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

*[Filed concurrently with Declaration of Kelsey
M. Szamet and Proposed Order]*

Date: June 23, 2023

Time: 8:30 A.M.

Dept.: 15

Complaint Filed: November 12, 2021

Trial Date: None

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

2 **PLEASE TAKE NOTICE** that on June 23, 2023 at 8:30 A.M. in Department 15 of the
3 above-entitled court, Plaintiff INGRID HANSEN-SCHOOLDERMAN will move the Court for an
4 Order of Preliminary Approval of the Class Action and PAGA Settlement Agreement
5 (“Agreement”).

6 By this Motion, Plaintiff requests that the Court:

7 (1) Grant preliminary approval of the fully-executed Class Action and PAGA
8 Settlement Agreement and Class Notice (“Agreement”). A true and correct copy of the Agreement
9 is attached to the concurrently filed Declaration of Kelsey M. Szamet as Exhibit “1”;

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

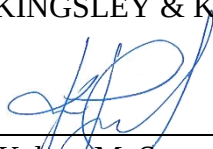
13 (3) Schedule a hearing on final approval of the proposed Settlement and Plaintiff’s
14 counsel’s application for an award of attorney’s fees and litigation costs at which Class Members
15 may be heard (“Final Approval Hearing”).

16 The Motion will be made on the grounds that the proposed Agreement is fair, adequate,
17 reasonable, and in the best interest of the Class and the Parties.

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

22 DATED: May 31, 2023

KINGSLEY & KINGSLEY, APC

23
24 By: 

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

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff INGRID HANSEN-SCHOOLDERMAN (“Plaintiff”) submits this Memorandum
4 of Points and Authorities in support of Plaintiff’s Motion for Preliminary Approval of the Class
5 Action and PAGA Settlement Agreement reached between Plaintiff and Defendant SOUTHERN
6 MONTEREY COUNTY MEMORIAL HOSPITAL (“Defendant”)(Plaintiff and Defendant
7 together, the “Parties”).

8 By this Motion, Plaintiff requests that the Court:

9 (1) Grant preliminary approval of the fully-executed Class Action and PAGA
10 Settlement Agreement and Class Notice (“Agreement”). A true and correct copy of the Agreement
11 is attached to the concurrently filed Declaration of Kelsey M. Szamet as Exhibit “1”;

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

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

18 **II. FACTUAL BACKGROUND**

19 **A. Plaintiff**

20 Plaintiff INGRID HANSEN-SCHOOLDERMAN was employed by Defendant (dba Mee
21 Memorial) as a non-exempt, non-union Licensed Vocational Nurse from November 2020 through
22 April 2021. (Declaration of Kelsey M. Szamet (“Szamet Decl.”) ¶4.) Plaintiff worked an
23 alternative workweek schedule consisting of generally 2 or 3 shifts of 12 hours each in a 40-hour
24 workweek and was scheduled to work from 7:00 p.m. to 7:30 a.m. (Szamet Decl. ¶5.) Plaintiff
25 earned \$30.99 an hour. *Id.*

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

27 On November 12, 2021, Plaintiff filed a Class Action Complaint seeking recovery for: (1)
28 failure to pay wages and/or overtime under Labor Code sections 510, 1194, and 1199; (2) failure

1 to provide meal breaks pursuant to Labor Code sections 226.7 and 512; (3) failure to provide rest
2 breaks pursuant to Labor Code section 226.7; (4) failure to provide accurate itemized wage
3 statements pursuant to Labor Code section 226(a); (5) penalties under Labor Code section 203;
4 and (6) violation of Business & Professions Code section 17200. (Szamet Decl. ¶6.) Also on
5 November 12, 2021, Plaintiff sent a notice letter, pursuant to Labor PAGA, to the Labor Workforce
6 Development Agency (“LWDA”) regarding her intent to seek civil penalties for the same Labor
7 Code violations above, under Labor Code section 2699, *et seq.* (Szamet Decl. ¶7.)

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

12 C. The Discovery Process

13 Plaintiff and Defendant have yet to engage in formal discovery, instead focusing their
14 efforts on resolving this case through early mediation. The Parties met and conferred as to the
15 parameters and Defendant informally produced a sampling of time and pay data for mediation
16 purposes only. (Szamet Decl. ¶9.) This sample specifically included records for periods of time
17 in 2020 and 2021 for 29 employees chosen at random who work 8/80 workweeks and each of the
18 three alternative workweek schedules adopted during the class period to provide the best overview
19 of time and pay records across the class. (Szamet Decl. ¶10.) The sampling of records included
20 electronic punch times, meal period and rest period attestations, pdf copies of payroll reports that
21 correspond with that time, and wage statements from that same time period. (Szamet Decl. ¶11.)
22 The average hourly rate of pay for the sample employees is \$38.36, and their average regular rate
23 of pay is \$39.97. (Szamet Decl. ¶12.)

24 **III. THE PROPOSED SETTLEMENT CLASS SHOULD BE CERTIFIED FOR**
25 **SETTLEMENT PURPOSES**

26 Originally creatures of equity, class actions have been statutorily embraced by the
27 Legislature whenever “the question [in a case] is one of a common or general interest, of many
28 persons, or when the parties are numerous, and it is impracticable to bring them all before the

1 court” (Code Civ. Proc. § 382; see, e.g., *Fireside Bank v. Sup. Court* (2007) 40 Cal.4th 1069,
2 1078.) They serve an important function by “establishing a technique whereby the claims of many
3 individuals can be resolved at the same time” thereby “eliminat[ing] the possibility of repetitious
4 litigation and provid[ing] small claimants with a method of obtaining redress.” (*Richmond v. Dart*
5 *Industries, Inc.* (1981) 29 Cal.3d 462, 469.) Public policy supports the use of class actions to
6 enforce wage and overtime laws for the benefit of workers. (See *Sav-on Drug Stores, Inc. v. Sup.*
7 *Court* (2004) 34 Cal.4th 319, 340.)

8 The certification question is “essentially a procedural one that does not ask whether an
9 action is legally or factually meritorious.” (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 439–
10 440.) A court ruling on a certification motion must determine “whether . . . the issues which may
11 be jointly tried, when compared with those requiring separate adjudication, are so numerous or
12 substantial that the maintenance of a class action would be advantageous to the judicial process
13 and to the litigants.” (*Collins v. Rocha* (1972) 7 Cal.3d 232, 238.) The California Supreme Court
14 has identified three certification requirements: (1) “the existence of an ascertainable and
15 sufficiently numerous class”; (2) “a well-defined community of interest”; and, (3) “substantial
16 benefits from certification that render proceeding as a class superior to the alternatives.” (*Brinker*
17 *Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.) The “community of interest”
18 requirement includes three additional requirements: (1) common questions of law or fact
19 predominant over individual questions; (2) the class representatives have claims or defenses
20 typical of the class; and (3) the class representatives can adequately represent the class. (*Ibid*, citing
21 *Fireside Bank, supra*, 40 Cal.4th at 1089.)

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

25 ///

26 ///

27 ///

28 ///

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

3 1. Ascertainability

4 Putative class members are deemed “ascertainable” when they may be “readily identified
5 without unreasonable expense or time by reference to official records.” (*Rose v. City of Hayward*
6 (1981) 126 Cal.App.3d 926, 932.) In determining whether a class is ascertainable, a court
7 scrutinizes the class definition, the size of the class and the means of identifying class members.
8 (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.)

9 Plaintiff maintains that the proposed settlement class is ascertainable for several reasons:
10 First, Defendant has agreed in the Agreement to provide a class list to the Administrator containing
11 the name, last known mailing address, Social Security number, employee identification number,
12 and number of Class Period Workweeks and PAGA Pay Periods for all putative class members
13 after issuance of the preliminary approval order. (Szamet Decl. ¶13; Ex. 1 at ¶1.8.) Second,
14 Settlement Class Member consist of Defendant’s hourly employees, and Defendant is required to
15 keep records of its hourly employees’ names, home addresses, and social security numbers. (*See*
16 *Wage Order 7-2001*, subsection 7(c); Szamet Decl. ¶14.) Third and finally, Defendant informally
17 produced Plaintiff’s personnel file and pay statements; relevant policies; and a sampling shift data,
18 pay data, and wage statements for Settlement Class Members containing class member contact
19 information, which confirms that all Settlement Class Member may be readily identified based on
20 Defendant’s records. (Szamet Decl. ¶15.)

21 2. Numerosity

22 There is no set number that is required as a matter of law to maintain a class action. (*See,*
23 *e.g., Rose v. City of Hayward, supra*, 126 Cal.App.3d at p. 934.) Here, the proposed settlement
24 class contains, based upon information and belief, approximately 660 hourly non-exempt
25 employees in the State of California. (Ex. 1 at ¶4.1.) Therefore, Plaintiff is confident she will be
26 able to establish that the proposed settlement class is ascertainable and sufficiently numerous.
27 (Szamet Decl. ¶16.)

28 ///

1 B. Plaintiff Contend That There Is a Well-Defined Community of Interest

2 1. There Are Predominant Questions of Law and Fact

3 In deciding whether questions of common or general interest predominate, a court must
4 determine whether “the issues which may be jointly tried, when compared with those requiring
5 separate adjudication, are so numerous or substantial that the maintenance of a class action would
6 be advantageous to the judicial process and to the litigants.” (*Collins v. Rocha* (1972) 7 Cal.3d
7 232, 238; *accord, Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.) As a
8 general matter, if the defendant’s liability can be determined by facts common to all members of
9 the class, a class will be certified even if the members must individually prove their damages.”
10 (*Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 916, 107; *accord, Knapp v.*
11 *AT & T Wireless Services, Inc.* (2011) 195 Cal.App.4th 932, 941.)

12 Here, Plaintiff argues that there are questions of law and fact common to the proposed
13 settlement class that predominate over any questions affecting only individual Class Members.
14 (Szamet Decl. ¶17.) These common questions include: (1) Whether Defendant failed to pay all
15 wages and/or overtime compensation; (2) Whether Defendant failed to provide lawfully required
16 meal periods and/or failed to compensate employees one hour’s wages in lieu thereof; (3) Whether
17 Defendant failed to provide lawfully required rest periods and/or failed to compensate employees
18 one (1) hour’s wages in lieu thereof; (4) Whether Defendant failed to provide accurate itemized
19 wage statements; (5) Whether Defendant failed to pay compensation due and owing upon
20 termination of employment; (6) Whether Defendant engaged in unfair competition; and (7)
21 Whether Defendant violated § 2699, et seq. of the Labor Code by engaging in the acts previously
22 alleged. (Szamet Decl. ¶18.)

23 Plaintiff contends that her challenge to Defendant’s uniform policies and practices involves
24 common factual and legal issues that are amenable to class treatment. (Szamet Decl. ¶19.) As the
25 California Supreme Court has emphasized, “[c]aims alleging that a uniform policy consistently
26 applied to a group of employees is in violation of the wage and hour laws are of the sort routinely,
27 and properly, found suitable for class treatment.” (*Brinker, supra*, 53 Cal.4th at 1033; *see also*
28 *Bradley v. Networkers International, LLC* (2012) 211 Cal.App.4th 1129, 1141-1146.) Moreover,

1 a class of similarly situated employees may be certified based on common questions of fact or law,
2 even if each employee has to establish the amount of his or her damages. (*See Bell v. Farmers Ins.*
3 *Exch.* (2004) 115 Cal.App.4th 715, 741; *Sav-On Drug Stores, Inc. v. Superior Court, supra*, 34
4 Cal.4th at 340.)

5 Plaintiff alleges that the proposed Settlement Class Members suffered the same injuries, in
6 the same manner, in that: (1) Settlement Class Members were not properly paid all
7 wages/overtime, including tips as a result; (2) Settlement Class Members did not receive their meal
8 and rest periods as required; (3) Settlement Class Members were not provided accurate itemized
9 wage statements; (4) Settlement Class Members did not receive timely wages; and (6) Settlement
10 Class Members were not paid all wages owed upon termination/resignation. (Szamet Decl. ¶21.)
11 Plaintiff alleges that Settlement Class Members worked in the same capacity for the same
12 employer and were subject to the same employment policies and practices, the questions of fact
13 and claims regarding the status of these employees are the same for each member of the settlement
14 class. Accordingly, for purposes of settlement, certification for settlement purposes is appropriate.
15 (Szamet Decl. ¶22.)

16 2. The Class Representative Has Claims Typical of the Proposed Class

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

1 Plaintiff worked as non-exempt employee for Defendant as a Licensed Vocational Nurse
2 in the King City, California location. (Szamet Decl. ¶23.) Plaintiff alleges that she (1) worked
3 without being paid all wages and/or overtime at the appropriate rate of pay; (2) worked without
4 being provided meal/rest periods as required by law; (3) worked without being provided accurate
5 itemized wage statements; and (4) worked without being paid all wages due upon separation. She
6 also alleges that she experienced derivative claims for unfair business competition (B&P Code
7 §17200) and Labor Code §2699, *et seq.* (Szamet Decl. ¶24.) Plaintiff also contends that her claims
8 are typical of those of the settlement class. (Szamet Decl. ¶25.)

9 3. Plaintiff Contends That As The Class Representative She Has and Will
10 Fairly Represent the Interests of the Settlement Class Members

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

15 Plaintiff believes that she is capable of fairly representing and adequately protecting the
16 interests of the proposed Settlement Class Members. (Szamet Decl. ¶26.) Plaintiff’s interests in
17 this litigation are coextensive with the interests of the proposed Settlement Class Members. The
18 members of the proposed settlement class all worked for Defendant during the relevant time period
19 and incurred the same type of alleged damages with regard to Defendant’s alleged violations of
20 the law. (Szamet Decl. ¶27.) Moreover, Plaintiff has agreed to serve as Class Representative and
21 has retained qualified Counsel who is experienced in prosecuting wage and hour class actions.
22 (Szamet Decl. ¶28.) This demonstrates her commitment to bringing about the best possible results
23 for the benefit of the proposed Class. (Szamet Decl. ¶29.) Plaintiff has provided her Counsel with
24 all necessary and pertinent information. (Szamet Decl. ¶30.) She has been a very active participant
25 in the litigation including having frequent contact with her Counsel and other Settlement Class
26 Members as appropriate, and working closely with Class Counsel to develop and pursue the
27 theories of liability. (Szamet Decl. ¶31.) Plaintiff has provided her Counsel with all necessary and
28 pertinent information. (Szamet Decl. ¶32.) She also made herself available during the full-day

1 mediation in this matter and was informed of an involved in all of the Settlement negotiations.
2 Therefore, Plaintiff believes that she has and will continue to adequately represent the proposed
3 Settlement Class Members. (Szamet Decl. ¶33.) Plaintiff has provided her Counsel with all
4 necessary and pertinent information. (Szamet Decl. ¶34.)

5 C. The Class Action Vehicle Is Superior to the Alternatives

6 “The ultimate question in every case of this type is whether . . . the issues which may be
7 jointly tried, when compared with those requiring separate adjudication, are so numerous or
8 substantial that the maintenance of a class action would be advantageous to the judicial process
9 and to the litigants.” (*Lockheed Martin, supra*, 29 Cal.App.4th at 1104–1105.) The California
10 Supreme Court has directed the courts to utilize the class action device to fashion “an effective
11 and inclusive group remedy.” (*Richmond v. Dart Indus., Inc.* (1981) 29 Cal.3d 462, 469.)
12 Normally, in making its class certification decision, the Court must determine that a class action
13 would be superior to alternate means for a fair and efficient adjudication. If the causes of action
14 may be adjudicated in a single proceeding, thereby saving time, reducing waste, and limiting
15 duplication of effort, class certification is superior to individual litigation. (*See, e.g., Vasquez v.*
16 *Superior Court* (1971) 4 Cal.3d 800, 816.) Since the Parties agreed to a settlement in principal
17 and now seek Court approval of that Settlement, Plaintiff submits that there is less need than there
18 would be in an ordinary class certification motion for the Court to determine that the case can be
19 manageably tried.

20 Plaintiff maintains that class treatment would be the superior method of managing this case.
21 A class action is superior to individual litigation “when numerous parties suffer injury of
22 insufficient size to warrant individual action and when denial of class relief would result in unjust
23 advantage to the wrongdoer.” (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.) In
24 cases such as this, where individual damages may be small, the class action device is the most
25 feasible method of recovery. (*See, e.g. Lockheed Martin, supra*, 29 Cal.4th at 1131.) In this regard,
26 the superiority of class treatment is evident here because individual pursuit of class members’
27 claims may not be economically viable. (Szamet Decl. ¶35.) The only alternative to certification
28 would be to force over 660 employees to join this action, file individual, uniform actions, or

1 abandon their legal rights altogether. (Szamet Decl. ¶36.) Plaintiff maintains that this economic
2 reality would result in a windfall for Defendant if this case were not certified. (Szamet Decl. ¶37.)

3 **IV. THE PROPOSED SETTLEMENT**

4 A. The Settlement Class

5 For purposes of Agreement, the settlement Class is defined as: “All persons who are
6 employed or have been employed as a non-exempt employee by SOUTHERN MONTEREY
7 COUNTY MEMORIAL HOSPITAL, in the State of California during the Covered Period.”
8 (“Class”). (Szamet Decl. ¶38; Agreement, Ex. 1 at ¶1.5.) The “Settlement Class Members” or
9 “Class Members” means a member of the Class, as either a Participating Class Member or Non-
10 Participating Class Member (including a Non-Participating Class Member who qualifies as an
11 Aggrieved Employee). (*Id.*)

12 The Class Period is November 12, 2017 to March 7, 2023. (Szamet Decl. ¶39; Ex. 1 at
13 ¶1.12.) As of the date of the Settlement Agreement and based on documents and other information
14 produced by Defendant, there are approximately 660 Settlement Class Members. (Szamet Decl.
15 ¶40; Ex. 1 at ¶9.)

16 B. Aggrieved Employees

17 For purposes of the Agreement, the Aggrieved Employees are defined as: “all persons who
18 are employed or have been employed as a non-exempt employee by SOUTHERN MONTEREY
19 COUNTY MEMORIAL HOSPITAL, in the State of California who worked one or more pay
20 periods during the PAGA Period. (“Aggrieved Employees” or “PAGA Members”). (Szamet Decl.
21 ¶41; Ex. 1 at ¶1.4.)

22 The PAGA Period is the period from November 12, 2020 to March 7, 2023. (Szamet Decl.
23 ¶42; Ex. 1 at ¶1.31.) Based on documents and other information produced by Defendant and
24 analyzed with the assistance of the expert for mediation, there were approximately 419 Aggrieved
25 Employees who worked 16,440 pay periods during the PAGA statutory period. (Szamet Decl.
26 ¶43.)

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28 ///

1 C. Gross Settlement Fund

2 As detailed fully in the Agreement, the Settlement provides for Defendant to pay a Gross
3 Settlement Fund of \$1,240,000.00, which includes the sum of the Individual Class Payments, the
4 Class Representative service award, the Class Counsel Award, PAGA Payment, and the Settlement
5 Administration Costs. (Szamet Decl. ¶44; Ex. 1 at ¶3.1.)

6 The Net Settlement Amount is the Gross Settlement Fund, less Class Counsel Award, Class
7 Representative Enhancement, PAGA Payment, and Settlement Administration Costs. (Szamet
8 Decl. ¶45; Ex. 1 at ¶1.28.)

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

10	Gross Settlement Fund:	\$	1,240,000.00
11	Less Class Representative Enhancement:	\$	5,000.00
12	Less Class Counsel's Fees:	\$	413,333.33
13	Less Class Counsel's Costs:	\$	15,000.00
14	Less PAGA Payment:	\$	20,000.00
15			<i>(\$15,000.00 to the LWDA and</i>
16			<i>\$5,000.00 to remain in the Net</i>
17			<i>Settlement Amount)</i>
18	<u>Less Administrator Costs:</u>	\$	<u>20,000.00</u>
19	Anticipated Net Settlement Amount	\$	771,666.67

20 (Ex. 1 at ¶3.)

21 D. Individual Settlement Payments

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

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

1 E. Process for Administering Settlement after Preliminary Approval

2 The detailed Notice Procedure established by the Agreement will efficiently and accurately
3 ensure that Notice is provided to the Settlement Class Members. (Ex. 1 at ¶8.4.) The Parties have
4 agreed to use a reputable third-party claims administrator, Xpand Legal to administer the
5 Agreement. (Szamet Decl. ¶46; Ex. 1 at ¶1.2.)

6 F. Process for Settlement Class Members to Respond to Class Notice

7 As detailed in the Agreement, Settlement Class Members will have an opportunity to
8 request exclusion from the Agreement (i.e. opt out) and to object to the Agreement. (See Ex. 1 at
9 ¶¶8.5;8.7; see also Ex. A to the Agreement at pp. 2, 5-6 and 8 [Class Notice].) The Agreement
10 and Class Notice contain details about the process to request exclusion or object. (*Id* at Ex. 1; see
11 also Ex. A to the Agreement at pp. 2, 5-6, and 8 [Class Notice].)

12 G. The Release

13 The Release by Participating Class Members is defined as: “the Released Claims applicable
14 to Plaintiff and all Participating Class Members shall mean: any and all claims, debts, liabilities,
15 demands, obligations, penalties, guarantees, costs, expenses, attorney’s fees, damages, action or
16 causes of action of whatever kind or nature, whether known or unknown, contingent or accrued,
17 that are alleged, or that reasonably could have arisen out of the same facts alleged in the Operative
18 Complaint, including: (1) failure to pay wages and/or overtime under Labor Code sections 510,
19 1194, and 1199; (2) failure to provide meal breaks pursuant to Labor Code sections 226.7 and 512;
20 (3) failure to provide rest breaks pursuant to Labor Code section 226.7; (4) failure to provide
21 accurate itemized wage statements pursuant to Labor Code section 226(a); (5) penalties under
22 Labor Code section 203; (6) violation of Business & Professions Code section 17200; and (7)
23 penalties pursuant to Labor Code section 2699 (“PAGA”) based upon the alleged violations
24 enumerated in the Operative Complaint. (Hereafter “Released Claims”.) Except as set forth in
25 Section 6.3 of the Agreement, Participating Class Members do not release any other claims,
26 including claims for vested benefits, wrongful termination, violation of the Fair Employment and
27 Housing Act, unemployment insurance, disability, social security, workers’ compensation, or
28 claims based on facts occurring outside the Class Period.” (Ex. 1 at ¶6.2)

1 The Release by Participating Class Members and Non-Participating Class Members who
2 are Aggrieved Employees is defined as: “Plaintiff and all Participating Class Members and Non-
3 Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of
4 themselves and their respective former and present representatives, agents, attorneys, heirs,
5 administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties
6 that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated
7 in the Operative Complaint, and the PAGA Notice and ascertained in the course of the Action
8 including, (1) failure to pay wages and/or overtime under Labor Code sections 510, 1194, and
9 1199; (2) failure to provide meal breaks pursuant to Labor Code sections 226.7 and 512; (3) failure
10 to provide rest breaks pursuant to Labor Code section 226.7; (4) failure to provide accurate
11 itemized wage statements pursuant to Labor Code section 226(a); (5) penalties under Labor Code
12 section 203; (6) violation of Business & Professions Code section 17200. (Ex. 1 at ¶6.3)

13 **V. ARGUMENT**

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

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

22 The proposed settlement satisfies each of these factors. (Szamet Decl. ¶47.) Class Counsel
23 conducted extensive informal discovery before entering into meaningful settlement negotiations
24 in this matter. (*Id* at Szamet Decl. ¶¶9-12.) This discovery permitted Class Counsel to fairly
25 evaluate the strength of the case and the risks associated with ongoing litigation. (Szamet Decl.
26 ¶48.) Class Counsel is experienced in handling wage and hour class actions and, after weighing
27 all of the following factors, supports this Agreement. (Szamet Decl. ¶49.)

28 ///

1 1. The Strength of Plaintiff's Case

2 a) Plaintiff Alleges That Defendant Failed to Pay Overtime at the
3 Appropriate Rate

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

17 Here, Plaintiff contends that she and all Class Members were forced to work on a regular
18 and consistent basis without receiving compensation for all hours worked at the proper rate.
19 (Szamet Decl. ¶50.) Specifically, Plaintiff contends that Defendant failed to blend Plaintiff's and
20 the Class Members' "Shift Differential" pay into the regular rate of pay for the purposes of
21 calculating the overtime rate during pay periods that Class Members worked overtime and also
22 earned "Shift Differential" pay. (Szamet Decl. ¶51.) As a result of this alleged failure to properly
23 blend, Plaintiff maintains that Defendant underpaid Plaintiff and Class Members in pay periods
24 when they worked overtime and also earned non-discretionary shift differential pay in the same
25 pay period. (Szamet Decl. ¶52.) Plaintiff contends that Defendant owes unpaid overtime wages
26 to Plaintiff and the Class members as a result. (Szamet Decl. ¶53.) Because this claim can be
27 readily analyzed from Defendant's time and pay records, Plaintiff felt confident that this claim was
28 certifiable and that she would likely prevail on the merits at trial. (Szamet Decl. ¶54.) However,

1 Defendant argued that it did properly blend, but to the extent that a trier of fact found that it did
2 not, the core wage exposure was quite minimal because any alleged failure to blend would only
3 result in only a few dollars being owed to any given Class Member during a specific pay period
4 when they worked overtime and also earned non-discretionary bonus pay in the same pay period.
5 (Szamet Decl. ¶55.)

6 In response, Defendant argued that, until recently, it lawfully paid overtime and meal and
7 rest period premiums based on the employee's hourly rate then in effect, and believed it was in
8 full compliance with all obligations, including as calculated by its software programs. (*Levanoff v.*
9 *Dragas*, (2021) 65 Cal.App.5th 1079; *Ferra v. Lowes Hollywood Hotel, LLC* (2021) 11 Cal.5th
10 858.) Defendant admits that it changed its practice on February 20, 2023, and now pays employees
11 for overtime hours and meal and rest period premiums based on the "regular rate" of pay for the
12 workweek. (Szamet Decl. ¶56.) However, it argued that approximately 30.40% of non-exempt
13 employees only work at a single rate, and therefore using the systems to calculate regular rate
14 payment is not an issue. (Szamet Decl. ¶57.) Moreover, because employees with varying rates at
15 times worked overtime hours at their higher rate, Defendant argued that it sometimes resulted in a
16 higher overtime rate being paid than what they would have received if their overtime hours were
17 paid at their regular rate. (Szamet Decl. ¶58.) Ultimately, Defendant acknowledged that it
18 calculated that across the class, the exposure on the underpayments of overtime due to use of the
19 rate in effect totaled approximately \$73,000 per its calculations without taking into account offsets
20 for overpayments resulting from the same process. (Szamet Decl. ¶59.)

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

23 Under California Labor Code section 512 and IWC Wage Order No. 5, no employer shall
24 employ any person for a work period of more than five hours without providing a meal period of
25 not less than thirty minutes. The first meal period must be permitted to commence no later than
26 after five hours of work, or the start of the sixth hour of work (5.0 hours on the clock). (*Brinker*
27 *Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1049.) The second meal period must be
28 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 violated the law and is liable.”].)

Here, Plaintiff contends that she and members of the Class consistently worked shifts over five (5) hours and Defendant failed to provide proper meal periods of not less than thirty (30) minutes as required by the Labor Code during the relevant time period. (Szamet Decl. ¶60.) To put it plainly, Plaintiff contends that her meal breaks were routinely interrupted, if taken at all, due to the nature of the work.

In addition, Plaintiff contends that Defendant allegedly has a consistent policy of failing to pay Plaintiff Hansen-Schoolderman and the Class Members one (1) hour of pay at the employees’

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

10 Plaintiff anticipated that Defendant would argue that since its written policy was to
11 “provide” a meal period per *Brinker*, that to determine liability on this claim would necessitate
12 asking each and every Class Member “whether they were provided a compliant meal period but
13 chose to work”. (*Id.* at 78; Szamet Decl. ¶61.) Defendant would necessarily argue that such an
14 inquiry will defeat class certification. (Szamet Decl. ¶62.) Defendant also argued that the records
15 do show many meal period premiums were paid. (Szamet Decl. ¶63.)

16 In response, Defendant generally contended it maintained and followed a legally compliant
17 meal period policy and employees are relieved of all duty during meal breaks. (Szamet Decl. ¶64.)
18 Further, Defendant argued that employees in the healthcare industry who work shifts more than eight
19 hours in a workday may waive in writing their right to one of their two meal periods, even when the
20 shift is more than 12 hours. (*Gerard v. Orange Coast Memorial Medical Center*, (2018) 6 Cal.5th
21 443; Wage Order 5, § 11(D).) Defendant argued that no meal period class would be certified
22 because employees signed compliant written meal period waivers, including Plaintiff. (Szamet
23 Decl. ¶65.)

24 Further, Defendant argued that it uses an electronic timekeeping system that records precise
25 clock in and clock out times. (Szamet Decl. ¶66.) Defendant contends that it instructs employees
26 to clock in when they arrive for a shift, clock out at the end of their shift, and clock out and in for
27 meal breaks. (Szamet Decl. ¶67.) Arguing that its timekeeping system will not permit an
28 employee to clock out for the end of their shift until they have answered a series of questions

1 concerning their meal and rest periods, Defendant was confident that if an employee attests that
2 the employee did not receive a meal and/or rest break during their shift, the entry is flagged, and
3 the system automatically issues a premium. (Szamet Decl. ¶68.) Only if Defendant later manually
4 confirms that the employee signed a meal period waiver excusing the premium, is the premium
5 then removed. (Szamet Decl. ¶69.) As such, Defendant was confident that in conjunction with its
6 valid written policy, its time and pay records confirm that meal and rest periods are paid when
7 reported and there would be no liability on this claim. (Szamet Decl. ¶70.)

8 Plaintiff perceived cognizable risk on this claim because if Defendant were to prevail on
9 its legal defenses as to maintaining valid written waivers and that it “provided” all meals, and its
10 factual defenses regarding the time clock, there could be little to no recovery on this claim.
11 (Szamet Decl. ¶71.)

12 c) Plaintiff Alleges Defendant Failed To Provide Class Members with
13 Lawful Rest Breaks

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, or
17 major fraction thereof. (Cal. Code Regs., tit. 8, § 11070, subd. 12(A).)

18 Plaintiff Hansen-Schoolderman and the Class Members’ rest period claims arise from a
19 common course of conduct wherein Defendant did not provide employees with the opportunity to
20 take first, second, and/or third 10-minute rest breaks in compliance with California law. The
21 California Supreme Court has held: “Employees are entitled to 10 minutes’ rest for shifts from
22 three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10
23 hours, 30 minutes for shifts of more than 10 hours up to 14 hours and so on.” (*Brinker Rest. Corp*
24 *v. Superior Court*, *supra*, 53 Cal.4th at 1029.) In an eight-hour work day, being denied the two
25 paid rest breaks in a day is “essentially perform[ing] 20 minutes of ‘free’ work.” (*Murphy v.*
26 *Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1104).

27 The Court has also clarified what steps an employer must take to make rest breaks available
28 to its employees:

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 she and the Class Members consistently worked shifts of over 10 hours and were not authorized or permitted to take rest breaks after every 3.5+ hour period. (Szamet Decl. ¶72.) Therefore, Defendant allegedly violated Labor Code §226.7 by failing to provide proper rest periods and pay Plaintiff and the Class Members one hour of compensation at their regular rate for rest period premium wages.

Plaintiff alleges that she generally was unable to take compliant rest periods of a full 10 minutes at all because of the nature of work. (Szamet Decl. ¶73.) In fact, Plaintiff contends that frequently it was difficult to even find a few minutes to use the restroom. *Id.* Plaintiff also alleges that she was not provided a third rest period on shifts over 10 hours.

As with meal periods, Defendant argued that it maintained a facially compliant policy that “provided” all required rest periods, it did not require employees to stay on the premises, and it never interfered with Plaintiff or any Class Members’ ability to take all complaint rest periods. (Szamet Decl. ¶74.) Plaintiff acknowledges that rest period claims can be difficult to prove on a classwide basis due to the lack of records. (Szamet Decl. ¶75.) This is especially true when an employer maintains a facially complaint rest period policy. (Szamet Decl. ¶76.) Defendant argued that, as with meal periods, this would devolve into a series of mini-trials where the trier of fact would be entitled to hear from each class member as to whether they were in fact provided the opportunity to take all required rest periods per day. (Szamet Decl. ¶77.) Of course, Defendant argued this would defeat class certification and make it nearly impossible to prove this claim on a classwide basis. (Szamet Decl. ¶78.) Based on this risk, Plaintiff believed it was appropriate to

1 discount this claim by 50%. (Szamet Decl. ¶79.)

2 Just as with meal periods, Defendant generally contended it maintained and followed a
3 legally compliant rest period policy and provided all required rest breaks. (Szamet Decl. ¶80.) It
4 insisted that the facts negating class certification were present because Defendant’s written meal
5 and rest period policies comply with the law, as do its practices. (Szamet Decl. ¶81.) Furthermore,
6 it argued that its timekeeping system ensures that employees are paid a meal and/or rest period
7 premium if they attest that they did not receive a compliant meal or rest break and also
8 implemented safeguards for its employees to correct any mistakes in incorrect attestations
9 concerning meal and rest breaks. (Szamet Decl. ¶82.) Finally, it asserted that its policies and
10 procedures are communicated and understood by employees as evidenced by the employee
11 orientation and handbook receipt and acknowledgments signed by employees. (Szamet Decl. ¶83.)

12 As with meal periods, Plaintiff recognized significant risk that she would not be able to
13 certify a rest break claim. (Szamet Decl. ¶84.) Because of this risk, a significant discount of the
14 valuation of this claim is appropriate. (Szamet Decl. ¶85.)

15 d) Plaintiff Contends That Defendant Failed to Issue Lawful Itemized
16 Wage Statements

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

26 Plaintiff brings a derivative Section 226(a) claim arguing that Defendant issued wage
27 statements that violate Labor Code §§ 226(a)(2) and (9). Labor Code § 226(a) specifically requires
28 that the employer shall, semimonthly or at the time of each payment of wages, furnish each of his

1 or her employees, an accurate itemized statement in writing showing all applicable hourly rates in
2 effect during the pay period and the corresponding number of hours worked at each hourly rate by
3 the employee. Plaintiff argues that she and the Class are issued wage statements that fail to account
4 for the unpaid wages, overtime, and correct blended rate all of which employees were owed but
5 never paid. The wage statements also fail to show meal and rest period premiums that were due
6 and owing.

7 In response, Defendant contends that Plaintiff's wage statement claim is meritless because
8 Defendant's wage statements record all rates in effect and the hours worked at each rate, as well
9 as meal and rest period premiums. (Szamet Decl. ¶86.)

10 e) Plaintiff Contends That Defendant Failed to Provide All Wages
11 Due at The Time of Termination

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

18 Here, Plaintiff Hansen-Schoolderman and numerous members of the Class are no longer
19 employed by Defendant. (Szamet Decl. ¶87.) Plaintiff asserts that by virtue of the allegations that
20 defendant failed to pay all wages at the appropriate of pay, Defendant therefore failed to pay all
21 wages owed and due upon their termination and/or resignation. (Szamet Decl. ¶88.) Plaintiff
22 acknowledges that the viability of this claim is tied to the wage claim. (Szamet Decl. ¶89.)

23 In response, Defendant contends that Plaintiff's waiting time penalty claim is merely
24 derivative of her unpaid overtime claim and meal and rest period claims. (Szamet Decl. ¶90.)
25 Defendant argued that there is no evidence to support that it failed to pay overtime or that it
26 engaged in willful conduct concerning break premium requirements. (Szamet Decl. ¶91.) With
27 respect to overtime, Defendant believed that its practice of paying overtime at the rate in effect
28 was consistent with and authorized by current law citing to *Levanoff, supra*, 65 Cal.App.5th 1079.

Further, it argued with respect to meal and rest period premiums, until recently, meal and rest period premiums were not considered wages for purposes of waiting time penalties. (*Naranjo v. Spectrum Security Services, Inc.*, (2022) 13 Cal.5th 93.) Because Defendant argued that it believed that it operated in compliance with California law, there is no basis for a finding a willfulness and therefore no potential recovery for waiting time penalties. (Szamet Decl. ¶92.)

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

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

Plaintiff discounted the PAGA claim for multiple reasons. First, the aggrieved employees’ PAGA claims are derivative of all the foregoing Labor Code claims. Second, a court has discretion to award less than the maximum penalty. 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). 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. As such, the Agreement’s contemplated PAGA payment of \$20,000.00 is appropriate. (Szamet Decl. ¶93.) *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. ¶94.) If the Court did eventually certify an unpaid wages or meal/rest class, trial of a case involving

1 approximately 660 Settlement Class Members would require the retention of expensive expert
2 witnesses, the accrual of extensive litigation costs, and a significant time overlay by the parties.
3 (Szamet Decl. ¶95.) Moreover, given the complexity and unsettled nature of the issues in this case
4 it is likely that any outcome at trial would have resulted in a lengthy and costly appeal. (Szamet
5 Decl. ¶96.) An appeal would result in further delay for the Settlement Class Members who are
6 waiting for a resolution in this matter. (*Id.*)

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

8 This case has not been certified to be tried as a class action. (Szamet Decl. ¶97.) While
9 Plaintiff believes there is strong evidence to support certification of several possible subclasses
10 certification is always hard fought and subject to judicial discretion. Moreover, in class actions,
11 decertification is always a possibility. (*Id.*) In attempting to certify a class, the parties would need
12 to conduct multiple depositions, including of the Class Representative and of several person(s)
13 most knowledgeable regarding Defendant's wage and hour policies. (*Id.*) There is a risk for both
14 sides as to what these depositions will reveal and whether they will support class certification to
15 the extent expected. (*Id.*)

16 4. The Amount Offered in Settlement

17 It was very difficult for the Parties to reach this Settlement of \$1,240,000.00. (Szamet
18 Decl. ¶98.) This Settlement is the result of adversarial, non-collusive, and arms-length
19 negotiations. (Szamet Decl. ¶99.) The Parties arrived at it after extensive investigation and
20 discovery, careful evaluation of the law, risks, and all information substantiating the amount of
21 penalties reasonably likely to be awarded to the class were the trier of fact to find Defendant liable,
22 and the assistance of an experienced mediator, Jill R. Sperber, Esq. (*Id.*)

23 Plaintiff worked with an expert to analyze the sample of time and pay records discussed
24 above to determine the exact monetary figures for Defendants alleged exposure. (Szamet Decl.
25 ¶100.)

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

27 Plaintiff assessed the full value of the Minimum Wage/Overtime claim, without any
28 discount, at approximately \$76,350. (Szamet Decl. ¶101.) This calculation is based on the expert

1 analysis of the time records and determining the amount of allegedly unpaid overtime wages owed
2 and is in accord with Defendant’s assessment of the potential exposure on this claim. (Szamet
3 Decl. ¶102.)

4 Plaintiff assessed the full value of the Meal Period claim, without any discount, at
5 approximately \$2,233,539. (Szamet Decl. ¶103.) This analysis is based on expert evaluation of
6 the alleged late, short or missed first meal periods. (Szamet Decl. ¶104.) Plaintiff assessed the full
7 value of the *Ferra* Meal Period blending claim, without any discount, at approximately \$7,349.
8 (Szamet Decl. ¶105.) This analysis is based on the alleged underpayment of meal period premiums
9 based on the allegation that Defendant failed to properly blend “Shift Differential” pay under
10 *Ferra, supra*. (Szamet Decl. ¶106.)

11 Plaintiff assessed the full value of the Rest Period claim, without any discount, at
12 approximately \$6,550,525. (Szamet Decl. ¶107.) This amount assumes a 100% rest break
13 violation rate based on Plaintiff’s allegations set forth above. (Szamet Decl. ¶108.) However,
14 assuming the evidence shows that many members of the Class were provided rest periods
15 frequently and reducing the violation rate to 50%, that reduces this amount dramatically to
16 \$3,275,262.50. (Szamet Decl. ¶109.)

17 Plaintiff valued the Wage Statement Claim, without discount, at \$1,109,650. (Szamet Decl.
18 ¶110.) This is based on 293 employees during the statutory period for Labor Code Section 226(a)
19 statutory period as derived from the sample. (Szamet Decl. ¶111.)

20 Plaintiff valued the Waiting Time Claim, tied to the alleged Wage/Overtime claim, at
21 \$3,782,062. (Szamet Decl. ¶112.) This is based on 376 former employees derived from the sample.
22 (Szamet Decl. ¶113.)

23 Finally, Plaintiff calculated the value of the PAGA claim at \$3,258,700 for Settlement
24 Class Members (using \$100 per pay period). (Szamet Decl. ¶114.) The main risk taken into
25 account with PAGA is the discretionary nature of the penalty award. (Szamet Decl. ¶115.) A judge
26 can award the statutory maximum of \$100 for the initial violation and \$200 thereafter or – in theory
27 – one cent per wage statement. (Szamet Decl. ¶116.) While there is a dearth of available authority,
28 in Plaintiff’s view, were she to succeed on any of the underlying Labor Code violations, it is not

1 likely that a Judge would also award a large amount of penalties of top of any damages recovered.
2 (Szamet Decl. ¶117.)

3 Per Plaintiff's assessment, the maximum potential value of all of Plaintiff's and the
4 Settlement Class Members' claims was approximately \$13,742,913 (\$76,350 + \$2,233,539 +
5 \$7,349 + \$3,275,262.50 + \$1,109,650 + \$3,782,062 + \$3,258,700 = \$13,742,913. (Szamet Decl.
6 ¶118.)

7 However, there are two key reasons to justify a discount. First, as discussed above, there
8 are risks as to the merits on each of the claims as detailed and as to Plaintiff's ability to certify all
9 of these claims. (Szamet Decl. ¶119.) Second, and critically important here, Defendant is a local
10 hospital with finite means to pay a sizeable settlement. (Szamet Decl. ¶120.) While the Parties
11 were focused on negotiating a meaningful settlement with excerpt assistance of the mediator, it
12 had to a number that Defendant could reasonably pay and still be able to keep its doors open and
13 operate in the community. (Szamet Decl. ¶121.) Based on this analysis, Class Counsel believes
14 the Gross Settlement Fund of \$1,240,000.00 is fair and reasonable. (Szamet Decl. ¶122.)

15 5. The Experience and Views of Counsel

16 Finally, counsel's experience and success in similar class actions also weigh in favor of
17 preliminary approval. *See Wershba, supra*, 91 Cal.App.4th at 245. Kingsley & Kingsley, APC is
18 very experienced in prosecuting complex employment litigation, and the firm has focused its
19 practice since the year 2000 on complex wage, hour, and working condition violations. (Szamet
20 Decl. ¶¶123-125.) The firm is well versed in class action litigation and has diligently and
21 aggressively pursued this action. (*Id.*) Kingsley & Kingsley, APC currently serves as Kingsley &
22 Kingsley, APC for dozens of pending class action lawsuits in Northern, Central, and Southern
23 California. (*Id.*) A list of representative cases that Kingsley & Kingsley, APC has handled is
24 included in the accompanying declaration of Kelsey M. Szamet (*Id.*) After factoring in the risks
25 explained above, Class Counsel believes that the proposed settlement is fair and reasonable.
26 (Szamet Decl. ¶126.)

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1 6. The Proposed Plan of Allocation Is Fair and Reasonable

2 Plans of allocation are subject to the same standard of review as class action settlements;
3 they must be “fair, adequate and reasonable.” (*See, e.g., Officers for Justice v. Civil Service*
4 *Comm’n* (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the proposed plan of allocation
5 compensates Settlement Class Members pro rata based on the number of compensable work weeks
6 worked by the Settlement Class Member during the Class Period. The lump sum payment to each
7 Settlement Class Member not excluding herself will be determined on an individualized basis by
8 dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating
9 Class Members during the Class Period and (b) multiplying the result by each Participating Class
10 Member’s Workweeks (Ex. 1 at ¶3.2.4.) This allocation distributes Agreement funds
11 proportionally to each class member’s potential damages and should therefore be approved as fair,
12 adequate, and reasonable. (Szamet Decl. ¶127.)

13 7. The Proposed Notice Fairly Apprises the Settlement Class Members of the
14 Terms of the Settlement and of the Class Members’ Rights under the
15 Settlement

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

25 With respect to the contents of the Notice, the “notice given to the class must fairly apprise
26 the class members of the terms of the proposed compromise and of the options open to dissenting
27 class members.” (*Trotsky v. L.A. Fed. Sav. & Loan Ass’n* (1975) 48 Cal.App.3d 134, 151–52.)
28 The purpose of a class notice is to give class members sufficient information to decide whether

1 they should accept the benefits offered, opt out and pursue their own remedies, or object to the
2 settlement. (*Ibid.*)

3 Here, the Notice clearly explains the proposed Agreement and the options to opt out of the
4 Settlement or object to it at the Final Approval Hearing. (Ex. 1 at ¶8.5; 8.7; *see also* Ex. A to the
5 Agreement at pp. 2, 5-6 and 8 [Class Notice].) In short, the Court should approve the proposed
6 Class Notice because it describes the proposed settlement with enough specificity to allow
7 Settlement Class Members to make an informed choice regarding whether to participate.

8 **VI. THE SERVICE AWARD TO THE NAMED PLAINTIFF**

9 The Class Representative is entitled to an enhancement for her valiant effort and time
10 expended in this matter. (Szamet Decl. ¶128.) The time spent by INGRID HANSEN-
11 SCHOOLDERMAN is significant and includes researching and retaining competent counsel;
12 providing information to Class Counsel regarding the nature of the work at Defendant; compiling
13 relevant documents; working closely with Class Counsel to develop the theories of liability and
14 martial relevant evidence; regularly discussing the status of the case with Class Counsel;
15 discussing the case with members of the Class as needed; making herself available for a attend a
16 full-day of mediation; and responding promptly to Class Counsel communications regarding
17 settlement. (*Id.*) Thus, in addition to the sums paid to Settlement Class Members, Plaintiff requests
18 a proposed litigation enhancement in the amount of \$5,000.00, to be paid from the Gross
19 Settlement Fund. (Ex. 1 at ¶3.2.1.) As set forth in the Agreement, Plaintiff will also be entering
20 into a general release of liability pursuant to Civil Code Section 1542. (Szamet Decl. ¶129; Ex. 1
21 at ¶6.)

22 Class Counsel considers this to be a fair and reasonable enhancement. (Szamet Decl.
23 ¶130.) The enhancement takes into consideration the time, effort, and expense incurred by Plaintiff
24 in coming forward to litigate this matter on behalf of all Settlement Class Members. (*Id.*) Plaintiff
25 will provide a detailed declaration with the Final Approval Motion detailing her participation and
26 further justification for the enhancement. (*Id.*)

27 ///

28 ///

1 **VII. SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY**

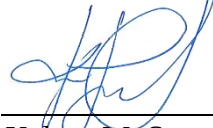
2 As indicated on the Proof of Service, Plaintiff's Motion for Approval of Class Action
3 Settlement ("Motion") will be concurrently uploaded to the LWDA website on the date this Motion
4 is filed as required by statute. Proof of submission of Plaintiff's Motion, all related documents,
5 and copy of the email from the LWDA confirming receipt is attached to the Declaration of Kelsey
6 M. Szamet as Exhibit "2." (Szamet Decl. ¶131.)

7 **VIII. CONCLUSION**

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

15
16 DATED: May 31, 2023

KINGSLEY & KINGSLEY, APC

17
18 By: 

19 Kelsey M. Szamet
20 Attorneys for Plaintiff INGRID HANSEN-
21 SCHOOLDERMAN and the Proposed Class
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(PROOF OF SERVICE)
[CCP 1013(a)(3)]

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On May 31, 2023, I served all interested parties in this action the following documents described as: **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

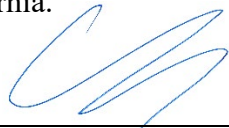
FENTON & KELLER, APC Elizabeth R. Leitzinger ELeitzinger@fentonkeller.com Gladys Rodriguez-Morales gmorales@fentonkeller.com 2801 Monterey-Salinas Highway Post Office Box 791 Monterey, CA 93942 <i>Attorneys for Defendant</i>	ABRAMSON LABOR GROUP William Zev Abramson Wza@abramsonlabor.com 3580 Wilshire Blvd., Ste 1260 Los Angeles, CA 90010-2513 <i>Attorneys for Plaintiff</i>
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☐ **(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 MAIL TRANSMISSION):** 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/308>) and service was completed by electronic means by transmittal of the documents referenced herein on the EF System.

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

Executed on May 31, 2023, at Woodland Hills, California.



Michelle Tanzer