

KINGSLEY & KINGSLEY, APC
ERIC B. KINGSLEY, Esq. (SBN 185123)
eric@kingsleykingsley.com
KELSEY M. SZAMET, Esq. (SBN 260264)
kelsey@kingsleykingsley.com
16133 Ventura Blvd., Suite 1200
Encino, CA 91436
Tel: (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) 492-6300; Fax: (213) 382-4083

Attorneys for Plaintiff and the Proposed Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MONTEREY**

INGRID HANSEN-SCHOOLDERMAN, an
individual, on behalf of herself and others
similarly situated,

PLAINTIFF,

v.

SOUTHERN MONTEREY COUNTY
MEMORIAL HOSPITAL; and DOES 1 thru
50, inclusive,

DEFENDANTS.

CASE NO. 21CV003609

[Case Assigned for All Purposes to Hon.
Thomas W. Wills in Dept. 15]

**NOTICE OF MOTION AND MOTION FOR
FINAL APPROVAL OF CLASS ACTION
AND PAGA 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, Ingrid Hansen-
Schoolderman and Taylor Mitzner, Proposed
Order, and Judgment]*

Date: November 17, 2023

Time: 8:30 A.M.

Dept.: 15

Complaint Filed: November 12, 2021

FAC Filed: March 16, 2022

Trial Date: None

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

2 PLEASE TAKE NOTICE that on November 17, 2023 at 8:30 A.M. in Department 15 of
3 the above-entitled court, Plaintiff INGRID HANSEN-SCHOOLDERMAN ("Plaintiff") will, and
4 hereby does, move the Court for an Order of Final Approval of the Class Settlement in this case.
5 Plaintiff moves the 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 & Kingsley, APC as Class Counsel;

10 3. Affirming INGRID HANSEN-SCHOOLDERMAN as Class Representative and
11 awarding an enhancement award of \$5,000.00;

12 4. Awarding Phoenix Settlement Administrators claims administration fees of
13 \$20,000.00 for its services as Administrator; and,

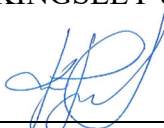
14 5. Entering judgment.

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 Settlement 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, INGRID HANSEN-SCHOOLDERMAN,
20 Taylor Mitzner, all other papers and records on file in this action, and on such oral and
21 documentary evidence as may be presented at the hearing on this Motion.

22 DATED: October 25, 2023

KINGSLEY & KINGSLEY, APC

23
24 By: 

25 Kelsey M. Szamet
26 Attorneys for Plaintiff INGRID HANSEN-
27 SCHOOLDERMAN and the Proposed Class
28

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	FACTUAL BACKGROUND.....	1
A.	Plaintiff	1
B.	Litigation Overview and Procedural History	1
C.	The Discovery Process.....	2
D.	Preliminary Approval.....	2
III.	THE PRELIMINARILY APPROVED SETTLEMENT	3
A.	The Settlement Class.....	3
B.	The Aggrieved Employees.....	3
C.	Settlement Payments	3
D.	Individual Settlement Payments	4
E.	Class Notice	5
F.	Check Mailed Settlement – No Reversion.....	5
IV.	THE COURT SHOULD ORDER FINAL APPROVAL OF THE SETTLEMENT	5
A.	The Settlement is Entitled to a Presumption of Fairness	5
B.	The Court Should Approve This Class Action Settlement Because it Satisfies Each of the <i>Kullar</i> Factors	6
1.	The Strength of Plaintiffs’ Case.....	7
a)	Plaintiff Alleges That Defendant Failed to Pay Overtime at the Appropriate Rate	7
b)	Plaintiff Alleges That Defendant Failed to Provide Lawful Meal Breaks	9
c)	Plaintiff Alleges Defendant Failed To Provide Class Members with Lawful Rest Breaks.....	11
d)	Plaintiff Contends That Defendant Failed to Issue Lawful Itemized	

1	Wage Statement	13
2	e) Plaintiff Contends That Defendant Failed to Provide All Wages	
3	Due at the Time of Termination.....	14
4	f) Plaintiff Contends That Defendant Is Liable for Penalties Pursuant	
5	to the Private Attorneys General Act of 2004 (“PAGA”).....	15
6	2. The Risk, Expense, Complexity, and Likely Duration of Further Litigation	
7		16
8	3. The Risk of Maintaining Class Action Status through Trial.....	16
9	4. The Amount Offered in Settlement.....	16
10	a) Plaintiff’s Assessment of Defendant’s Maximum Exposure	17
11	5. The Extent of Discovery Completed and Stage of the Proceedings	18
12	6. The Experience and Views of Counsel	19
13	7. The Presence of a Governmental Participant.....	19
14	8. The Proposed Plan of Allocation Is Fair and Reasonable.....	19
15	9. The Reaction of the Class Members to the Proposed Settlement	20
16	V. ENHANCEMENT TO PLAINTIFF	20
17	VI. SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY.	21
18		
19	VII. CONCLUSION.....	21
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).....	20
<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)	20

State Cases

<i>Barnhill v. Robert Saunders & Co.,</i>	
(1981) 125 Cal.App.3d 1	14
<i>Benton v. Telecom Network Specialists, Inc.,</i>	
(2013) 220 Cal.App.4th 701	9
<i>Bradley v. Networkers International LLC,</i>	
(2012) 211 Cal.App.4th 1129	9
<i>Brinker Rest. Corp. v. Superior Court,</i>	
(2012) 53 Cal.4th 1004	9, 12
<i>Carrington v. Starbucks Corporation,</i>	
(2018) 30 Cal.App.5th 504, 241 Cal.Rptr.3d 647.....	15
<i>Dunk v. Ford Motor Co.,</i>	
(1996) 48 Cal.App.4th 1794	5
<i>Faulkinbury v. Boyd & Associates, Inc.,</i>	

1	(2013) 216 Cal.App.4th 220	9
2	<i>Ferra v. Lowes Hollywood Hotel, LLC,</i>	
3	(2021) 11 Cal.5th 858	8, 10
4		
5	<i>Gerard v. Orange Coast Memorial Medical Center,</i>	
6	(2018) 6 Cal.5th 443	10
7		
8	<i>Kullar v. Foot Locker Retail, Inc.,</i>	
9	(2008) 168 Cal.App.4th 116	6
10	<i>Levanoff v. Dragas,</i>	
11	(2021) 65 Cal.App.5th 1079	8, 15
12		
13	<i>Mamika v. Barca,</i>	
14	(1998) 68 Cal.App.4th 487	14
15	<i>Murphy v. Kenneth Cole Productions, Inc.,</i>	
16	(2007) 40 Cal.4th 1094	12
17		
18	<i>Naranjo v. Spectrum Security Services, Inc.,</i>	
19	(2022) 13 Cal.5th 93	15
20	<i>Nordstrom Commissions Cases,</i>	
21	186 Cal.App.4th 576 (2010)	16
22		
23	<u>State Statutes</u>	
24	Business & Professions Code § 17200	2
25		
26	Civil Code § 1542	21
27	Code of Civil Procedure § 382.....	5
28		

1	Code of Civil Procedure § 1781(f).....	5
2	Labor Code § 203.....	1, 14
3		
4	Labor Code § 218.....	7
5	Labor Code § 218.5.....	7
6		
7	Labor Code § 222.....	7
8	Labor Code § 223.....	7
9		
10	Labor Code § 224.....	7
11	Labor Code § 226(a).....	1, 13, 14, 17
12		
13	Labor Code §§ 226(a)(2)	14
14	Labor Code §§ 226(a)(9)	14
15		
16	Labor Code § 226(e)(1)	14
17	Labor Code § 226(e)(2)(B)	14
18		
19	Labor Code § 226.7.....	1, 10, 11, 12
20	Labor Code § 510.....	1
21		
22	Labor Code, § 510(a)	7
23	Labor Code § 512.....	1, 9, 10, 12
24		
25	Labor Code § 1194.....	1, 7
26	Labor Code § 1194.2.....	7
27		
28	Labor Code § 1197.....	7

1	Labor Code § 1199.....	1
2		
3	Labor Code § 2698.....	15
4	Labor Code § 2699.....	2
5		
6	<u>State Regulations</u>	
7	Code of Regulations, Title 8, § 11050, 12(B).....	12
8		
9	Code of Regulations, Title 8, § 11070, 12(A).....	11
10	<u>Other Authorities</u>	
11		
12	<u><i>Glass v. UBS Financial Services, Inc.,</i></u>	
13	2007 WL 227862 (N.D. Cal. Jan. 26, 2007)	20

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff INGRID HANSEN-SCHOOLDERMAN (“Plaintiff”) submits this Motion for
4 Final Approval of Class 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. Affirming Kingsley & Kingsley, APC as Class Counsel and award attorneys’ fees
9 and costs as detailed in the concurrently-filed Motion for Attorneys’ Fees and Costs;

10 3. Award Phoenix Settlement Administrators claims administration fees of
11 \$20,000.00 for its services as Administrator;

12 4. Affirm named Plaintiff INGRID HANSEN-SCHOOLDERMAN as Class
13 Representative and award a Class Representative payment of \$5,000.00; and

14 5. Enter judgment.

15 **II. FACTUAL BACKGROUND**

16 **A. Plaintiff**

17 Plaintiff INGRID HANSEN-SCHOOLDERMAN was employed by Defendant (dba Mee
18 Memorial) as a non-exempt, non-union Licensed Vocational Nurse from November 2020 through
19 April 2021. (Declaration of Kelsey M. Szamet (“Szamet Decl.”) ¶5.) Plaintiff worked an
20 alternative workweek schedule consisting of generally 2 or 3 shifts of 12 hours each in a 40-hour
21 workweek and was scheduled to work from 7:00 p.m. to 7:30 a.m. (Szamet Decl. ¶6.) Plaintiff
22 earned \$30.99 an hour. (*Id.*)

23 **B. Litigation Overview and Procedural History**

24 On November 12, 2021, Plaintiff filed a Class Action Complaint seeking recovery for: (1)
25 failure to pay wages and/or overtime under Labor Code sections 510, 1194, and 1199; (2) failure
26 to provide meal breaks pursuant to Labor Code sections 226.7 and 512; (3) failure to provide rest
27 breaks pursuant to Labor Code section 226.7; (4) failure to provide accurate itemized wage
28 statements pursuant to Labor Code section 226(a); (5) penalties under Labor Code section 203;

1 and (6) violation of Business & Professions Code section 17200. (Szamet Decl. ¶7.) Also on
2 November 12, 2021, Plaintiff sent a notice letter, pursuant to Labor PAGA, to the Labor Workforce
3 Development Agency (“LWDA”) regarding her intent to seek civil penalties for the same Labor
4 Code violations above, under Labor Code section 2699, et seq. (Szamet Decl. ¶8.)

5 On March 16, 2022, Plaintiff filed a First Amended Class and Representative Action
6 Complaint adding an additional cause of action for penalties pursuant to Labor Code § 2699, et
7 seq., the Private Attorneys General Act (“PAGA”) based on the underlying Labor Code violations
8 already pled. (Hereafter, the “Action”.) (Szamet Decl. ¶9.)

9 C. The Discovery Process

10 Plaintiff and Defendant have yet to engage in formal discovery, instead focusing their
11 efforts on resolving this case through early mediation. The Parties met and conferred as to the
12 parameters and Defendant informally produced a sampling of time and pay data for mediation
13 purposes only. (Szamet Decl. ¶10.) This sample specifically included records for periods of time
14 in 2020 and 2021 for 29 employees chosen at random who work 8/80 workweeks and each of the
15 three alternative workweek schedules adopted during the class period to provide the best overview
16 of time and pay records across the class. (Szamet Decl. ¶11.) The sampling of records included
17 electronic punch times, meal period and rest period attestations, pdf copies of payroll reports that
18 correspond with that time, and wage statements from that same time period. (Szamet Decl. ¶12.)
19 The average hourly rate of pay for the sample employees is \$38.36, and their average regular rate
20 of pay is \$39.97. (Szamet Decl. ¶13.)

21 D. Preliminary Approval

22 On July 5, 2023, the Court entered an Amended Order preliminarily approving the
23 settlement in this case, approving the proposed Class Notice, ordering that the Administrator send
24 notice to the Class, and setting a date for the Final Approval and Fairness Hearing. (Szamet Decl.
25 ¶14.)

26 ///

27 ///

28 ///

III. THE PRELIMINARILY APPROVED SETTLEMENT

A. The Settlement Class

For purposes of Agreement, the settlement Class is defined as: “All persons who are employed or have been employed as a non-exempt employee by SOUTHERN MONTEREY COUNTY MEMORIAL HOSPITAL, in the State of California during the Covered Period.” (“Class”). (Szamet Decl. ¶15; Agreement, Ex. 1 at ¶1.5.) The “Settlement Class Members” or “Class Members” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee). (*Id.*)

The Class Period is November 12, 2017 to March 7, 2023. (Szamet Decl. ¶16; Ex. 1 at ¶1.12.) The final Class contained 665 individuals. (Mitzner Decl. ¶11.)

B. The Aggrieved Employees

For purposes of the Agreement, the Aggrieved Employees are defined as: “all persons who are employed or have been employed as a non-exempt employee by SOUTHERN MONTEREY COUNTY MEMORIAL HOSPITAL, in the State of California who worked one or more pay periods during the PAGA Period. (“Aggrieved Employees” or “PAGA Members”). (Szamet Decl. ¶17; Ex. 1 at ¶1.4.)

The PAGA Period is the period from November 12, 2020 to March 7, 2023. (Szamet Decl. ¶18; Ex. 1 at ¶1.31.) Based on documents and other information produced by Defendant and analyzed with the assistance of the expert for mediation, there were approximately 419 Aggrieved Employees who worked 16,440 pay periods during the PAGA statutory period. (Szamet Decl. ¶19.)

There are four hundred fifty-three (453) Aggrieved Employees. (Mitzner Decl. ¶15.)

C. Settlement Payments

As detailed fully in the Agreement, the Settlement provides for Defendant to pay a Gross Settlement Fund of \$1,240,000.00, 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. ¶20; Ex. 1 at ¶3.1.)

1 The Net Settlement Amount is the Gross Settlement Fund, less Class Counsel Award, Class
2 Representative Enhancement, PAGA Payment, and Settlement Administration Costs. (Szamet
3 Decl. ¶21; Ex. 1 at ¶1.28.)

4 Plaintiff now requests final approval of the allocation of the Gross Settlement Amount to
5 determine the Net Settlement Amount for distribution to the Class as follows:

Gross Settlement Amount:	\$	1,240,000.00
Attorneys' Fees (1/3):	\$	413,333.33
Requested Case Costs:	\$	15,000.00
Claims Administration:	\$	12,500.00
PAGA Penalties:	\$	20,000.00
		<i>(\$15,000.00 to the LWDA; \$5,000.00 to remain in the Net Settlement Amount)</i>
Named Plaintiff Enhancement:	\$	<u>5,000.00</u>
Anticipated Net Settlement Amount:	\$	779,166.67

13 D. Individual Settlement Payments

14 The amount of each Participating Class Member's Individual Class Payment is an
15 individualized amount that is based on the number of compensable Workweeks worked by the
16 Participating Class Member during the Class Period. (Ex. 1 at ¶1.23; see also Ex. A to the
17 Agreement at pp. 7 [Class Notice].) This individual amount shall be calculated by (a) dividing the
18 Net Settlement Amount by the total number of Workweeks worked by all Participating Class
19 Members during the Class Period and (b) multiplying the result by each Participating Class
20 Member's Workweeks determined according to the settlement payment formula set forth in the
21 Agreement. (See Ex. 1 at ¶3.2.4.)

22 The Individual PAGA Payment means the Aggrieved Employee's pro rata share of 25% of
23 the PAGA Penalties calculated according to the number of pay periods worked during the PAGA
24 Period. (See Ex. 1 at ¶1.24.)

25 Based on these calculations, the highest individual recovery share is \$2,786.41 and the
26 average individual share of the recovery is \$1,164.16 per Settlement Class Member. (Mitzner Decl.
27 ¶14.)

28 ///

1 E. Class Notice

2 The Court approved the proposed Class Notice and directed the mailing of the Notice by
3 first-class mail to Settlement Class Members in accordance with the proposed implementation
4 schedule. (Szamet Decl. ¶22.) The procedures for giving notice to the Settlement Class Members,
5 as set forth in the Agreement and Plaintiffs’ Motion for Preliminary Approval and approved by
6 the Court, have been fully and properly carried out. (Mitzner Decl. ¶2.)

7 To date, Phoenix Settlement Administrators received 1 (one) request to be excluded (“opt-
8 outs”) from the proposed Agreement and zero (0) objections. (Mitzner Decl. ¶¶8-9.)

9 F. Check Mailed Settlement – No Reversion

10 The Parties agreed to, and the Court preliminary approved, a checks-mailed settlement
11 without the possibility of reversion of settlement funds to Defendant. Under the Agreement, every
12 Class Member will receive a settlement check and Class Members do not need to submit a claim
13 in order to receive a settlement check. Any funds that remain uncashed after 120 days shall be
14 turned over by the Administrator, with information for each Class Member who failed to timely
15 cash his/her settlement check, to the California Rural Legal Assistance Foundation. (Ex. 1 at § 4,
16 ¶4.4.3.)

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

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

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

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

meets all of the *Dunk* factors and is therefore entitled to a presumption of fairness.

As to the first *Dunk* factor, this settlement is the result of adversarial, non-collusive, and arm's-length negotiations 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 Settlement Class Members. (Szamet Decl. ¶23.) 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. ¶24.)

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. As detailed above, Defendant produced data and documents informally for purposes of settlement including a sampling of time and pay records chosen at random. Receipt of appropriate discovery allowed Class Counsel to fairly evaluate the exposure and risks associated with each claim alleged in the lawsuit. (Szamet Decl. ¶25.)

Third, Class Counsel have significant experience in cases of this type, including several years prosecuting wage, hour, and working condition violations. (Szamet Decl. ¶26.) Class Counsel is thus qualified to evaluate the class claims and viability of the defenses. Class Counsel believes that the settlement is fair, reasonable, adequate, and in the best interests of the class and that the average recovery for each Settlement Class Member of over \$ 1,164.16. is substantial, given the risks inherent in litigation and the defenses asserted. (Szamet Decl. ¶27.)

Finally, the fourth *Dunk* factor considers the percentage of objectors. Here, there was 1 (one) request to be excluded and no objectors. (Mitzner 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

In *Kullar v. Foot Locker Retail, Inc* (2008) 168 Cal.App.4th 116, 128, the court 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. ¶28.) Class Counsel
5 conducted extensive informal discovery before entering into meaningful settlement negotiations
6 in this matter. (*Id.* at Szamet Decl. ¶¶10-13.) This discovery permitted Class Counsel to fairly
7 evaluate the strength of the case and the risks associated with ongoing litigation. (Szamet Decl.
8 ¶29.) 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. ¶30.)

10 1. The Strength of Plaintiffs' Case

11 a) Plaintiff Alleges That Defendant Failed to Pay Overtime at the
12 Appropriate Rate

13 Plaintiff contends that Defendant has had a continuous policy of not paying Plaintiff and
14 Class Members for all hours worked in violation of established law guaranteeing a minimum wage
15 and wages owed under contract or statute and prohibitions on making deductions reducing the
16 agreed upon wage. (See Lab. Code §§ 218, 218.5, 222, 223, 224, 1194, 1194.2, & 1197.) California
17 workers are statutorily entitled to overtime compensation, unless they are properly classified as
18 falling within one of the narrow exemption categories. Under California law, “[a]ny work in excess
19 of eight hours in one workday and any work in excess of 40 hours in any one workweek...shall be
20 compensated at the rate of no less than one and one-half times the regular rate of pay for an
21 employee.” (Lab. Code, § 510, subd. (a).) Furthermore, “[a]ny work in excess of 12 hours in one
22 day shall be compensated at the rate of no less than twice the regular rate of pay for an employee.”
23 (Lab. Code, § 510, subd. (a).) California law also requires that any compensation must be included
24 in the regular rate of pay for the purpose of determining the correct overtime rate.

25 Plaintiff contends that she and all Class Members were forced to work on a regular and
26 consistent basis without receiving compensation for all hours worked at the proper rate. (Szamet
27 Decl. ¶31.) Specifically, Plaintiff contends that Defendant failed to blend Plaintiff’s and the Class
28 Members’ “Shift Differential” pay into the regular rate of pay for the purposes of calculating the

1 overtime rate during pay periods that Class Members worked overtime and also earned “Shift
2 Differential” pay. (Szamet Decl. ¶32.) As a result of this alleged failure to properly blend, Plaintiff
3 maintains that Defendant underpaid Plaintiff and Class Members in pay periods when they worked
4 overtime and also earned non-discretionary shift differential pay in the same pay period. (Szamet
5 Decl. ¶33.) Plaintiff contends that Defendant owes unpaid overtime wages to Plaintiff and the
6 Class members as a result. (Szamet Decl. ¶34.) Because this claim can be readily analyzed from
7 Defendant’s time and pay records, Plaintiff felt confident that this claim was certifiable and that
8 she would likely prevail on the merits at trial. (Szamet Decl. ¶35.) However, Defendant argued
9 that it did properly blend, but to the extent that a trier of fact found that it did not, the core wage
10 exposure was quite minimal because any alleged failure to blend would only result in only a few
11 dollars being owed to any given Class Member during a specific pay period when they worked
12 overtime and also earned non-discretionary bonus pay in the same pay period. (Szamet Decl. ¶36.)

13 In response, Defendant argued that, until recently, it lawfully paid overtime and meal and
14 rest period premiums based on the employee’s hourly rate then in effect, and believed it was in
15 full compliance with all obligations, including as calculated by its software programs. (*Levanoff v.*
16 *Dragas*, (2021) 65 Cal.App.5th 1079; *Ferra v. Lowes Hollywood Hotel, LLC* (2021) 11 Cal.5th
17 858.) Defendant admits that it changed its practice on February 20, 2023, and now pays employees
18 for overtime hours and meal and rest period premiums based on the “regular rate” of pay for the
19 workweek. (Szamet Decl. ¶37.) However, it argued that approximately 30.40% of non-exempt
20 employees only work at a single rate, and therefore using the systems to calculate regular rate
21 payment is not an issue. (Szamet Decl. ¶38.) Moreover, because employees with varying rates at
22 times worked overtime hours at their higher rate, Defendant argued that it sometimes resulted in a
23 higher overtime rate being paid than what they would have received if their overtime hours were
24 paid at their regular rate. (Szamet Decl. ¶39.) Ultimately, Defendant acknowledged that it
25 calculated that across the class, the exposure on the underpayments of overtime due to use of the
26 rate in effect totaled approximately \$73,000 per its calculations without taking into account offsets
27 for overpayments resulting from the same process. (Szamet Decl. ¶40.)

28 ///

b) Plaintiff Alleges That Defendant Failed to Provide Lawful Meal
Breaks

Under California Labor Code section 512 and IWC Wage Order No. 5, no employer shall employ any person for a work period of more than five hours without providing a meal period of not less than thirty minutes. The first meal period must be permitted to commence no later than after five hours of work, or the start of the sixth hour of work (5.0 hours on the clock). (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1049.) The second meal period must be permitted to commence no later than after ten hours of work, or the start of the eleventh hour of work (10.0 hours on the clock). (*Ibid.*) The California Supreme Court succinctly described Section 512’s mandate: “Employers must afford employees uninterrupted half-hour periods in which they are relieved of any duty or employer control and are free to come and go as they please.” (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1037.)

It is well settled that if an employer fails to maintain a uniform policy that authorizes and permits the meal periods or rest breaks called for under the law (as specified in the applicable Wage Order), “it has violated the wage order and is liable.” (See *Brinker*, 53 Cal.4th at p. 1033.) Following *Brinker*, California courts have confirmed that liability for meal and rest period violations arises when an employer adopts a uniform policy that fails to comply with the Labor Code. (See *Faulkinbury v. Boyd & Associates, Inc.* (2013) 216 Cal.App.4th 220, 235, [“In *Faulkinbury I*, we concluded that even if [defendant]’s on-duty meal break policy was unlawful, [defendant] would be liable only when it actually failed to provide a required off-duty meal break. *Brinker* leads us now to conclude [defendant] would be liable upon a determination that [defendant]’s uniform on-duty meal break policy was unlawful.” (emphasis added)]; accord *Bradley v. Networkers International LLC* (2012) 211 Cal.App.4th 1129; *Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th 701, 725–726 [finding that the employer would become liable upon a showing that it failed to maintain a policy authorizing required breaks, which does not require an individual technician to provide he or she actually missed breaks as a result of the employer’s policies. Rather, “the Wage Order . . . imposes an affirmative obligation on every employer to authorize and provide legally-required meal and rest breaks; if it fails to do so, it has

1 violated the law and is liable.”].)

2 Plaintiff contends that she and members of the Class consistently worked shifts over five
3 (5) hours and Defendant failed to provide proper meal periods of not less than thirty (30) minutes
4 as required by the Labor Code during the relevant time period. (Szamet Decl. ¶41.) To put it
5 plainly, Plaintiff contends that her meal breaks were routinely interrupted, if taken at all, due to
6 the nature of the work.

7 In addition, Plaintiff contends that Defendant allegedly has a consistent policy of failing to
8 pay Plaintiff Hansen-Schoolderman and the Class Members one (1) hour of pay at the employees’
9 regular rate of compensation for each workday that the first meal period was not provided within
10 the first (5) hours of the shift in violation of Labor Code §§ 226.7 and 512. On July 15, 2021, in
11 *Ferra v. Loews Hollywood Hotel, LLC*, (2021) 11 Cal. 5th 858, the California Supreme Court set
12 forth the formula for calculating the one extra hour of premium pay that employees are owed if an
13 employer fails to provide a compliant meal period or rest break. Specifically, the Court held that
14 those premium payments must include the hourly value of any nondiscretionary earnings (such as
15 a nondiscretionary bonuses), and cannot simply be paid at an employee’s base hourly rate. Here,
16 Plaintiff alleges that when Defendant did pay mal premiums, it paid then at the straight rate not
17 the properly blended regular rate. Specifically, Defendant failed to blend the shift differential.

18 Plaintiff anticipated that Defendant would argue that since its written policy was to
19 “provide” a meal period per Brinker, that to determine liability on this claim would necessitate
20 asking each and every Class Member “whether they were provided a compliant meal period but
21 chose to work”. (*Id.* at 78; Szamet Decl. ¶42.) Defendant would necessarily argue that such an
22 inquiry will defeat class certification. (Szamet Decl. ¶43.) Defendant also argued that the records
23 do show many meal period premiums were paid. (Szamet Decl. ¶44.)

24 In response, Defendant generally contended it maintained and followed a legally compliant
25 meal period policy and employees are relieved of all duty during meal breaks. (Szamet Decl. ¶45.)
26 Further, Defendant argued that employees in the healthcare industry who work shifts more than
27 eight hours in a workday may waive in writing their right to one of their two meal periods, even
28 when the shift is more than 12 hours. (*Gerard v. Orange Coast Memorial Medical Center*, (2018)

1 6 Cal.5th 443; Wage Order 5, § 11(D).) Defendant argued that no meal period class would be
2 certified because employees signed compliant written meal period waivers, including Plaintiff.
3 (Szamet Decl. ¶46.)

4 Further, Defendant argued that it uses an electronic timekeeping system that records precise
5 clock in and clock out times. (Szamet Decl. ¶47.) Defendant contends that it instructs employees
6 to clock in when they arrive for a shift, clock out at the end of their shift, and clock out and in for
7 meal breaks. (Szamet Decl. ¶48.) Arguing that its timekeeping system will not permit an
8 employee to clock out for the end of their shift until they have answered a series of questions
9 concerning their meal and rest periods, Defendant was confident that if an employee attests that
10 the employee did not receive a meal and/or rest break during their shift, the entry is flagged, and
11 the system automatically issues a premium. (Szamet Decl. ¶49.) Only if Defendant later manually
12 confirms that the employee signed a meal period waiver excusing the premium, is the premium
13 then removed. (Szamet Decl. ¶50.) As such, Defendant was confident that in conjunction with its
14 valid written policy, its time and pay records confirm that meal and rest periods are paid when
15 reported and there would be no liability on this claim. (Szamet Decl. ¶51.)

16 Plaintiff perceived cognizable risk on this claim because if Defendant were to prevail on
17 its legal defenses as to maintaining valid written waivers and that it “provided” all meals, and its
18 factual defenses regarding the time clock, there could be little to no recovery on this claim.
19 (Szamet Decl. ¶52.)

20 c) Plaintiff Alleges Defendant Failed To Provide Class Members with
21 Lawful Rest Breaks

22 Labor Code section 226.7, subdivision (c), requires an employer to pay an additional hour
23 of compensation for each workday the employer fails to provide a rest period according to law.
24 Employees are entitled to a paid ten (10) minute rest break for every four (4) hours worked, or
25 major fraction thereof. (Cal. Code Regs., tit. 8, § 11070, subd. 12(A).)

26 Plaintiff Hansen-Schoolderman and the Class Members’ rest period claims arise from a
27 common course of conduct wherein Defendant did not provide employees with the opportunity to
28 take first, second, and/or third 10-minute rest breaks in compliance with California law. The

1 California Supreme Court has held: “Employees are entitled to 10 minutes’ rest for shifts from
2 three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10
3 hours, 30 minutes for shifts of more than 10 hours up to 14 hours and so on.” (*Brinker Rest. Corp*
4 *v. Superior Court*, *supra*, 53 Cal.4th at 1029.) In an eight-hour work day, being denied the two
5 paid rest breaks in a day is “essentially perform[ing] 20 minutes of ‘free’ work.” (*Murphy v.*
6 *Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1104).

7 The Court has also clarified what steps an employer must take to make rest breaks available
8 to its employee:

9 An employer is required to authorize and permit the amount of rest break time
10 called for under the wage order for its industry. If it does not—if, for example, it
11 adopts a uniform policy authorizing and permitting only one rest break for
12 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.

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

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

18 Plaintiff contends that she and the Class Members consistently worked shifts of over 10
19 hours and were not authorized or permitted to take rest breaks after every 3.5+ hour period.
20 (Szamet Decl. ¶53.) Therefore, Defendant allegedly violated Labor Code §226.7 by failing to
21 provide proper rest periods and pay Plaintiff and the Class Members one hour of compensation at
22 their regular rate for rest period premium wages.

23 Plaintiff alleges that she generally was unable to take compliant rest periods of a full 10
24 minutes at all because of the nature of work. (Szamet Decl. ¶54.) In fact, Plaintiff contends that
25 frequently it was difficult to even find a few minutes to use the restroom. (*Id.*) Plaintiff also alleges
26 that she was not provided a third rest period on shifts over 10 hours. (*Id.*)

27 As with meal periods, Defendant argued that it maintained a facially compliant policy that
28 “provided” all required rest periods, it did not require employees to stay on the premises, and it

1 never interfered with Plaintiff or any Class Members' ability to take all complaint rest periods.
2 (Szamet Decl. ¶55.) Plaintiff acknowledges that rest period claims can be difficult to prove on a
3 classwide basis due to the lack of records. (Szamet Decl. ¶56.) This is especially true when an
4 employer maintains a facially complaint rest period policy. (Szamet Decl. ¶57.) Defendant argued
5 that, as with meal periods, this would devolve into a series of mini-trials where the trier of fact
6 would be entitled to hear from each class member as to whether they were in fact provided the
7 opportunity to take all required rest periods per day. (Szamet Decl. ¶58.) Of course, Defendant
8 argued this would defeat class certification and make it nearly impossible to prove this claim on a
9 classwide basis. (Szamet Decl. ¶59.) Based on this risk, Plaintiff believed it was appropriate to
10 discount this claim by 50%. (Szamet Decl. ¶60.)

11 Just as with meal periods, Defendant generally contended it maintained and followed a
12 legally compliant rest period policy and provided all required rest breaks. (Szamet Decl. ¶61.) It
13 insisted that the facts negating class certification were present because Defendant's written meal
14 and rest period policies comply with the law, as do its practices. (Szamet Decl. ¶62.) Furthermore,
15 it argued that its timekeeping system ensures that employees are paid a meal and/or rest period
16 premium if they attest that they did not receive a compliant meal or rest break and also
17 implemented safeguards for its employees to correct any mistakes in incorrect attestations
18 concerning meal and rest breaks. (Szamet Decl. ¶63.) Finally, it asserted that its policies and
19 procedures are communicated and understood by employees as evidenced by the employee
20 orientation and handbook receipt and acknowledgments signed by employees. (Szamet Decl. ¶64.)
21 As with meal periods, Plaintiff recognized significant risk that she would not be able to certify a
22 rest break claim. (Szamet Decl. ¶65.) Because of this risk, a significant discount of the valuation
23 of this claim is appropriate. (Szamet Decl. ¶66.)

24 d) Plaintiff Contends That Defendant Failed to Issue Lawful Itemized
25 Wage Statement

26 California Labor Code §226(a) requires Defendant to provide its employees with an
27 accurate, itemized written wage statement that shows, in relevant part, all applicable hourly rates
28 and the corresponding number of hours worked. An employee "suffering injury," like Plaintiff

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

7 Plaintiff brings a derivative Section 226(a) claim arguing that Defendant issued wage
8 statements that violate Labor Code §§ 226(a)(2) and (9). Labor Code § 226(a) specifically requires
9 that the employer shall, semimonthly or at the time of each payment of wages, furnish each of his
10 or her employees, an accurate itemized statement in writing showing all applicable hourly rates in
11 effect during the pay period and the corresponding number of hours worked at each hourly rate by
12 the employee. Plaintiff argues that she and the Class are issued wage statements that fail to account
13 for the unpaid wages, overtime, and correct blended rate all of which employees were owed but
14 never paid. (Szamet Decl. ¶67.) The wage statements also fail to show meal and rest period
15 premiums that were due and owing.

16 In response, Defendant contends that Plaintiff’s wage statement claim is meritless because
17 Defendant’s wage statements record all rates in effect and the hours worked at each rate, as well
18 as meal and rest period premiums. (Szamet Decl. ¶68.)

19 e) Plaintiff Contends That Defendant Failed to Provide All Wages
20 Due at the Time of Termination

21 Under Labor Code section 203, if an employer fails to provide wages at the time of an
22 employee’s termination or within seventy-two (72) hours of resignation, then the employee’s
23 wages shall continue as a penalty for up to thirty (30) days. (Labor Code § 203.) Section 203
24 reflects a public policy that favors the full and prompt payment of earned wages. (See, e.g.,
25 *Barnhill v. Robert Saunders & Co.* (1981) 125 Cal.App.3d 1, 7; *Mamika v. Barca* (1998) 68
26 Cal.App.4th 487, 492.)

27 Here, Plaintiff Hansen-Schoolderman and numerous members of the Class are no longer
28 employed by Defendant. (Szamet Decl. ¶69.) Plaintiff asserts that by virtue of the allegations that

1 defendant failed to pay all wages at the appropriate of pay, Defendant therefore failed to pay all
2 wages owed and due upon their termination and/or resignation. (Szamet Decl. ¶70.) Plaintiff
3 acknowledges that the viability of this claim is tied to the wage claim. (Szamet Decl. ¶71.)

4 In response, Defendant contends that Plaintiff's waiting time penalty claim is merely
5 derivative of her unpaid overtime claim and meal and rest period claims. (Szamet Decl. ¶72.)
6 Defendant argued that there is no evidence to support that it failed to pay overtime or that it
7 engaged in willful conduct concerning break premium requirements. (Szamet Decl. ¶73.) With
8 respect to overtime, Defendant believed that its practice of paying overtime at the rate in effect
9 was consistent with and authorized by current law citing to *Levanoff, supra*, 65 Cal.App.5th 1079.
10 Further, it argued with respect to meal and rest period premiums, until recently, meal and rest
11 period premiums were not considered wages for purposes of waiting time penalties. (*Naranjo v.*
12 *Spectrum Security Services, Inc.*, (2022) 13 Cal.5th 93.) Because Defendant argued that it believed
13 that it operated in compliance with California law, there is no basis for a finding a willfulness and
14 therefore no potential recovery for waiting time penalties. (Szamet Decl. ¶74.)

15 f) Plaintiff Contends That Defendant Is Liable for Penalties Pursuant
16 to the Private Attorneys General Act of 2004 ("PAGA")

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

22 Plaintiff discounted the PAGA claim for multiple reasons. (Szamet Decl. ¶75.) First, the
23 aggrieved employees' PAGA claims are derivative of all the foregoing Labor Code claims.
24 (Szamet Decl. ¶76.) Second, a court has discretion to award less than the maximum penalty.
25 (Szamet Decl. ¶77.) Labor Code § 2699(e)(2) ("a court may award a lesser amount than the
26 maximum civil penalty amount specified by this part if, based on the facts and circumstances of
27 the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive,
28 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). Third and finally, the settlement class is arguably compensated for these violations in the proposed Agreement, and thus any PAGA recovery for these same violations would be duplicative. (Szamet Decl. ¶78.) As such, the Agreement's contemplated PAGA payment of \$20,000.00 is appropriate. (Szamet Decl. ¶79.) See Nordstrom Commissions Cases, 186 Cal.App.4th 576, 589 (2010) (affirming settlement allocating \$0 of \$6.4 million settlement to PAGA penalties).

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

There is significant expense associated with the class certification process, which the Parties can avoid by entering into the contemplated Agreement now. (Szamet Decl. ¶80.) If the Court did eventually certify an unpaid wages or meal/rest class, trial of a case involving approximately 660 Settlement 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. ¶81.) 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. ¶82.) An appeal would result in further delay for the Settlement Class Members who are waiting for a resolution in this matter. (*Id.*)

3. The Risk of Maintaining Class Action Status through Trial

This case has not been certified to be tried as a class action. (Szamet Decl. ¶84.) While Plaintiff believes there is strong evidence to support certification of several possible subclasses certification is always hard fought and subject to judicial discretion. Moreover, in class actions, decertification is always a possibility. (*Id.*) In attempting to certify a class, the parties would need to conduct multiple depositions, including of the Class Representative and of several person(s) most knowledgeable regarding Defendant's wage and hour policies. (*Id.*) There is a risk for both sides as to what these depositions will reveal and whether they will support class certification to the extent expected. (*Id.*)

4. The Amount Offered in Settlement

It was very difficult for the Parties to reach this Settlement of \$1,240,000.00. (Szamet Decl. ¶85.) This Settlement is the result of adversarial, non-collusive, and arms-length

1 negotiations. (Szamet Decl. ¶86.) The Parties arrived at it after extensive investigation and
2 discovery, careful evaluation of the law, risks, and all information substantiating the amount of
3 penalties reasonably likely to be awarded to the class were the trier of fact to find Defendant liable,
4 and the assistance of an experienced mediator, Jill R. Sperber, Esq. (*Id.*)

5 Plaintiff worked with an expert to analyze the sample of time and pay records discussed
6 above to determine the exact monetary figures for Defendants alleged exposure. (Szamet Decl.
7 ¶88.)

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

9 Plaintiff assessed the full value of the Minimum Wage/Overtime claim, without any
10 discount, at approximately \$76,350. (Szamet Decl. ¶89.) This calculation is based on the expert
11 analysis of the time records and determining the amount of allegedly unpaid overtime wages owed
12 and is in accord with Defendant's assessment of the potential exposure on this claim. (Szamet
13 Decl. ¶90.)

14 Plaintiff assessed the full value of the Meal Period claim, without any discount, at
15 approximately \$2,233,539. (Szamet Decl. ¶91.) This analysis is based on expert evaluation of the
16 alleged late, short or missed first meal periods. (Szamet Decl. ¶92.) Plaintiff assessed the full value
17 of the *Ferra* Meal Period blending claim, without any discount, at approximately \$7,349. (Szamet
18 Decl. ¶93.) This analysis is based on the alleged underpayment of meal period premiums based
19 on the allegation that Defendant failed to properly blend "Shift Differential" pay under *Ferra*,
20 *supra*. (Szamet Decl. ¶94.)

21 Plaintiff assessed the full value of the Rest Period claim, without any discount, at
22 approximately \$6,550,525. (Szamet Decl. ¶95.) This amount assumes a 100% rest break violation
23 rate based on Plaintiff's allegations set forth above. (Szamet Decl. ¶96.) However, assuming the
24 evidence shows that many members of the Class were provided rest periods frequently and
25 reducing the violation rate to 50%, that reduces this amount dramatically to \$3,275,262.50.
26 (Szamet Decl. ¶97.)

27 Plaintiff valued the Wage Statement Claim, without discount, at \$1,109,650. (Szamet Decl.
28 ¶98.) This is based on 293 employees during the statutory period for Labor Code Section 226(a)

1 statutory period as derived from the sample. (Szamet Decl. ¶99.)

2 Plaintiff valued the Waiting Time Claim, tied to the alleged Wage/Overtime claim, at
3 \$3,782,062. (Szamet Decl. ¶100.) This is based on 376 former employees derived from the sample.
4 (Szamet Decl. ¶101.)

5 Finally, Plaintiff calculated the value of the PAGA claim at \$3,258,700 for Settlement
6 purposes (using \$100 per pay period). (Szamet Decl. ¶102.) The main risk taken into account with
7 PAGA is the discretionary nature of the penalty award. (Szamet Decl. ¶103.) A judge can award
8 the statutory maximum of \$100 for the initial violation and \$200 thereafter or – in theory – one
9 cent per wage statement. (Szamet Decl. ¶104.) While there is a dearth of available authority, in
10 Plaintiff’s view, were she to succeed on any of the underlying Labor Code violations, it is not
11 likely that a Judge would also award a large amount of penalties of top of any damages recovered.
12 (Szamet Decl. ¶105.)

13 Per Plaintiff’s assessment, the maximum potential value of all of Plaintiff’s and the
14 Settlement Class Members’ claims was approximately \$13,742,913 (\$76,350 + \$2,233,539 +
15 \$7,349 + \$3,275,262.50 + \$1,109,650 + \$3,782,062 + \$3,258,700 = \$13,742,913. (Szamet Decl.
16 ¶106.)

17 However, there are two key reasons to justify a discount. First, as discussed above, there
18 are risks as to the merits on each of the claims as detailed and as to Plaintiff’s ability to certify all
19 of these claims. (Szamet Decl. ¶107.) Second, and critically important here, Defendant is a local
20 hospital with finite means to pay a sizeable settlement. (Szamet Decl. ¶108.) While the Parties
21 were focused on negotiating a meaningful settlement with excerpt assistance of the mediator, it
22 had to a number that Defendant could reasonably pay and still be able to keep its doors open and
23 operate in the community. (Szamet Decl. ¶109.) Based on this analysis, Class Counsel believes
24 the Gross Settlement Fund of \$1,240,000.00 is fair and reasonable. (Szamet Decl. ¶110.)

25 5. The Extent of Discovery Completed and Stage of the Proceedings

26 As outlined above, Class Counsel conducted a thorough investigation into the facts of the
27 claims alleged. (Szamet Decl. ¶111.) The agreement to settle did not occur until Class Counsel
28 exchanged and possessed sufficient information to make an informed judgement regarding the

1 likelihood of success on the merits and the results that could be obtained through further litigation.
2 (*Id.*)

3 6. The Experience and Views of Counsel

4 Kingsley & Kingsley is very experienced in prosecuting and defending employment
5 litigation, and the firm has focused its practice since 2000 on wage, hour, and working condition
6 violations. (Szamet Decl. ¶¶112-113.) The firm is well versed in class action litigation and has
7 diligently and aggressively pursued this action. (*Ibid.*) Kingsley & Kingsley, APC currently serves
8 as Class Counsel for dozens of pending class action lawsuits in Northern, Central, and Southern
9 California. (*Ibid.*) A list of representative cases that Kingsley & Kingsley, APC has handled is
10 included in the accompanying declaration of Kelsey M. Szamet (Szamet Decl. ¶¶*Ibid.*) After
11 factoring in the risks explained above, Class Counsel believes that the proposed settlement is fair
12 and reasonable. (Szamet Decl. ¶114.)

13 7. The Presence of a Governmental Participant

14 There is no governmental participant in this action except arguably the LWDA. (Szamet
15 Decl. ¶115.) The LWDA has been provided with all required documents relevant to the proposed
16 Settlement. *Id.*

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

18 Plans of allocation are subject to the same standard of review as class action settlements;
19 they must be “fair, adequate and reasonable.” (See, e.g., *Officers for Justice v. Civil Service*
20 *Comm’n* (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the proposed plan of allocation
21 compensates Settlement Class Members pro rata based on the number of compensable work weeks
22 worked by the Settlement Class Member during the Class Period. The lump sum payment to each
23 Settlement Class Member not excluding herself will be determined on an individualized basis by
24 dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating
25 Class Members during the Class Period and (b) multiplying the result by each Participating Class
26 Member’s Workweeks (Ex. 1 at ¶3.2.4.) This allocation distributes Agreement funds
27 proportionally to each class member’s potential damages and should therefore be approved as fair,
28 adequate, and reasonable. (Szamet Decl. ¶116.)

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

2 To date, there is one (1) request to be excluded from the proposed Agreement and zero (0)
3 objections. (Mitzner Decl. ¶¶8-9.) Such indicates that the reaction of Settlement Class Members
4 on the whole is positive and weighs in favor of approval.

5 **V. ENHANCEMENT TO PLAINTIFF**

6 Plaintiff's Counsel request an enhancement of \$5,000.00 to the Class Representative
7 INGRID HANSEN-SCHOOLDERMAN for her work on behalf of the Class. (Szamet Decl. ¶162.)
8 "Courts routinely approve incentive awards to compensate named plaintiffs for the services they
9 provide and the risks they incurred during the course of the class action litigation." *Ingram v. The*
10 *Coca-Cola Company*, 200 F.R.D. 685, 694 (N.D. Ga 2001) (internal quotations and citations
11 omitted); *see also Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995).
12 In *Coca-Cola*, the Court approved service awards of \$300,000 to each named plaintiff in
13 recognition of the services they provided to the class by responding to discovery, participating in
14 the mediation process, and taking the risk of stepping forward on behalf of the class. *Coca-Cola*,
15 200 F.R.D. at 694; *see also, e.g. Van Vranken*, 901 F. Supp. at 299 (approving \$50,000
16 participation award to plaintiffs); *Glass v. UBS Financial Services, Inc.*, Case No. C-06-4068
17 MMC, 2007 WL 227862, at *17 (N.D. Cal. Jan. 26, 2007) (approving \$25,00 enhancement to each
18 named plaintiff).

19 Ms. Hansen-Schoolderman is an adequate class representative because she has diligently,
20 adequately and fairly represented the Class and has not placed her interests above any member of
21 the Class. (*see* Declaration of INGRID HANSEN-SCHOOLDERMAN ("Hansen-Schoolderman
22 Decl.") ¶¶2-12.)

23 Here, Class Counsel requests an enhancement for Ms. Hansen-Schoolderman's valiant
24 effort and time expended in this matter. The time spent by INGRID HANSEN-
25 SCHOOLDERMAN is significant and includes researching and retaining competent counsel;
26 providing information to Class Counsel regarding the nature of the work at Defendant; compiling
27 relevant documents; working closely with Class Counsel to develop the theories of liability and
28 martial relevant evidence; regularly discussing the status of the case with Class Counsel;

1 discussing the case with members of the Class as needed; making herself available for a attend a
2 full-day of mediation; and responding promptly to Class Counsel communications regarding
3 settlement. (Szamet Decl. ¶163; Hansen-Schoolderman Decl. ¶¶5-9.) As set forth in the
4 Agreement, Plaintiff will also be entering into a general release of liability pursuant to Civil Code
5 Section 1542. (Szamet Decl. ¶164; Ex. 1 at §6, ¶6.1.1.)

6 Class Counsel considers this to be a fair and reasonable enhancement. (Szamet Decl. ¶165.)
7 The enhancement takes into consideration the time, effort, and expense incurred by Ms. Hansen-
8 Schoolderman in coming forward to litigate this matter on behalf of all Settlement Class Members.
9 (Szamet Decl. ¶166.) Additionally, the Class Representative was at risk for paying for Defendant's
10 legal fees and costs in the event that Defendant prevailed at trial. (Szamet Decl. ¶167.)

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

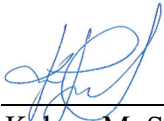
12 As indicated on the Proof of Service, Plaintiff's Motion for Final Approval of Class Action
13 Settlement ("Motion") will be concurrently uploaded to the Labor and Workforce Development
14 Agency's ("LWDA") website on the date this Motion is filed as required by statute. Proof of
15 submission of Plaintiff's Motion, all related documents, and copy of the email from the LWDA
16 confirming receipt is attached to the Declaration of Kelsey M. Szamet as Exhibit "6." (Szamet
17 Decl. ¶172.)

18 **VII. CONCLUSION**

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

25 DATED: October 25, 2023

KINGSLEY & KINGSLEY, APC

26
27 By: 

28 Kelsey M. Szamet
Attorneys for Plaintiff INGRID HANSEN-
SCHOOLDERMAN and the Proposed Class

(PROOF OF SERVICE)
[CCP 1013(a)(3)]
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On October 25, 2023, I served all interested parties in this action the following documents described as **NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

FENTON & KELLER, APC Elizabeth R. Leitzinger Eleitzinger@fentonkeller.com Gladys Rodriguez-Morales gmorales@fentonkeller.com 2801 Monterey-Salinas Highway Post Office Box 791 Monterey, CA 93942	ABRAMSON LABOR GROUP William Zev Abramson Wza@abramsonlabor.com 11846 Ventura Blvd, Suite 100 Studio City, CA 91604
--	---

☐ **(BY MAIL)** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage fully prepaid at Encino, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☒ **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.

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

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

Executed on October 25, 2023, at Encino, California.



Michelle Tanzer