaintiff contends that he and the Class Members consistently worked shifts of 4+ hours
25 and were not authorized or permitted to take rest breaks. (Szamet Decl. ¶64.) Therefore, Plaintiff
26 alleges that for each rest period Plaintiff and the Class Members were not provided with, Defendant
27 is liable for one (1) additional hour of pay at the employee’s regular rate of compensation. (Lab.
28 Code, § 226.7, subd. (b).) (Szamet Decl. ¶65.)

1 Again, Defendant disagreed and maintained that there was accurate rest period policy and
2 employee were provided the opportunity to take all required rest breaks. (Szamet Decl. ¶66.) The
3 risk for Plaintiff is that there are no time records to show if rest periods are compliant because rest
4 breaks are not recorded. (Szamet Decl. ¶67.) The primary way that Plaintiff can establish rest
5 period liability is through testimonial evidence. (Szamet Decl. ¶68.) In theory, Plaintiff could
6 have secured several class member declarations about their experiences regarding rest breaks to
7 bolster Plaintiff's contentions. (Szamet Decl. ¶69.) But, there is risk as to what these declarations
8 would have said and Defendant likewise would presumably attempt to gather competing
9 declarations that state the opposite. (Szamet Decl. ¶70.) Such would devolve into a "declaration
10 war" that could potentially defeat class certification. (Szamet Decl. ¶71.) It also would likely
11 result in dozens of class members declarations with great uncertainty as to what those depositions
12 would establish. (Szamet Decl. ¶72.) Just as with meal periods, Defendant will argue that it is an
13 individualized inquiry that requires questioning of each and every Class Member as to each and
14 every shift as to whether or not they were able to take all compliant rest periods. (Szamet Decl.
15 ¶73.) Again, such an inquiry, Defendant would argue, necessarily defeats class certification.
16 (Szamet Decl. ¶74.) Based on this significant risk and given that rest period claims can be very
17 difficult to certify and prove liability, Plaintiff factored in a significant discount for this claim for
18 settlement purposes. (Szamet Decl. ¶75.)

19 c) The Risks Associated with Wage Claim

20 Labor Code §227.3 provides: "...whenever a contract of employment or employer policy
21 provides for paid vacations, and an employee is terminated without having taken off his vested
22 vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with
23 such contract of employment or employer policy respecting eligibility or time served..."

24 Plaintiff's wage allegations are based on Defendant's alleged failure pay Plaintiff and all
25 members of the Proposed Settlement Class for their vested vacation at the time of their separation
26 from the company. (Szamet Decl. ¶76.) Plaintiff pled that, as a result of this unlawful policy,
27 Defendant does not pay all wages owed at the appropriate rate to Plaintiff and all members of the
28 Proposed Settlement Class in violation of Labor Code §510. (Szamet Decl. ¶77.) Defendant

1 argued that when the location was closed, all vested vacation was paid out at the correct rate.
2 (Szamet Decl. ¶78.) Plaintiff's expert analysis of the pay records did indicate that vested vacation
3 was paid out at the time of termination. (Szamet Decl. ¶79.) Defendant further argued that at the
4 time of filing the lawsuit, Plaintiff was out on leave and therefore potentially not a typical or
5 adequate representative as to the vacation claim. (Szamet Decl. ¶80.) Therefore, Plaintiff viewed
6 this claim as extremely weak and placed no value on it for settlement purposes. (Szamet Decl.
7 ¶81.)

8 Plaintiff's review of the records did reveal a wage problem as it relates to sick pay. (Szamet
9 Decl. ¶82.) In the data, there were approximately 3,800 pay periods with sick pay and of those
10 half of the pay periods with sick pay also had shift differential pay for a total of approximately
11 1,900 pay periods. (Szamet Decl. ¶83.) The sick pay was paid out at the regular rate, not the
12 correctly blended rate. (Szamet Decl. ¶84.) The average underpayment of sick pay due to the
13 failure to blend to determine the correct regular rate was approximately \$10 for each of the 1,900
14 payments leading to a maximum exposure of \$19,000. (Szamet Decl. ¶85.) Though small in
15 overall value, Plaintiff felt confident this claim would be certified. (Szamet Decl. ¶86.)

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

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

26 Plaintiff maintains that Defendant issued wage statements that allegedly violate Labor
27 Code §§ 226(a)(2) and (9). (Szamet Decl. ¶87.) Labor Code § 226(a) specifically requires that the
28 employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her

employees, an accurate itemized statement in writing showing all applicable hourly rates in effect during the pay period and the corresponding number of hours *worked* at each hourly rate by the employee. Plaintiff alleges that he and Class Members are issued wage statements that do not accurately show the applicable overtime rate and the number of hours worked at the corresponding rate based on Defendant's alleged failure to blend discussed above. (Szamet Decl. ¶88.) However, Plaintiff has to recognize that this is a derivative claim. (Szamet Decl. ¶ 89.) Plaintiff does not argue that Defendant failed to show required information on the paystubs it issued to Class Members, only that the paystubs do not accurately show the information. (Szamet Decl. ¶90.) While Plaintiff believes this claim is easily certifiable, Plaintiff has to acknowledge that this is a more difficult argument to prevail on when it comes to assessing liability and a resulting discount for settlement purposes is appropriate. (Szamet Decl. ¶91.)

e) The Risks Associated with the Waiting Time Penalty Claim

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

Here, all Class Members, including Plaintiff, are no longer employed by Defendant as a result of the facility being shut down over a period of time in approximately Q4 2020 and Q1 2021. (Szamet Decl. ¶92.) Plaintiff contends that Defendant has failed to pay employees wages immediately or within 72 hours of termination and/or resignation by not paying all meal period premiums owed and wages. (Szamet Decl. ¶93.) Therefore, under California Law, Plaintiff contends that "waiting time" penalties would be triggered for each former employee in the class. (Szamet Decl. ¶94.) Labor Code section 203 reflects a public policy concern that favors the full and prompt payment of earned wages. (See, e.g., *Barnhill v. Robert Saunders & Co.* (1981) 125 Cal.App.3d 1, 7; *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.)

Defendant maintains that it has paid all wages due to employees at the separation of

1 employment. Defendant argues that a good-faith belief applies here and that if it inadvertently did
2 not pay final wages to an individual, its actions were not willful. (Szamet Decl. ¶95.) Plaintiff
3 responds that the well-settled meaning of “willful,” as used in Labor Code section 203, is that an
4 employer has intentionally failed or refused to perform an act which was required to be done.
5 (*Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201.) (Szamet Decl. ¶96.) Plaintiff
6 contends that Defendant knew wages were owed but failed to pay them. (Szamet Decl. ¶97.)
7 Therefore, Plaintiff contends that waiting time penalties apply here and each former employee
8 would be entitled to thirty (30) days of wages.

9 f) 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 of
14 \$100 per employee per pay period for the initial violation and \$200 for subsequent violations.

15 Plaintiff discounted the PAGA claim for settlement purposes for multiple reasons. (Szamet
16 Decl. ¶98.) First, the aggrieved employees’ PAGA claims are derivative of all the underlying class
17 claims. *Id.* Second, a court has discretion to award less than the maximum penalty. *Id.*; Labor
18 Code § 2699(e)(2) (“a court may award a lesser amount than the maximum civil penalty amount
19 specified by this part if, based on the facts and circumstances of the particular case, to do otherwise
20 would result in an award that is unjust, arbitrary and oppressive, or confiscatory”). *See e.g.*,
21 *Carrington v. Starbucks Corporation* (2018) 30 Cal.App.5th 504, 241 Cal.Rptr.3d 647, 669
22 (affirming award of 10% of maximum PAGA penalty). Finally, the Class is arguably compensated
23 for these violations in the proposed Agreement, and thus any PAGA recovery for these same
24 violations could be deemed to be duplicative. *Id.* As such, Class Counsel believes that the
25 Agreement’s contemplated PAGA payment of \$25,000.00 is appropriate. *Id.*; *see Nordstrom*
26 *Commissions Cases*, 186 Cal.App.4th 576, 589 (2010) (affirming settlement allocating \$0 of \$6.4
27 million settlement to PAGA penalties).

28 ///

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. ¶¶99.) If the
4 Court did eventually certify a meal/rest or wage class, trial of a case involving approximately 219
5 Class Members would require the retention of expensive expert witnesses, the accrual of extensive
6 litigation costs, and a significant time overlay by the parties. (Szamet Decl. ¶¶100.) Moreover,
7 given the complexity and unsettled nature of the issues in this case it is likely that any outcome at
8 trial would have resulted in a lengthy and costly appeal. (Szamet Decl. ¶¶101.) An appeal would
9 result in further delay 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. ¶¶102.) While
12 Plaintiff believes there is strong evidence to support certification of several possible subclasses,
13 certification is always hard fought and subject to judicial discretion. Moreover, in class actions,
14 decertification is always a possibility. (*Id.*) In attempting to certify a class, the parties would need
15 to conduct multiple depositions, including of the Class Representative and of several person(s)
16 most knowledgeable regarding Defendant's meal/rest policies and practices and the payment of
17 vested vacation wages. (*Id.*) There is a risk for both sides as to what these depositions will reveal
18 and whether they will support class certification to the extent expected. (*Id.*)

19 4. The Amount Offered in Settlement

20 It was very difficult for the Parties to reach this Settlement of \$650,000.00. (Szamet Decl.
21 ¶¶103.) This Settlement is the result of adversarial, non-collusive, and arms-length negotiations.
22 (Szamet Decl. ¶¶104.) 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 a very experienced jurist and mediator, Francis J. Ortman (Ret.). (*Id.*)

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

27 Plaintiff worked with an expert to analyze the time and pay records and put together an
28 exposure model for purposes of mediation. (Szamet Decl. ¶¶105.)

1 Plaintiff assessed full value of the wage claim related to the underpaid sick pay allegations
2 discussed above, without any discount, at a maximum of approximately \$19,000. (Szamet Decl.
3 ¶106.)

4 As discussed above, if Plaintiff could prove that the “late” meal periods in the records did
5 amount to a meal period violation with a premium due and owing, the value of the claim, without
6 any discount, was approximately \$1,261,498. (Szamet Decl. ¶107.)

7 If Plaintiff likewise assumed a rest break violation rate of 59.9%³, the full value of the rest
8 period claim, without any discount, would also be approximately \$1,261,498. (Szamet Decl. ¶108.)
9 This amount assumes a rest period premium of \$25.08 (average hourly rate of pay) for 50,299
10 shifts. (Szamet Decl. ¶ 109.) For the reasons above, Plaintiff determined that accepting a discount
11 of the full amount was appropriate. (Szamet Decl. ¶ 110.)

12 Plaintiff valued the Wage Statement Claim, without discount, at \$231,150. (Szamet Decl.
13 ¶111.) Based on expert analysis of the time pay data, this assumes there are 65 class members in
14 the wage statement penalty period of November 19, 2020 to January 24, 2023 with 4,517 pay
15 periods at issue. (Szamet Decl. ¶ 112.) Plaintiff used 50\$ for the first wage statement and \$100
16 per wage statement thereafter for each Class Member (Labor Code §226(e)(1) uses \$50 for the
17 initial pay period (not \$100) and puts a \$4,000 cap on wage statement penalties per employee).
18 (Szamet Decl. ¶113.) Due to the risk discussed above that 226(a) liability would not, Plaintiff
19 determined that a discount of this claim was fair for settlement purposes. (Szamet Decl. ¶ 114.)

20 Plaintiff valued the Waiting Time Claim (Labor Code §203), tied to the sick pay claim
21 discussed above, at \$561,452. (Szamet Decl. ¶115.) Based on the data, this assumes there are 75
22 Class Members with the sick pay issue who are owed wages. (Szamet Decl. ¶116.)

23 Finally, Plaintiff calculated the maximum value of the PAGA claim at \$850,600 for Class
24 Members (using \$100/\$200 per pay period) if Plaintiff prevailed on the meal period claim. (Szamet
25 Decl. ¶ 117.) The main risk taken into account with PAGA is the discretionary nature of the
26 penalty award. (Szamet Decl. ¶118.) A judge can award the statutory maximum of \$100 for the
27

28 ³ Expert analysis of the pay records showed meal periods were allegedly “late” (after the
5th hour) 59.9% of the time.

1 initial violation and \$200 thereafter or – in theory – one cent per wage statement. (Szamet Decl.
2 ¶119.) While there is a dearth of available authority, in Plaintiff’s view, were he to succeed on
3 any of the underlying Labor Code violations, it is not likely that a Judge would also award a large
4 amount of penalties of top of any damages recovered. (Szamet Decl. ¶120.)

5 Per Plaintiff’s assessment, adding all of the exposure above, the maximum potential value
6 of all of Plaintiff’s and the Class Members’ claims was approximately \$4,185,198. (Szamet Decl.
7 ¶121.) However, as a result of the forgoing risks on the merits, Class Counsel believes the Gross
8 Settlement Amount of \$650,000.00 is fair and reasonable. (Szamet Decl. ¶122.)

9 Though the risks at to each claim and the resulting discounts are discussed at length above,
10 another major risk factor Class Counsel took into account is that Defendant provided informal
11 evidence that it gathered approximately 55 signed severance agreements. (Szamet Decl. ¶123.)
12 This certainly presented cognizable risk that Defendant was willing to and could engage in a
13 successful *Chindarah v. Pick Up Stix* campaign to gather signed severance agreements form Class
14 Members. (Szamet Decl. ¶124.) If Defendant did this successfully, the exposure could be reduced
15 dramatically if not almost entirely eliminated. (Szamet Decl. ¶125.) Also factoring in this risk,
16 Class Counsel believes that the settlement is fair and reasonable and should be approved. (Szamet
17 Decl. ¶126.)

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. ¶¶127-129.) The firm is well versed in class action litigation and has diligently and
24 aggressively pursued this action. (*Id.*) Kingsley & Kingsley, APC currently serves as Class
25 Counsel for dozens of pending class action lawsuits in Northern, Central, and Southern California.
26 (*Id.*) A list of representative cases that Kingsley & Kingsley, APC has handled is included in the
27 accompanying declaration of Kelsey M. Szamet. (*Id.*) After factoring in the risks explained above,
28 Class Counsel believes that the proposed settlement is fair and reasonable. (Szamet Decl. ¶130.)

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 is an individualized payment to each Class Member pro rata based on the number of compensable
6 work weeks worked by the Class Member during the Class Period. (Ex. 1 at § 3, ¶3.2.4.) This
7 allocation distributes Agreement funds proportionally to each class member’s potential damages
8 and should therefore be approved as fair, adequate, and reasonable. (Szamet Decl. ¶131.)

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

11 Plaintiff requests that the Court approve the proposed plan and form of Class Notice. The
12 standard for determining the adequacy of notice is whether the notice has “a reasonable chance of
13 reaching a substantial percentage of the class members.” (*Cartt v. Superior Court* (1975) 50
14 Cal.App.3d 960, 974.) Pursuant to the Agreement, the Notice will be sent to the last known address
15 of all Class Members, or to an updated address if one is located in the National Change of Address
16 Database. (Ex. 1 at § 8, ¶8.4.2). If any Notices are returned as undeliverable, the Administrator
17 will undertake another reasonable address verification measure to locate a valid mailing address
18 and will promptly send the Notice to the new address. (*Id.*) As such, the Notice is likely to reach
19 most, if not all, Class Members.

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

26 Here, the Notice clearly explains the proposed Agreement and the options to opt out of the
27 Settlement or object to it at the Final Approval Hearing. (Ex. 1 at § 8, ¶¶8.5;8.7; *see also* Ex. A to
28 the Agreement at pp. 2-3, 7-8 [Class Notice].) In short, the Court should approve the proposed

Class Notice because it describes the proposed settlement with enough specificity to allow Class Members 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 his valiant effort and time expended in this matter. (Szamet Decl. ¶132.) The time spent by NICK VASQUEZ 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 Class Members; making himself available for a full-day of mediation as necessary; 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 \$5,000.00, to be paid from the Gross Settlement Amount. (Ex. 1 at § 3, ¶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. ¶133; Ex. 1 at § 6, ¶6.1.)

Class Counsel considers this to be a fair and reasonable enhancement. (Szamet Decl. ¶134.) 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 his participation and further justification for the enhancement. (*Id.*)

VII. SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY

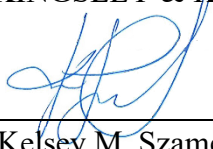
As indicated on the Proof of Service, Plaintiff’s Motion for Approval of Class Action Settlement (“Motion”) will be concurrently uploaded to the Labor and Workforce Development Agency’s (“LWDA”) website on the date this Motion is filed as required by statute. Proof of submission of Plaintiff’s Motion, all related documents, and copy of the email from the LWDA confirming receipt is attached to the Declaration of Kelsey M. Szamet as Exhibit “4.” (Szamet Decl. ¶135.)

VIII. CONCLUSION

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

8
9 DATED: September 11, 2023

KINGSLEY & KINGSLEY, APC

10
11 By: 

Kelsey M. Szamet

12 Attorneys for Plaintiff NICK VASQUEZ and the
13 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 September 11, 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:

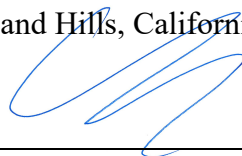
SEYFARTH SHAW LLP Andrew M. Paley apaley@seyfarth.com Jill A. Porcaro jporcaro@seyfarth.com Angelina Evans aevans@seyfarth.com 2029 Century Park East, Suite 3500 Los Angeles, CA 90067-3021	ABRAMSON LABOR GROUP William Zev Abramson wza@abramsonlabor.com 3580 Wilshire Blvd, Ste 1260 Los Angeles, CA 90010-2513
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[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 THROUGH CASE ANYWHERE): On interested parties set forth on the attached service list.

[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 11, 2023, at Woodland Hills, California.



Michelle Tanzer