

KINGSLEY SZAMET & LY

ERIC B. KINGSLEY, Esq. (SBN 185123)

eric@kingsleylawyers.com

KELSEY M. SZAMET, Esq. (SBN 260264)

kelsey@kingsleylawyers.com

16133 Ventura Blvd., Suite 1200

Encino, CA 91436

Telephone: (818) 990-8300

Fax: (818) 990-2903

ABRAMSON LABOR GROUP

WILLIAM ZEV ABRAMSON, Esq. (SBN 289387)

Wza@abramsonlabor.com

11846 Ventura Blvd., Suite 100

Studio City, CA 91604

Tel: (213) 493-6300, Fax (213) 382-4083

Attorneys for Plaintiff and the Proposed Class

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. Elaine
Lu in Dept. 9]

**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, Nick Vasquez and Lluvia
Islas of Phoenix Settlement Administrators,
Proposed Order and Judgment]*

Date: October 23, 2024

Time: 10:00 AM

Dept.: 9

Complaint Filed: November 19, 2021

Trial Date: None Set

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

2 PLEASE TAKE NOTICE that on October 23, 2024 at 10:00 AM in Department 9 of the
3 above-entitled court, Plaintiff NICK VASQUEZ (“Plaintiff”) will, and hereby does, move the
4 Court for an Order of Final Approval of the Class Settlement in this case. Plaintiff moves the
5 Court for an order:

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

9 2. Affirming Kingsley Szamet & Ly and Abramson Labor Group as Class Counsel;

10 3. Affirming NICK VASQUEZ as Class Representative and awarding an
11 enhancement award of \$5,000.00;

12 4. Awarding Phoenix Class Action Settlement Administration Solutions claims
13 administration fees of \$8,000.00 for its services as Administrator; and,

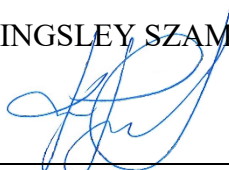
14 5. Entering judgment.

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

18 The Motion will be based on this Notice of Motion, the attached Memorandum of Points
19 and Authorities, the Declarations of Kelsey M. Szamet, Nick Vasquez, Lluvia Islas, all other
20 papers and records on file in this action, and on such oral and documentary evidence as may be
21 presented at the hearing on this Motion.

22 DATED: September 23, 2024

KINGSLEY SZAMET & LY

23
24 By: 

25 Kelsey M. Szamet
26 Attorneys for Plaintiff NICK VASQUEZ and the
27 proposed class
28

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	FACTUAL BACKGROUND.....	1
A.	Litigation Overview and Procedural History	1
B.	The Discovery Process.....	2
C.	Preliminary Approval.....	3
III.	THE PRELIMINARILY APPROVED SETTLEMENT.....	4
A.	The Settlement Class.....	4
B.	The Aggrieved Employees.....	4
C.	Settlement Payments.....	4
D.	Individual Settlement Payments	5
E.	Class Notice	5
F.	Check Mailed Settlement – No Reversion.....	6
IV.	THE COURT SHOULD ORDER FINAL APPROVAL OF THE SETTLEMENT	6
A.	The Settlement is Entitled to a Presumption of Fairness	6
B.	The Court Should Approve This Class Action Settlement Because it Satisfies Each of the <i>Kullar</i> Factors	7
1.	The Strength of Plaintiffs’ Case.....	8
a)	The Risks Associated with the Meal Break Claim.....	8
b)	The Risks Associated with the Rest Break Claim.....,.....	10
c)	The Risks Associated with the Wage Claim.....	12
d)	The Risks Associated with the Inaccurate Wage Statement Claim.....	13
e)	The Risks Associated with the Waiting Time Penalty Claim.....	13
f)	The Risks Associated with the PAGA Claim.....	14

1	2.	The Risk, Expense, Complexity, and Likely Duration of Further Litigation	
2			15
3	3.	The Risk of Maintaining Class Action Status through Trial.....	15
4	4.	The Amount Offered in Settlement.....	16
5	5.	The Extent of Discovery Completed and Stage of the Proceedings	18
6	6.	The Experience and Views of Counsel	18
7	7.	The Presence of a Governmental Participant.....	19
8	8.	The Proposed Plan of Allocation Is Fair and Reasonable.....	19
9	9.	The Reaction of the Class Members to the Proposed Settlement	19
10	V.	ENHANCEMENT TO PLAINTIFF	19
11	VI.	SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY.	20
12			
13	VII.	CONCLUSION.....	20
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			
27			
28			

TABLE OF AUTHORITIES

Federal Cases

<i>Ingram v. The Coca-Cola Company</i> , 200 F.R.D. 685 (N.D. Ga 2001).....	19
<i>Officers for Justice v. Civil Service Comm’n</i> , (9th Cir. 1982) 688 F.2d 615	19
<i>Van Vranken v. Atlantic Richfield Co.</i> , 901 F. Supp. 294 (N.D. Cal. 1995)	19

State Cases

<i>Amaral v. Cintas Corp. No. 2</i> , (2008) 163 Cal.App.4th 1157.....	14
<i>Barnhill v. Robert Saunders & Co.</i> , (1981) 125 Cal.App.3d 1	14
<i>Brinker Restaurant Corp. v. Superior Court</i> , (2012) 53 Cal.4th 1004	8, 9, 10, 11
<i>Carrington v. Starbucks Corporation</i> , (2018) 30 Cal.App.5th 504, 241 Cal.Rptr.3d 647.....	15
<i>Dunk v. Foot Locker Retail, Inc.</i> , (1996) 48 Cal.App.4th 1794	3, 6
<i>Kullar v. Foot Locker Retail, Inc.</i> , (2008) 168 Cal.App.4th 116 (“ <i>Dunk/Kullar</i> ”).....	3, 7
<i>Mamika v. Barca</i> , (1998) 68 Cal.App.4th 487	14
<i>Murphy v. Kenneth Cole Productions, Inc.</i> , (2007) 40 Cal.4th 1094	10
<i>Nordstrom Commissions Cases</i> , 186 Cal.App.4th 576 (2010)	15

State Statutes

Business & Professions Code § 17200	2
Civil Code § 1542	20
Code of Civil Procedure § 382.....	6

1	Code of Civil Procedure § 1781(f).....	6
2	Labor Code § 203.....	2, 13, 14, 17
3	Labor Code, § 203, subd. (a).....	14
4	Labor Code § 226(a)	2, 13
5	Labor Code §§ 226(a)(2) and (9)	13
6	Labor Code § 226(e)(1)	13, 17
7	Labor Code § 226(e)(2)(B)	13
8	Labor Code § 226.7	1, 2, 9
9	Labor Code, § 226.7, subd. (b)	11
10	Labor Code § 226.7, subdivision (c).....	10
11	Labor Code § 227.3.....	2, 12
12	Labor Code §510.....	2, 12
13	Labor Code § 512.....	1, 2, 8, 9
14	Labor Code § 2698.....	14
15	Labor Code § 2699.....	2, 15

State Regulations

18	Cal. Code Regs., tit. 8, § 11050, subd. 12(A)	10, 11
----	---	--------

Other Authorities

Glass v. UBS Financial Service, Inc.,

20	Case No. C-06-4068 MMC 2007 WL 227862 (N.D. Cal. Jan. 26, 2007)	19
----	---	----

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff NICK VASQUEZ (“Plaintiff”) submits this Motion for Final Approval of Class
4 Settlement and requests 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 Phoenix Class Action Settlement Administration Solutions claims
11 administration fees of \$8,000.00 for its services as Administrator;

12 4. Affirm named Plaintiff NICK VASQUEZ as Class Representative and award a
13 cumulative Class Representative payment of \$5,000.00; and

14 5. Enter judgment.

15 **II. FACTUAL BACKGROUND**

16 A. Litigation Overview and Procedural History

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

24 On November 19, 2021, Plaintiff NICK VASQUEZ filed a complaint entitled *NICK*
25 *VASQUEZ v. TURBINE ENGINE COMPONENTS TECHNOLOGIES CORPORATION* in the Los
26 Angeles County Superior Court, case number 21STCV42670. (Declaration of Kelsey M. Szamet
27 (“Szamet Decl.”) ¶5.) (Agreement, Ex. 1 at (“Ex. 1”) § 1 ¶1.1.). In the Complaint, Plaintiff alleged
28 five causes of action for: (1) Failure to Provide Meal Periods Under Labor Code §§ 226.7 and 512;

(2) Failure to Pay Vested Vacation Wages Under Labor Code §§ 227.3 and 510; (3) Violation of Labor Code § 226(a); (4) Penalties Pursuant to Labor Code § 203; and (5) Violation of Business & Professions Code § 17200, *et seq.* (Szamet Decl. ¶6.)

Also on November 19, 2021, Plaintiff sent a notice letter, pursuant to Labor Code § 2699 *et seq.* the Private Attorneys General Act (“PAGA”), to the Labor Workforce Development Agency (“LWDA”) regarding his intent to seek civil penalties for the Labor Code violations above. (Szamet Decl. ¶7; Exhibit “2”.) A true and correct copy of the initial PAGA letter is attached hereto as Exhibit “2”.

On February 2, 2022, Plaintiff filed a First Amended Complaint, adding a sixth claim for penalties under the Labor Code’s Private Attorneys General Act (“PAGA”), Labor Code § 2699 *et seq.* (Szamet Decl. ¶8.) On June 16, 2023, Plaintiff filed a Second Amended Class and Representative Action Complaint, adding a claim for violations of Labor Code § 226.7 for failure to provide rest periods on behalf of a settlement class during the relevant class period. (Szamet Decl. ¶9.) (hereafter the “Lawsuit”). Additionally, Plaintiff sent an amended notice letter to the LWDA regarding his intent to add this additional rest period claim. (*Id.*; Exhibit “3”). A true and correct copy of the amended PAGA letter is attached hereto as Exhibit “3”.

B. The Discovery Process

The Parties have yet to engage in formal discovery, instead focusing their efforts on resolving this case through early mediation. (Szamet Decl. ¶10.) The Parties scheduled a private mediation with Francis J. Ortman III, Esq. on January 24, 2023. (Szamet Decl. ¶11.) In preparation for mediation, Defendant informally produced multiple documents and provided other information necessary to evaluate settlement. (Szamet Decl. ¶12.) This included Plaintiff’s personnel file and time and pay records, a redacted sampling of payroll journals and ending hourly pay rates for Defendant’s employees (i.e., hourly rate of pay at time of termination), and the total number of Class Members and relevant work weeks at issue. (Szamet Decl. ¶13.) Defendant provided Plaintiff’s complete personnel file; a class list containing 183 class members (out of 219 total Class Members); a redacted sampling of payroll journals and ending hourly pay rates for Defendant’s employees (i.e., hourly rate of pay at time of termination); sample severance agreement; and time

1 and pay data for Class Members. (Szamet Decl. ¶14.) The time and pay data included 93,222
2 shifts spanning 20,391 workweeks. (*Id.*) Plaintiff retained an expert to review the data and all of
3 these 93,222 shifts were analyzed by the expert to determine potential violation rates, damages
4 exposure, etc. (*Id.*) The 93,222 shifts produced and analyzed represent 99.5% of the shifts at issue
5 in the matter. (*Id.*) This is statistically significant and represents less than a 1% margin of error.
6 (*Id.*) The data included 20,391 workweeks and the Parties ultimately settled 20,964 workweeks.
7 (*Id.*) As such, the Parties engaged in extensive informal discovery that allowed the Parties to fully
8 investigate the claims at issue and understand their strengths and weakness. Plaintiff's
9 investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot*
10 *Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008)
11 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").

12 Defendant denies any liability or wrongdoing of any kind associated with the claims
13 alleged in the Action, disputes the damages and penalties claimed by Plaintiff, and further contends
14 that, for any purpose other than settlement, Plaintiff's claims are not appropriate for class or
15 representative action treatment. (Szamet Decl. ¶15.) Defendant contends, among other things, that,
16 at all times, it has complied with the California Labor Code and the IWC Wage Orders. (*Id.*)

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

26 C. Preliminary Approval

27 On April 30, 2024, the Court issued an Order preliminarily approving the settlement in this
28 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. ¶17.)

III. THE PRELIMINARILY APPROVED SETTLEMENT

A. The Settlement Class

For purposes of Agreement, the Class is defined as: “all current and former non-exempt employees of Defendant in the State of California including all temporary employees supplied by Defendant by any staffing agency at any time between November 19, 2017 through January 24, 2023.” (“Class”) (Szamet Decl. ¶18; Ex. 1 at § 1, ¶1.5.) The “Class Members” shall not include any person who submits a timely and valid Request for Exclusion as provided in this Agreement, or any person who previously released the Released Claims under a separate agreement. (Szamet Decl. ¶19; Agreement, Ex. 1 at § 1, ¶1.5.)

The Class Period is November 19, 2017 through January 24, 2023. (Szamet Decl. ¶20; Ex. 1 at § 1, ¶1.12.) The Class Period cuts off at the date of mediation. (*Id.*)

The final Class contained 214 individuals. (Islas Decl. ¶5.)

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. ¶21; Settlement, Ex. 1 at § 1, ¶1.4.)

The PAGA Period is November 19, 2020 through January 24, 2023. Szamet Decl. ¶22; Ex. 1 at § 1, ¶1.31.)

C. Settlement Payments

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. ¶23; Ex. 1 at § 1, ¶1.22.) Plaintiff now requests final approval of the allocation of the Gross Settlement Amount to determine the Net Settlement Amount for distribution to the Class as follows:

Gross Settlement Amount:	\$	650,000.00
Less Class Counsel's Fees:	\$	216,666.67
Less Class Counsel's Costs:	\$	21,336.80 ¹
Less Administrators Costs:	\$	8,000.00
Less PAGA Payment:	\$	25,000.00
		(\$18,750.00 to the LWDA; \$6,250.00 to remain in the Net Settlement Amount)
Less Class Representative Enhancement:	\$	<u>5,000.00</u>
Net Settlement Amount:	\$	380,246.53

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.)

Based on these calculations and per the Settlement Administrator, the average potential recovery is \$2,314.58 per Class Member and the highest recovery is \$9,842.34. (Islas Decl. ¶13.)

E. Class Notice

The Court approved the proposed Class Notice and directed the mailing of the Notice by

¹ The Agreement provided for counsel to receive cost reimbursement up to \$25,000.00. However, counsel's final costs come to \$21,336.80, which includes the anticipated cost of \$600 for filing the instant motion. (Szamet Decl. ¶23, Ex. 7). The extra \$3663.20 will remain in the net settlement fund, causing the net distribution to the Class Members to be slightly higher than the \$376,683.33 contemplated in the settlement agreement (*Id.*, Ex. 1 §3, ¶3.2.2)

1 first-class mail to Class Members in accordance with the proposed implementation schedule.
2 (Szamet Decl. ¶24.) The procedures for giving notice to the Class Members, as set forth in the
3 Agreement and Plaintiffs’ Motion for Preliminary Approval and approved by the Court, have been
4 fully and properly carried out. (Islas Decl. ¶5.)

5 To date, Phoenix Class Action Settlement Administration Solutions received zero (0)
6 request to be excluded (“opt-outs”) from the proposed Agreement and zero (0) objections. (Islas
7 Decl. ¶¶8- 9.)

8 F. Check Mailed Settlement – No Reversion

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

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

17 Pursuant to California Code of Civil Procedure § 1781(f), “a class action shall not be
18 dismissed or compromised without the approval of the court, and notice of the proposed dismissal
19 or compromise shall be given to all members of the Class in such manner as the court directs”
20 In deciding whether to grant final approval to a proposed class action settlement under Code of
21 Civil Procedure § 382, the court’s overriding concern is whether the proposed settlement is “fair,
22 adequate, and reasonable.” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.)

23 A. The Settlement is Entitled to a Presumption of Fairness

24 “A presumption of fairness exists where: (1) the settlement is reached through arm’s length
25 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
26 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
27 small.” (*Dunk, supra*, 48 Cal.App.4th at p. 1802.) The proposed Settlement in the present case
28 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 overseen by an experienced mediator. All settlement discussions were made by experienced and informed counsel, who believe that this settlement represents a favorable resolution for the Class Members. (Szamet Decl. ¶25.) The settlement negotiations have been, at all times, adversarial and non-collusive, with the aid of a mediator, 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. (Szamet Decl. ¶27.) This included Plaintiff's personnel file and time and pay records, a redacted sampling of payroll journals and ending hourly pay rates for Defendant's employees (i.e., hourly rate of pay at time of termination), and the total number of Class Members and relevant work weeks at issue. (*Id.*) 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 Class Member of over \$2,314.58 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. (Islas Decl. ¶¶8-9.) As all of the *Dunk* factors are satisfied, this settlement is entitled to a presumption of fairness.

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

The case of *Kullar v. Foot Locker Retail, Inc* (2008) 168 Cal.App.4th 116, 128, set forth several factors that the Court should analyze in determining whether to approve a class action settlement. These factors include: (1) the strength of plaintiff's case; (2) the risk, expense, complexity and likely duration of further litigation; (3) the risk of maintaining class action status

1 through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and stage
2 of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental
3 participant; and (8) the reaction of the class members to the proposed settlement.

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

10 2. The Strength of Plaintiffs' Case

11 a) The Risks Associated with the Meal Break Claim

12 California law requires employers to provide employees a duty-free, uninterrupted thirty
13 (30) minute meal period when an employee works more than five (5) hours in a workday, and it
14 must be provided within the first five (5) hours the employee works. Lab. Code 512; IWC Wage
15 Order 1-2001, §11(A) and (C); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th
16 1004. Employers must also provide employees with a second duty-free, uninterrupted thirty (30)
17 minute meal period when an employee works more than (10) hours in a workday, and it must be
18 provided before the end of the 10th hour of work. *Ibid.* Meal periods can be waived, but only under
19 the following circumstances: (1) if an employee's total work period in a day is over five (5) hours
20 but no more than six (6) hours, the required meal period may be waived by mutual consent of the
21 employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours
22 but no more than twelve (12) hours, the required second meal period may be waived by mutual
23 consent of the employer and employee, but only if the first meal period was not waived. *Ibid.*

24 Employers covered by Industrial Welfare Commission ("IWC") Wage Order 1-2001 have
25 an obligation to both (1) relieve their employees for at least one meal period for shifts over five
26 hours (see above), and (2) to record having done so. If the employer fails to properly record a valid
27 meal period, it is presumed that no meal period was provided. IWC Wage Order 1-2001, §7(A)(3)
28 ("Meal periods . . . shall also be recorded"); *Brinker*, *supra*, 53 Cal.4th 1004, 1052-1053, citing

§7(A)(3) (“If an employer’s records show no meal period for a given shift over five hours, a rebuttable presumption arises that the employee was not relieved of duty and no meal period was provided”).

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

Plaintiff and the Class Members consistently worked shifts over five (5) hours. (Szamet Decl. ¶34.) Plaintiff contends that Defendant failed to provide Plaintiff and the Class Members with proper meal periods of not less than thirty (30) minutes as required by the Labor Code during the relevant time period. Indeed, due to the hectic nature of their job, Plaintiff alleged that was 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. ¶35.) 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. ¶36.)

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. ¶37.) 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. ¶38.) This presented a significant risk on the meal period claim that Plaintiff considered when evaluating this settlement. (Szamet Decl. ¶39.) 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. ¶40.) Second,

1 Plaintiff worked with an expert to analyze Defendant’s time and pay records. (Szamet Decl. ¶41.)
2 The records show that there are first meal periods recorded for shifts greater than 5 hours in 92.8%
3 of shifts. (Szamet Decl. ¶42.) However, Plaintiff contends that the records show that of these
4 recorded meal periods for shifts greater than five hours, 59.9% of them occur after the end of the
5 5th hour of work (i.e late meal periods). (Szamet Decl. ¶43.) This can be a tough claim to prove
6 on a classwide basis, however, because Defendant will argue it is an individualized inquiry that
7 requires questioning of each and every Class Member as to each and every late meal period in the
8 records as to why the break was late – was it “provided” but the person chose to take the meal
9 period later or was the person prohibited from taking it timely by Defendant. (Szamet Decl. ¶44.)
10 Such an inquiry, Defendant would argue, necessarily defeats class certification. (Szamet Decl.
11 ¶45.) Based on this significant risk, Class Counsel contends it was appropriate to discount the full
12 value of this claim for settlement purposes. (Szamet Decl. ¶46.)

13 b) The Risks Associated with the Rest Break Claim

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

16 Employees are entitled to a paid ten (10) minute rest break for every four (4) hours worked,
17 or major fraction thereof. (Cal. Code Regs., tit. 8, § 11050, subd. 12(A).) Plaintiff and the Proposed
18 Class’s rest period claims arise from an alleged common course of conduct wherein Defendant did
19 not provide employees with the opportunity to take a 10-minute rest break during their shifts in
20 compliance with California law. (Szamet Decl. ¶47.) The California Supreme Court has held:
21 “Employees are entitled to 10 minutes’ rest for shifts from three and onehalf to six hours in length,
22 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10
23 hours up to 14 hours, and so on.” (*Brinker Rest. Corp. v. Superior Court*, supra, 53 Cal.4th at
24 1029.) In an eight-hour workday, being denied the two paid rest breaks in a day is “essentially
25 perform[ing] 20 minutes of ‘free’ work.” (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40
26 Cal.4th 1094, 1104.) The Court also clarified what steps an employer has to take to “make
27 available” rest breaks to its employees. Under *Brinker*,

28 An employer is required to authorize and permit the amount of rest
break time called for under the wage order for its industry. If it does

not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour 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.

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

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

Plaintiff contends that he and the Class Members consistently worked shifts of 4+ hours and were not authorized or permitted to take rest breaks. (Szamet Decl. ¶48.) Therefore, Plaintiff alleges that for each rest period Plaintiff and the Class Members were not provided with, Defendant is liable for one (1) additional hour of pay at the employee’s regular rate of compensation. (Lab. Code, § 226.7, subd. (b).) (Szamet Decl. ¶49.)

Again, Defendant disagreed and maintained that there was accurate rest period policy and employee were provided the opportunity to take all required rest breaks. (Szamet Decl. ¶50.) The risk for Plaintiff is that there are no time records to show if rest periods are compliant because rest breaks are not recorded. (Szamet Decl. ¶51.) The primary way that Plaintiff can establish rest period liability is through testimonial evidence. (Szamet Decl. ¶52.) In theory, Plaintiff could have secured several class member declarations about their experiences regarding rest breaks to bolster Plaintiff’s contentions. (Szamet Decl. ¶53.) But, there is risk as to what these declarations would have said and Defendant likewise would presumably attempt to gather competing declarations that state the opposite. (Szamet Decl. ¶54.) Such would devolve into a “declaration war” that could potentially defeat class certification. (Szamet Decl. ¶55.) It also would likely result in dozens of class members declarations with great uncertainty as to what those depositions would establish. (Szamet Decl. ¶56.) Just as with meal periods, Defendant will argue that it is an individualized inquiry that requires questioning of each and every Class Member as to each and every shift as to whether or not they were able to take all compliant rest periods. (Szamet Decl. ¶57.) Again, such an inquiry, Defendant would argue, necessarily defeats class certification. (Szamet Decl. ¶58.)

1 Based on this significant risk and given that rest period claims can be very difficult to certify and
2 prove liability, Plaintiff factored in a significant discount for this claim for settlement purposes.
3 (Szamet Decl. ¶59.)

4 c) The Risks Associated with the Wage Claim

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

9 Plaintiff's wage allegations are based on Defendant's alleged failure pay Plaintiff and all
10 members of the Proposed Settlement Class for their vested vacation at the time of their separation
11 from the company. (Szamet Decl. ¶60.) Plaintiff pled that, as a result of this unlawful policy,
12 Defendant does not pay all wages owed at the appropriate rate to Plaintiff and all members of the
13 Proposed Settlement Class in violation of Labor Code §510. (Szamet Decl. ¶61.) Defendant argued
14 that when the location was closed, all vested vacation was paid out at the correct rate. (Szamet
15 Decl. ¶62.) Plaintiff's expert analysis of the pay records did indicate that vested vacation was paid
16 out at the time of termination. (Szamet Decl. ¶63.) Defendant further argued that at the time of
17 filing the lawsuit, Plaintiff was out on leave and therefore potentially not a typical or adequate
18 representative as to the vacation claim. (Szamet Decl. ¶64.) Therefore, Plaintiff viewed this claim
19 as extremely weak and placed no value on it for settlement purposes. (Szamet Decl. ¶65.)

20 Plaintiff's review of the records did reveal a wage problem as it relates to sick pay. (Szamet
21 Decl. ¶66.) In the data, there were approximately 3,800 pay periods with sick pay and of those half
22 of the pay periods with sick pay also had shift differential pay for a total of approximately 1,900
23 pay periods. (Szamet Decl. ¶67.) The sick pay was paid out at the regular rate, not the correctly
24 blended rate. (Szamet Decl. ¶68.) The average underpayment of sick pay due to the failure to blend
25 to determine the correct regular rate was approximately \$10 for each of the 1,900 payments leading
26 to a maximum exposure of \$19,000. (Szamet Decl. ¶69.) Though small in overall value, Plaintiff
27 felt confident this claim would be certified. (Szamet Decl. ¶70.)

28 ///

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

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

11 Plaintiff maintains that Defendant issued wage statements that allegedly violate Labor
12 Code §§ 226(a)(2) and (9). (Szamet Decl. ¶71.) Labor Code § 226(a) specifically requires that the
13 employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her
14 employees, an accurate itemized statement in writing showing all applicable hourly rates in effect
15 during the pay period and the corresponding number of hours worked at each hourly rate by the
16 employee. Plaintiff alleges that he and Class Members are issued wage statements that do not
17 accurately show the applicable overtime rate and the number of hours worked at the corresponding
18 rate based on Defendant’s alleged failure to blend discussed above. (Szamet Decl. ¶72.) However,
19 Plaintiff has to recognize that this is a derivative claim. (Szamet Decl. ¶ 73.) Plaintiff does not
20 argue that Defendant failed to show required information on the paystubs it issued to Class
21 Members, only that the paystubs do not accurately show the information. (Szamet Decl. ¶74.)
22 While Plaintiff believes this claim is easily certifiable, Plaintiff has to acknowledge that this is a
23 more difficult argument to prevail on when it comes to assessing liability and a resulting discount
24 for settlement purposes is appropriate. (Szamet Decl. ¶75.)

25 e) The Risks Associated with the Waiting Time Penalty Claim

26 Labor Code section 203 provides that if an employer fails to provide wages at the time of
27 an employee’s termination or within 72 hours of his/her resignation, then such employee’s wages
28 shall continue as a penalty for up to thirty (30) days. “If an employer willfully fails to pay . . . any

1 wages of an employee who is discharged or who quits, the wages of the employee shall continue
2 as a penalty from the due date thereof at the same rate until paid . . . but the wages shall not continue
3 for more than 30 days.” (Lab. Code, § 203, subd. (a).)

4 Here, all Class Members, including Plaintiff, are no longer employed by Defendant as a
5 result of the facility being shut down over a period of time in approximately Q4 2020 and Q1 2021.
6 (Szamet Decl. ¶76.) Plaintiff contends that Defendant has failed to pay employees wages
7 immediately or within 72 hours of termination and/or resignation by not paying all meal period
8 premiums owed and wages. (Szamet Decl. ¶77.) Therefore, under California Law, Plaintiff
9 contends that “waiting time” penalties would be triggered for each former employee in the class.
10 (Szamet Decl. ¶78.) Labor Code section 203 reflects a public policy concern that favors the full
11 and prompt payment of earned wages. (See, e.g., *Barnhill v. Robert Saunders & Co.* (1981) 125
12 Cal.App.3d 1, 7; *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.)

13 Defendant maintains that it has paid all wages due to employees at the separation of
14 employment. Defendant argues that a good-faith belief applies here and that if it inadvertently did
15 not pay final wages to an individual, its actions were not willful. (Szamet Decl. ¶79.) Plaintiff
16 responds that the well-settled meaning of “willful,” as used in Labor Code section 203, is that an
17 employer has intentionally failed or refused to perform an act which was required to be done.
18 (*Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201.) (Szamet Decl. ¶80.) Plaintiff
19 contends that Defendant knew wages were owed but failed to pay them. (Szamet Decl. ¶81.)
20 Therefore, Plaintiff contends that waiting time penalties apply here and each former employee
21 would be entitled to thirty (30) days of wages.

22 f) The Risks Associated with the PAGA Claim

23 California’s Private Attorneys General Act (“PAGA”), Labor Code § 2698, et seq., permits
24 private litigants to recover civil penalties for violations of the Labor Code. PAGA provides that
25 plaintiffs may recover previously established civil penalties (section 2699(a)) or, if none were
26 established, plaintiffs may recover default penalties provided in section 2699(f) in the amount of
27 \$100 per employee per pay period for the initial violation and \$200 for subsequent violations.

28 Plaintiff discounted the PAGA claim for settlement purposes for multiple reasons. (Szamet

Decl. ¶82.) First, the aggrieved employees’ PAGA claims are derivative of all the underlying class claims. *Id.* Second, a court has discretion to award less than the maximum penalty. *Id.*; Labor Code § 2699(e)(2) (“a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory”). See e.g., *Carrington v. Starbucks Corporation* (2018) 30 Cal.App.5th 504, 241 Cal.Rptr.3d 647, 669 (affirming award of 10% of maximum PAGA penalty). Finally, the Class is arguably compensated for these violations in the proposed Agreement, and thus any PAGA recovery for these same violations could be deemed to be duplicative. *Id.* As such, Class Counsel believes that the Agreement’s contemplated PAGA payment of \$25,000.00 is appropriate. *Id.*; see *Nordstrom Commissions Cases*, 186 Cal.App.4th 576, 589 (2010) (affirming settlement allocating \$0 of \$6.4 million settlement to PAGA penalties).

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

There is significant expense associated with the class certification process, which the Parties can avoid by entering into the contemplated Agreement now. (Szamet Decl. ¶83.) If the Court did eventually certify a meal/rest or wage class, trial of a case involving approximately 219 Class Members would require the retention of expensive expert witnesses, the accrual of extensive litigation costs, and a significant time overlay by the parties. (Szamet Decl. ¶84.) Moreover, given the complexity and unsettled nature of the issues in this case it is likely that any outcome at trial would have resulted in a lengthy and costly appeal. (Szamet Decl. ¶85.) An appeal would result in further delay for the Class Members who are waiting for a resolution in this matter. (*Id.*)

4. The Risk of Maintaining Class Action Status through Trial

This case has not been certified to be tried as a class action. (Szamet Decl. ¶86.) While Plaintiff believes there is strong evidence to support certification of several possible subclasses, certification is always hard fought and subject to judicial discretion. Moreover, in class actions, decertification is always a possibility. (*Id.*) In attempting to certify a class, the parties would need to conduct multiple depositions, including of the Class Representative and of several person(s) most knowledgeable regarding Defendant’s meal/rest policies and practices and the payment of

1 vested vacation wages. (*Id.*) There is a risk for both sides as to what these depositions will reveal
2 and whether they will support class certification to the extent expected. (*Id.*)

3 5. The Amount Offered in Settlement

4 It was very difficult for the Parties to reach this Settlement of \$650,000.00. (Szamet Decl.
5 ¶87.) This Settlement is the result of adversarial, non-collusive, and arms-length negotiations.
6 (Szamet Decl. ¶88.) The Parties arrived at it after extensive investigation and discovery, careful
7 evaluation of the law, risks, and all information substantiating the amount of penalties reasonably
8 likely to be awarded to the class were the trier of fact to find Defendant liable, and the assistance
9 of a very experienced jurist and mediator, Francis J. Ortman (Ret.). (*Id.*)

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

11 Plaintiff worked with an expert to analyze the time and pay records and put together an
12 exposure model for purposes of mediation. (Szamet Decl. ¶89.) Plaintiff assessed full value of the
13 wage claim related to the underpaid sick pay allegations discussed above, without any discount, at
14 a maximum of approximately \$19,000. (Szamet Decl. ¶90.) As discussed above, if Plaintiff could
15 prove that the "late" meal periods in the records did amount to a meal period violation with a
16 premium due and owing, the value of the claim, without any discount, was approximately
17 \$1,261,498. (Szamet Decl. ¶91.)

18 If Plaintiff likewise assumed a rest break violation rate of 59.9%², the full value of the
19 rest period claim, without any discount, would also be approximately \$1,261,498. (Szamet Decl.
20 ¶92.) This amount assumes a rest period premium of \$25.08 (average hourly rate of pay) for 50,299
21 shifts. (Szamet Decl. ¶ 93.) For the reasons above, Plaintiff determined that accepting a discount
22 of the full amount was appropriate. (Szamet Decl. ¶ 94.)

23 Plaintiff valued the Wage Statement Claim, without discount, at \$231,150. (Szamet Decl.
24 ¶95.) Based on expert analysis of the time pay data, this assumes there are 65 class members in the
25 wage statement penalty period of November 19, 2020 to January 24, 2023 with 4,517 pay periods
26 at issue. (Szamet Decl. ¶ 96.) Plaintiff used 50\$ for the first wage statement and \$100 per wage
27

28 ² Expert analysis of the pay records showed meal periods were allegedly "late" (after the
5th hour) 59.9% of the time.

1 statement thereafter for each Class Member (Labor Code §226(e)(1) uses \$50 for the initial pay
2 period (not \$100) and puts a \$4,000 cap on wage statement penalties per employee). (Szamet Decl.
3 ¶97.) Due to the risk discussed above that 226(a) liability would not, Plaintiff determined that a
4 discount of this claim was fair for settlement purposes. (Szamet Decl. ¶ 98.)

5 Plaintiff valued the Waiting Time Claim (Labor Code §203), tied to the sick pay claim
6 discussed above, at \$561,452. (Szamet Decl. ¶99.) Based on the data, this assumes there are 75
7 Class Members with the sick pay issue who are owed wages. (Szamet Decl. ¶100.)

8 Finally, Plaintiff calculated the maximum value of the PAGA claim at \$850,600 for Class
9 Members (using \$100/\$200 per pay period) if Plaintiff prevailed on the meal period claim. (Szamet
10 Decl. ¶ 101.) The main risk taken into account with PAGA is the discretionary nature of the penalty
11 award. (Szamet Decl. ¶102.) A judge can award the statutory maximum of \$100 for the initial
12 violation and \$200 thereafter or – in theory – one cent per wage statement. (Szamet Decl. ¶103.)
13 While there is a dearth of available authority, in Plaintiff’s view, were he to succeed on any of the
14 underlying Labor Code violations, it is not likely that a Judge would also award a large amount of
15 penalties of top of any damages recovered. (Szamet Decl. ¶104.)

16 Per Plaintiff’s assessment, adding all of the exposure above, the maximum potential value
17 of all of Plaintiff’s and the Class Members’ claims was approximately \$4,185,198. (Szamet Decl.
18 ¶105.) However, as a result of the forgoing risks on the merits, Class Counsel believes the Gross
19 Settlement Amount of \$650,000.00 is fair and reasonable. (Szamet Decl. ¶106.)

20 Though the risks at to each claim and the resulting discounts are discussed at length above,
21 another major risk factor Class Counsel took into account is that Defendant provided informal
22 evidence that it gathered approximately 55 signed severance agreements. (Szamet Decl. ¶107.)
23 The 55 individuals who did sign severance agreements were paid a small amount in exchange for
24 the severance of approximately \$1,000-2000 per person. (Szamet Decl. ¶108.) The severance
25 agreements were signed by individuals who continued working for Defendant during its closure
26 period though the layoffs were staggered. (*Id.*) The facility closure was well-known and many of
27 the individuals continued to work for Defendant for months after being made aware of the layoffs
28 and signing the agreements. (*Id.*) Some also signed second severance agreements after several

1 months elapsed and they were still working. (*Id.*) The severance agreements were discussed at
2 mediation and in the subsequent meet and confer efforts around the drafting of the long-form
3 agreement. (*Id.*) Ultimately, the Parties agreed to make two requested changes to the settlement
4 agreement. First, the Parties made a change to pg. 7 of the settlement agreement to reflect that any
5 severance payment received will be an offset against the individual's settlement share. Second, the
6 Parties revised the settlement agreement by striking the following language from pg. 18 of the
7 agreement: ". . . Defendant shall have the option to either cut off the Class Period as of the date
8 that there are 22,012.2 workweeks or . . .". (*Id.*) Plaintiff did not sign a severance agreement so
9 there are no adequacy or typicality concerns. (Szamet Decl. ¶109.) This certainly presented
10 cognizable risk that Defendant was willing to and could engage in a successful *Chindarah v. Pick*
11 *Up Stix* campaign to gather signed severance agreements from Class Members. (Szamet Decl.
12 ¶110.) If Defendant did this successfully, the exposure could be reduced dramatically if not almost
13 entirely eliminated. (Szamet Decl. ¶111.) Also factoring in this risk, Class Counsel believes that
14 the settlement is fair and reasonable and should be approved. (Szamet Decl. ¶112.)

15 6. The Extent of Discovery Completed and Stage of the Proceedings

16 As outlined above, Class Counsel conducted a thorough investigation into the facts of the
17 claims alleged. (Szamet Decl. ¶113.) The agreement to settle did not occur until Class Counsel
18 exchanged and possessed sufficient information to make an informed judgement regarding the
19 likelihood of success on the merits and the results that could be obtained through further litigation.
20 (*Id.*)

21 7. The Experience and Views of Counsel

22 Kingsley Szamet & Ly is very experienced in prosecuting employment litigation, and the
23 firm has focused its practice since 2000 on wage, hour, and working condition violations. (Szamet
24 Decl. ¶¶114-116.) The firm is well versed in class action litigation and has diligently and
25 aggressively pursued this action. (*Ibid.*) Kingsley Szamet & Ly currently serves as Class Counsel
26 for dozens of pending class action lawsuits in Northern, Central, and Southern California. (*Ibid.*)
27 A list of representative cases that Kingsley Szamet & Ly has handled is included in the
28 accompanying declaration of Kelsey M. Szamet (Szamet Decl. ¶¶114-115.) After factoring in the

1 risks explained above, Class Counsel believes that the proposed settlement is fair and reasonable.
2 (Szamet Decl. ¶116.)

3 8. The Presence of a Governmental Participant

4 There is no governmental participant in this action. (Szamet Decl. ¶117.)

5 9. The Proposed Plan of Allocation Is Fair and Reasonable

6 Plans of allocation are subject to the same standard of review as class action settlements;
7 they must be “fair, adequate and reasonable.” (See, e.g., *Officers for Justice v. Civil Service*
8 *Comm’n* (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the proposed plan of allocation
9 is an individualized payment to each Class Member pro rata based on the number of compensable
10 work weeks worked by the Class Member during the Class Period. (Ex. 1 at § 3, ¶3.2.4.) This
11 allocation distributes Agreement funds proportionally to each class member’s potential damages
12 and should therefore be approved as fair, adequate, and reasonable. (Szamet Decl. ¶118.)

13 10. 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. (Islas Decl. ¶¶8-9.) Such indicates that the reaction of Class Members on the whole
16 is positive and weighs in favor of approval.

17 **V. ENHANCEMENT TO PLAINTIFF**

18 Plaintiff’s Counsel request an enhancement of \$5,000.00 to the Class Representative NICK
19 VASQUEZ for his work on behalf of the Class. (Szamet Decl. ¶163.) “Courts routinely approve
20 incentive awards to compensate named plaintiffs for the services they provide and the risks they
21 incurred during the course of the class action litigation.” *Ingram v. The Coca-Cola Company*, 200
22 F.R.D. 685, 694 (N.D. Ga 2001) (internal quotations and citations omitted); *see also Van Vranken*
23 *v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995). In *Coca-Cola*, the Court
24 approved service awards of \$300,000 to each named plaintiff in recognition of the services they
25 provided to the class by responding to discovery, participating in the mediation process, and taking
26 the risk of stepping forward on behalf of the class. *Coca-Cola*, 200 F.R.D. at 694; *see also, e.g.*
27 *Van Vranken*, 901 F. Supp. at 299 (approving \$50,000 participation award to plaintiffs); *Glass v.*
28 *UBS Financial Services, Inc.*, Case No. C-06-4068 MMC, 2007 WL 227862, at *17 (N.D. Cal.

Jan. 26, 2007) (approving \$25,00 enhancement to each named plaintiff).

Mr. Vasquez is an adequate class representative because he has diligently, adequately and fairly represented the Class and has not placed his interests above any member of the Class. (*see* Declaration of NICK VASQUEZ (“Vasquez Decl.”) ¶¶5-10.)

Here, Class Counsel requests an enhancement for Mr. Vasquez’s valiant effort and time expended in this matter. 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. (Szamet Decl. ¶164; Vasquez Decl. ¶¶5-8.) 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. ¶165; Ex. 1 at § 6, ¶6.1.)

Class Counsel considers this to be a fair and reasonable enhancement. (Szamet Decl. ¶166.) The enhancement takes into consideration the time, effort, and expense incurred by Mr. Vasquez in coming forward to litigate this matter on behalf of all Class Members. (Szamet Decl. ¶167.) Additionally, the Class Representative was at risk for paying for Defendant’s legal fees and costs in the event that Defendant prevailed at trial. (Szamet Decl. ¶168.)

VI. SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY

As indicated on the Proof of Service, Plaintiff’s Motion for Final 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 “9.” (Szamet Decl. ¶174.)

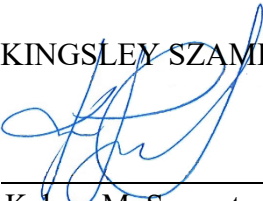
VII. CONCLUSION

Plaintiff respectfully submits that the proposed Agreement is fair, adequate, reasonable,

1 and in the best interest of the Class Members. Therefore, Plaintiff respectfully requests that the
2 Court (1) grant Final Approval of the Agreement and all of its terms; (2) award attorneys' fees and
3 costs in the amount detailed in the concurrently filed Motion for Attorneys' Fees and Costs; (3)
4 award Phoenix Class Action Settlement Administration Solutions claims administration fees of
5 \$8,000.00; and (4) award the Class Representative an enhancement of \$5,000.00; and (5) enter
6 judgment.

7
8 DATED: September 23, 2024

KINGSLEY SZAMET & LY

9
10 By: 

11 Kelsey M. Szamet
12 Attorneys for Plaintiff NICK VASQUEZ and the
13 proposed class
14
15
16
17
18
19
20
21
22
23
24
25
26
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 24, 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:

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

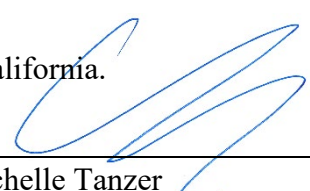
Los Angeles, CA 90010-2513

[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 24, 2024, at Encino, California.



Michelle Tanzer