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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF HUMBOLDT

GABRIEL GOMEZ, an individual, on behalf
of the State of California, as a private attorney
general; BARON QUIROS, an individual, on
behalf of himself and others similarly
situated,

PLAINTIFFS,

v.

WAHID OF PENNSYLVANIA LLC; and
DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO. CV2200078

[Case Assigned for All Purposes to Dept. 4]

**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: April 26, 2023

Time: 10:30 A.M.

Dept.: 4

Complaint Filed: January 14, 2022

Trial Date: None Set

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

2 **PLEASE TAKE NOTICE** that on April 26, 2023 at 10:30 A.M. in Department 4 of the
3 above-entitled court, Plaintiffs GABRIEL GOMEZ and BARON QUIROS will move the Court
4 for an Order of Preliminary Approval of the Class Action and PAGA Settlement Agreement
5 (“Agreement”), a copy of which is filed concurrently herewith. Plaintiff will move the Court for
6 an order to:

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

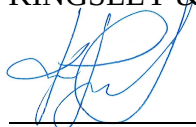
13 (3) Schedule a hearing on final approval of the proposed Settlement and Plaintiff’s
14 counsel’s application for an award of attorney’s fees and litigation costs at which Class Members
15 may be heard (“Final Approval Hearing”).

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
23 DATED: March 29, 2023

KINGSLEY & KINGSLEY, APC

24
25 By: 

26 Kelsey M. Szamet
27 Attorneys for Plaintiffs, the Proposed Class and the
28 Aggrieved Employees

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs GABRIEL GOMEZ AND BARON QUIROS (“Plaintiffs”) submit this
4 Memorandum of Points and Authorities in support of Plaintiff’s Motion for Preliminary Approval
5 of the Class Action and PAGA Settlement Agreement reached between Plaintiff and Defendant
6 Wahid of Pennsylvania LLC (“Defendant”) (Plaintiff and Defendant together, the “Parties”).

7 By this Motion, Plaintiff requests that the Court:

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

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

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

17 **II. FACTUAL BACKGROUND**

18 **A. Litigation Overview and Procedural History**

19 On November 3, 2021, Plaintiff Gabriel Gomez filed a Class and Representative Action
20 Complaint seeking recovery for: (1) failure to pay wages and/or overtime under Labor Code
21 sections 510, 1194, 1194.2, and 1199; (2) failure to provide meal breaks pursuant to Labor Code
22 sections 226.7 and 512; (3) failure to provide rest breaks pursuant to Labor Code section 226.7;
23 (4) failure to provide accurate itemized wage statements pursuant to Labor Code section 226(a);
24 (5) penalties under Labor Code section 203; and (6) violation of Business & Professions Code
25 section 17200. (Declaration of Kelsey M. Szamet (“Szamet Decl.”) ¶4.) Also on November 3,
26 2021, Plaintiff Gabriel Gomez sent a notice letter, pursuant to Labor PAGA, to the Labor
27 Workforce Development Agency (“LWDA”) regarding his intent to seek civil penalties for the
28 same Labor Code violations above, including an additional claim for Labor Code section 204(d)

1 and 210. (Szamet Decl. ¶5.)

2 Plaintiffs' Counsel later learned that Gabriel Gomez had entered into an individual
3 settlement with Defendant with representation by the Abramson Firm. (Szamet Decl. ¶6.)
4 Another potential class representative stepped forward around the same time, so on December 22,
5 2021, Plaintiff Gomez dismissed his action without prejudice. (Szamet Decl. ¶7.)

6 On January 14, 2022, Plaintiffs Gabriel Gomez and Baron Quiros filed a Class and
7 Representative Action Complaint seeking recovery for: (1) failure to pay wages and/or overtime
8 under Labor Code sections 510, 1194, 1194.2, and 1199; (2) failure to provide meal breaks
9 pursuant to Labor Code sections 226.7 and 512; (3) failure to provide rest breaks pursuant to Labor
10 Code section 226.7; (4) failure to provide accurate itemized wage statements pursuant to Labor
11 Code section 226(a); (5) penalties under Labor Code section 203; (6) violation of Business &
12 Professions Code section 17200; and (7) penalties pursuant to Labor Code § 2699, et seq., the
13 Private Attorneys General Act ("PAGA"). (Szamet Decl. ¶8.)

14 Plaintiff Quiros brings the Class Action on behalf of a proposed class defined as follows:

15 "All non-management employees of Wahid of Pennsylvania LLC, in the State
16 of California who worked one or more pay periods since four (4) years prior to
17 the filing of this action to the present." (Hereafter, "Class Members".)

18 Plaintiff Gomez brings the Representative Action on behalf of a group of aggrieved
19 employees defined as follows:

20 "All non-management employees of Wahid of Pennsylvania LLC, in the State of
21 California who worked one or more pay periods since one (1) year prior to the date
22 of Plaintiff Gomez's PAGA notice letter and continuing to the present." (Hereafter,
23 "Aggrieved Employees".)

24 (Szamet Decl. ¶9.)

25 **B. The Discovery Process and Mediation**

26 Although the Court stayed formal discovery and the Parties continued the discovery stay
27 pending mediation, the Parties engaged in informal discovery to assess potential liability, risks,
28 and to arrive at the Settlement now presented to the Court for preliminary approval. (Szamet Decl.
¶10.) Defendant informally produced its findings regarding a sampling of time and pay data and
wage statements for mediation purposes only. (Szamet Decl. ¶11.) Thereafter, the Parties attended

1 a full-day mediation with respected wage and hour mediator Todd A. Smith, Esq. (Szamet Decl.
2 ¶12.)

3 Defendant denies any liability or wrongdoing of any kind associated with the claims
4 alleged in the Action, disputes the damages and penalties claimed by Plaintiffs, and further
5 contends that, for any purpose other than settlement, Plaintiffs' claims are not appropriate for class
6 or representative action treatment. (Szamet Decl. ¶13.) Defendant contends, among other things,
7 that, at all times, it has complied with the California Labor Code, and the Industrial Wage
8 Commission Orders. (*Id.*)

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

18 **III. THE PROPOSED SETTLEMENT CLASS SHOULD BE CERTIFIED FOR** 19 **SETTLEMENT PURPOSES**

20 Originally creatures of equity, class actions have been statutorily embraced by the
21 Legislature whenever "the question [in a case] is one of a common or general interest, of many
22 persons, or when the parties are numerous, and it is impracticable to bring them all before the
23 court" (Code Civ. Proc. § 382; *see, e.g., Fireside Bank v. Sup. Court* (2007) 40 Cal.4th 1069,
24 1078.) They serve an important function by "establishing a technique whereby the claims of many
25 individuals can be resolved at the same time" thereby "eliminat[ing] the possibility of repetitious
26 litigation and provid[ing] small claimants with a method of obtaining redress." (*Richmond v. Dart*
27 *Industries, Inc.* (1981) 29 Cal.3d 462, 469.) Public policy supports the use of class actions to
28 enforce wage and overtime laws for the benefit of workers. (*See Sav-on Drug Stores, Inc. v. Sup.*

1 Court (2004) 34 Cal.4th 319, 340.)

2 The certification question is “essentially a procedural one that does not ask whether an
3 action is legally or factually meritorious.” (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 439–
4 440.) A court ruling on a certification motion must determine “whether . . . the issues which may
5 be jointly tried, when compared with those requiring separate adjudication, are so numerous or
6 substantial that the maintenance of a class action would be advantageous to the judicial process
7 and to the litigants.” (*Collins v. Rocha* (1972) 7 Cal.3d 232, 238.)

8 The California Supreme Court has identified three certification requirements: (1) “the
9 existence of an ascertainable and sufficiently numerous class”; (2) “a well-defined community of
10 interest”; and, (3) “substantial benefits from certification that render proceeding as a class superior
11 to the alternatives.” (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.)
12 The “community of interest” requirement includes three additional requirements: (1) common
13 questions of law or fact predominant over individual questions; (2) the class representatives have
14 claims or defenses typical of the class; and (3) the class representatives can adequately represent
15 the class. (*Ibid*, citing *Fireside Bank*, *supra*, 40 Cal.4th at 1089.)

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

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

20 1. Ascertainability

21 Putative class members are deemed “ascertainable” when they may be “readily identified
22 without unreasonable expense or time by reference to official records.” (*Rose v. City of Hayward*
23 (1981) 126 Cal.App.3d 926, 932.) In determining whether a class is ascertainable, a court
24 scrutinizes the class definition, the size of the class and the means of identifying class members.
25 (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.)

26 Here, Plaintiff Quiros maintains that the proposed settlement class is ascertainable for
27 several reasons: First, Defendant has agreed in the Agreement to provide a class list to the
28 Administrator containing the name, last known mailing address, social security number, and

number of Class Settlement Period Workweeks and PAGA Pay Periods for all putative class members after issuance of the preliminary approval order. (Szamet Decl. ¶15; Ex. 1 at ¶1.8.) Second, Settlement Class Member consist of Defendant’s hourly employees, and Defendant is required to keep records of its hourly employees’ names, home addresses, and social security numbers. (See Wage Order 7-2001, subsection 7(c); Szamet Decl. ¶16.) Third and finally, Defendant informally produced Plaintiffs’ personnel file and pay statements and a sampling of shift data, pay data, and wage statements for Settlement Class Members containing class member contact information, which confirms that all Settlement Class Member may be readily identified based on Defendant’s records. (Szamet Decl. ¶17.)

2. Numerosity

There is no set number that is required as a matter of law to maintain a class action. (See, e.g., *Rose v. City of Hayward*, *supra*, 126 Cal.App.3d at p. 934.) Here, the proposed settlement class contains, based upon information and belief, approximately 81 hourly non-exempt employees in the State of California. (Ex. 1 at ¶9.) Therefore, Plaintiffs are confident they will be able to establish that the proposed settlement class is ascertainable and sufficiently numerous. (Szamet Decl. ¶18.)

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

1. There Are Predominant Questions of Law and Fact

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

Here, Plaintiff Quiros contends that there are questions of law and fact common to the

1 proposed Settlement Class that predominate over any questions affecting only individual Class
2 Members. (Szamet Decl. ¶19.) These common questions include:

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

14 (Szamet Decl. ¶20.)

15 Plaintiff Quiros contends that Defendant maintained a company handbook containing
16 uniform meal and rest break policies for all hourly employees. (Szamet Decl. ¶21.) Plaintiff
17 maintains that the policies in the handbook do not comply with California law and the presence of
18 a company-wide meal and rest policy suggests that Defendant applied the same policies to all
19 employees, which would weigh in favor of class certification. (Szamet Decl. ¶22.)

20 Plaintiff's challenge to Defendant's uniform policies and practices involves common
21 factual and legal issues that are amenable to class treatment. (Szamet Decl. ¶23.) As the California
22 Supreme Court has emphasized, "[c]aims alleging that a uniform policy consistently applied to a
23 group of employees is in violation of the wage and hour laws are of the sort routinely, and properly,
24 found suitable for class treatment." (*Brinker, supra*, 53 Cal.4th at 1033; *see also Bradley v.*
25 *Networkers International, LLC* (2012) 211 Cal.App.4th 1129, 1141-1146.) Moreover, a class of
26 similarly situated employees may be certified based on common questions of fact or law, even if
27 each employee has to establish the amount of his or her damages. (*See Bell v. Farmers Ins. Exch.*
28 (2004) 115 Cal.App.4th 715, 741; *Sav-On Drug Stores, Inc. v. Superior Court, supra*, 34 Cal.4th

1 at 340.)

2 Here, Plaintiff maintains that the proposed Settlement Class Members suffered the same
3 injuries, in the same manner: (1) Settlement Class Members were not properly paid all
4 wages/overtime; (2) Settlement Class Members did not receive their meal and rest periods as
5 required; (3) Settlement Class Members were not provided accurate itemized wage statements; (4)
6 Settlement Class Members did not receive timely wages; and (5) Settlement Class Members were
7 not paid all wages owed upon termination/resignation. (Szamet Decl. ¶24.) Plaintiff alleges that
8 Settlement Class Members worked in the same capacity for the same employer and were subject
9 to the same employment policies and practices, the questions of fact and claims regarding the status
10 of these employees are the same for each member of the settlement class. (Szamet Decl. ¶25.)
11 Accordingly, for purposes of settlement, the evidence reviewed by Class Counsel demonstrates
12 that common meal and rest policies and wage policies applied to the proposed Settlement Class
13 Members and certification for settlement purposes is appropriate. (Szamet Decl. ¶26.)

14 2. Plaintiff Quiros Contends That As The Class Representative, He Has
15 Claims Typical of the Proposed Class

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

28 Plaintiff Quiros worked as "hourly employees" for Defendant, including commission pay.

1 Plaintiff Gomez began performing work for Defendant on or around February 2020 as a sales
2 representative. Plaintiff Quiros also worked for Defendant as a sales representative. Plaintiffs and
3 Class Members were paid on an hourly basis. In addition to the base hourly rate, Plaintiffs and
4 other Class Members also received commission wages for each sale that they closed. (Szamet Decl.
5 ¶27.) Plaintiffs allege that they (1) worked without being paid all wages and/or overtime, including
6 minimum wage and commission pay; (2) worked without being paid wages in a timely manner;
7 (3) worked without being provided meal/rest periods as required by law; (4) worked without being
8 provided accurate itemized wage statements; and (5) worked without being paid all wages due
9 upon separation. (Szamet Decl. ¶28.) They also allege that they experienced derivative claims for
10 unfair business competition (B&P Code §17200) and Labor Code §2699, et seq. (*Id.*) Plaintiffs
11 also contend that they claims are typical of those of the settlement class. (Szamet Decl. ¶29.)

12 3. Plaintiff Contends That As The Class Representative He Has and Will
13 Fairly Represent the Interests of the Settlement Class Members

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

18 Plaintiff Quiros believes that he is capable of fairly representing and adequately protecting
19 the interests of the proposed Settlement Class Members. (Szamet Decl. ¶30.) Plaintiff’s interests
20 in this litigation are coextensive with the interests of the proposed Settlement Class Members. The
21 members of the proposed settlement class all worked for Defendant during the relevant time period
22 and incurred the same type of alleged damages with regard to Defendant’s alleged violations of
23 the law. (Szamet Decl. ¶31.) Moreover, Plaintiff Baron Quiros has agreed to serve as Class
24 Representative and has retained qualified Counsel who is experienced in prosecuting wage and
25 hour class actions. (Szamet Decl. ¶32.) This demonstrates his commitment to bringing about the
26 best possible results for the benefit of the proposed settlement class. (Szamet Decl. ¶33.) Plaintiff
27 has provided his Counsel with all necessary and pertinent information. (Szamet Decl. ¶34.) He
28 has been a very active participant in the litigation including having frequent contact with

1 Settlement Class Members and working closely with Class/PAGA Counsel to develop the theories
2 of liability. (Szamet Decl. ¶35.) Plaintiff has provided his Counsel with all necessary and pertinent
3 information. (Szamet Decl. ¶36.) He also made himself available for the full-day mediation in this
4 matter and was informed of and involved in all of the Settlement negotiations. Therefore, Plaintiffs
5 believe that he has and will continue to adequately represent the proposed Settlement Class
6 Members. (Szamet Decl. ¶37.)

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

8 “The ultimate question in every case of this type is whether . . . the issues which may be
9 jointly tried, when compared with those requiring separate adjudication, are so numerous or
10 substantial that the maintenance of a class action would be advantageous to the judicial process
11 and to the litigants.” (*Lockheed Martin, supra*, 29 Cal.App.4th at 1104–1105.) The California
12 Supreme Court has directed the courts to utilize the class action device to fashion “an effective
13 and inclusive group remedy.” (*Richmond v. Dart Indus., Inc.* (1981) 29 Cal.3d 462, 469.)
14 Normally, in making its class certification decision, the Court must determine that a class action
15 would be superior to alternate means for a fair and efficient adjudication. If the causes of action
16 may be adjudicated in a single proceeding, thereby saving time, reducing waste, and limiting
17 duplication of effort, class certification is superior to individual litigation. (*See, e.g., Vasquez v.*
18 *Superior Court* (1971) 4 Cal.3d 800, 816.) Since the Parties agreed to a settlement in principal
19 and now seek Court approval of that Settlement, Plaintiff submits that there is not as much need
20 as there would be in an ordinary motion for class certification for the Court to determine that the
21 case can be manageably tried. (Szamet Decl. ¶38.)

22 Plaintiff maintains that class treatment would be the superior method of managing this case.
23 (Szamet Decl. ¶39.) A class action is superior to individual litigation “when numerous parties
24 suffer injury of insufficient size to warrant individual action and when denial of class relief would
25 result in unjust advantage to the wrongdoer.” (*Blue Chip Stamps v. Superior Court* (1976) 18
26 Cal.3d 381, 385.) In cases such as this, where individual damages may be small, the class action
27 device is the most feasible method of recovery. (*See, e.g. Lockheed Martin, supra*, 29 Cal.4th at
28 1131.) In this regard, the superiority of class treatment is evident here because individual pursuit

1 of class members' claims may not be economically viable. (Szamet Decl. ¶40.) The only
2 alternative to certification would be to force over 81 employees to join this action, file individual,
3 uniform actions, or abandon their legal rights altogether. (Szamet Decl. ¶41.) Plaintiff maintains
4 that this economic reality would result in a windfall for Defendant if this case were not certified.
5 (Szamet Decl. ¶42.)

6 **IV. THE PROPOSED SETTLEMENT**

7 **A. The Settlement Class**

8 For purposes of Agreement, the Settlement Class is defined as: "all non-management
9 employees of Wahid of Pennsylvania LLC, in the State of California who worked one or more pay
10 periods during the Class Settlement Period." ("Class") The "Settlement Class Members" means a
11 member of the Class, as either a Participating Class Member or Non-Participating Class Member
12 (including a Non-Participating Class Member who qualifies as an Aggrieved Employee). (Szamet
13 Decl. ¶43; Agreement, Ex. 1 at ¶1.5.)

14 The Class Settlement Period is November 1, 2020 through December 13, 2022. (Szamet
15 Decl. ¶44; Ex. 1 at ¶1.12.) As of October 14, 2022 (the date of mediation), based on documents
16 and other information produced by Defendant, there are approximately 81 Settlement Class
17 Members. (Szamet Decl. ¶45; Ex. 1 at ¶9.)

18 **B. The Aggrieved Employees**

19 For purposes of Agreement, the Aggrieved Employees or PAGA Members are defined as
20 "all non-management employees of Wahid of Pennsylvania LLC, in the State of California who
21 worked one or more pay periods during the PAGA Settlement Period. (Szamet Decl. ¶46; Ex. 1 at
22 ¶1.4.)

23 The PAGA Settlement Period is November 3, 2020 through December 13, 2022. (Szamet
24 Decl. ¶47; Ex. 1 at ¶1.31.)

25 **D. Gross Settlement Amount**

26 As detailed fully in the Agreement, the Settlement provides for Defendant to pay a Gross
27 Settlement Amount of \$90,000.00, which includes the sum of the Individual Class Payments, the
28 Class Representative service award, the Class/PAGA Counsel Award, PAGA Payment, and the

Settlement Administration Costs. (Szamet Decl. ¶48; Ex. 1 at ¶3.1.)

The Net Settlement Amount is the Gross Settlement Amount, less Class/PAGA Counsel Award, Class Representative Enhancement, PAGA Payment, and Settlement Administration Costs. (Szamet Decl. ¶49; Ex. 1 at ¶1.28.)

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

Gross Settlement Amount:	\$	90,000.00
Less Class Representative Enhancement:	\$	\$5,000.00
Less Class/PAGA Counsel's Fees:	\$	30,000.00
Less Class/PAGA Counsel's Costs:	\$	15,000.00
Less PAGA Payment:	\$	5,000.00

*(\$3,750.00 to the LWDA and
\$1,250.00 to Aggrieved Employees)*

Less Administrator Costs: \$ 5,000.00

Anticipated Net Settlement Amount \$ 31,250.00
(Ex. 1 at ¶3.)

D. Individual Settlement Payments

The amount of each Participating Class Member's Individual Class Payment is an individualized amount that is based on the number of compensable workweeks worked by the Participating Class Member during the Class Settlement Period. (Ex. 1 at ¶1.23; *see also* Ex. A to the Agreement at pp. 4 [Class Notice].) This individual amount shall be determined by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Settlement Period and (b) multiplying the result by each Participating Class Member's Workweeks (*See* Ex. 1 at ¶3.2.4; *Id.* at Ex. A to the Agreement [Class Notice].) The Agreement provides for a specific and detailed Workweek dispute process. (*See* Ex. 1 at ¶8.8.4.)

The Individual PAGA Payment will be the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked during the PAGA Settlement Period. (*See* Ex. 1 at ¶1.24.)

E. Process for Administering Settlement after Preliminary Approval

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

Administration Solutions, to administer the Agreement. (Ex. 1 at ¶1.2.)

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

As detailed in the Agreement, Settlement Class Members will have an opportunity to request exclusion from the Agreement (i.e. opt out) and to object to the Agreement at the Final Approval Hearing. (See Ex. 1 at ¶¶8.5; 8.7; see also Ex. A to the Agreement at pp. 26 and 29 [Class Notice].) The Agreement and Class Notice contain details about the process to request exclusion or object. (*Id* at Ex. 1; see also Ex. A to the Agreement at pp. 29; 32-33 [Class Notice].)

G. The Release

The Release by Participating Class Members Who Are Not Aggrieved Employees is defined as: “All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) any and all claims, debts, liabilities, demands, obligations, penalties, guarantees, costs, expenses, attorney’s fees, damages, action or causes of action of whatever kind or nature, whether known or unknown, contingent or accrued, that are alleged, or that reasonably could have arisen out of the same facts alleged in the Action, including: (1) failure to pay wages and/or overtime under Labor Code sections 510, 1194, 1194.2, and 1199; (2) failure to provide meal breaks pursuant to Labor Code sections 226.7 and 512; (3) failure to provide rest breaks pursuant to Labor Code section 226.7; (4) failure to provide accurate itemized wage statements pursuant to Labor Code section 226(a); (5) penalties under Labor Code section 203; (6) violation of Business & Professions Code section 17200; and (7) penalties pursuant to Labor Code § 2699, et seq., the Private Attorneys General Act (collectively, the “Released Class Claims”) during the Class Settlement Period. Except as set forth in Section 6.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Settlement Period.” (Ex. 1 at ¶6.2.)

The Release by Non-Participating Class Members Who Are Aggrieved Employees is defined as: “All Non-Participating Class Members who are Aggrieved Employees are deemed to

1 release, on behalf of themselves and their respective former and present representatives, agents,
2 attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for
3 PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA
4 Settlement Period facts stated in the Operative Complaint the PAGA Notice and ascertained in the
5 course of the Action including, any and all claims involving any alleged failure to pay wages,
6 overtime wages, meal and rest period premiums, wage statement violations, separation pay
7 violations, and PAGA penalties (collectively, the “Released PAGA Claims”) during the PAGA
8 Settlement Period.” (Ex. 1 at ¶6.3.)

9 **V. ARGUMENT**

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

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

18 The proposed settlement satisfies each of these factors. (Szamet Decl. ¶50.) Class/PAGA
19 Counsel conducted meaningful informal discovery before entering into good faith settlement
20 negotiations in this matter. (*Id* at Szamet Decl. ¶¶10-14.) This discovery permitted Class/PAGA
21 Counsel to fairly evaluate the strength of the case and the risks associated with ongoing litigation.
22 (Szamet Decl. ¶51.) Class/PAGA Counsel is experienced in handling wage and hour class actions
23 and, after weighing all of the following factors, supports this Agreement. (Szamet Decl. ¶52.)

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1 1. The Strength of Plaintiff's Case

2 a) Plaintiff Alleges That Defendant Failed to Pay Proper Wages and
3 Overtime By Not Blending Commission Pay Into the Regular Rate
4 of Pay for Overtime Purposes

5 “Under state and federal law, overtime compensation is based on an employee's ‘regular
6 rate’” of pay. (Huntington Memorial Hosp. v. Superior Court (2005) 131 Cal.App.4th 893, 902.)
7 “California Labor Code section 510, subdivision (a) provides, as relevant here, [that] an employee
8 is entitled to overtime pay at one and one-half times the ‘regular rate’ for work in excess of eight
9 hours in one day and twice the ‘regular rate’ for work in excess of 12 hours in one day.” (Ibid.)
10 For hourly employees, the regular rate is generally the employee’s straight-time hourly rate.
11 (Huntington, supra, 131 Cal.App.4th at p. 905.) However, in any pay period where an hourly
12 employee earns other includable compensation in addition to hourly wages—such as a non-
13 discretionary bonus, commission, or shift differential—her or his regular rate is computed by
14 dividing the employee’s total compensation in the period in which the other compensation is
15 earned by the total hours worked in that period. (Marin v. Costco Wholesale Corp. (2008) 169
16 Cal.App.4th 804, 807.)

17 Here, Plaintiff Quiros alleges that he and the Class Members earned commission pay for
18 each sale that they closed. (Szamet Decl. ¶53.) The operative Complaint alleges that Defendant
19 failed to include their commission pay in the regular rate calculation. (Szamet Decl. ¶54.) Thus,
20 Plaintiff contends that Defendant underpaid Plaintiff Quiros and the Class Members whenever
21 they worked overtime and earned commission pay in the same pay period because Defendant did
22 not blend commission pay into the regular rate of pay when calculating overtime. (Szamet Decl.
23 ¶55.) As a result, Plaintiff contends that Defendant owes unpaid overtime wages to Plaintiff Quiros
24 and the Class Members. (Szamet Decl. ¶56.) Because this claim can be readily analyzed from
25 Defendant’s time and pay records, Plaintiff felt confident that this claim was certifiable and that
26 he would likely prevail on the merits at trial. (Szamet Decl. ¶57.) However, Defendant argued
27 that it did properly blend, but to the extent that a trier of fact found that it did not, the core wage
28 exposure was quite minimal because any alleged failure to blend would only result in only a few

dollars being owed to any given Class Member during a specific pay period when they worked overtime and also earned comission pay in the same pay period. (Szamet Decl. ¶58.)

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

Under California Labor Code section 512 and IWC Wage Order No. 7, 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

1 affirmative obligation on every employer to authorize and provide legally-required meal and rest
2 breaks; if it fails to do so, it has violated the law and is liable.”].)

3 Here, Plaintiff Quiros alleges that he and the Class Members consistently worked shifts over
4 five (5) hours and Defendant failed to provide compliant meal periods of not less than thirty (30)
5 minutes as required by the Labor Code during the relevant time period. (Szamet Decl. ¶59.)
6 Specifically, Plaintiff alleges that Defendant informs employees that any “downtime” they have during
7 the day counts as their meal period, requires its employees to forgo meal periods to attend to customers
8 and/or require them to give up their commission pay if they do not forgo meal periods, and routinely
9 interrupted meal periods. (Szamet Decl. ¶60.)

10 In addition, Plaintiff Quiros alleges Defendant has a consistent policy of failing to pay Plaintiff
11 Quiros and the Class Members one (1) hour of pay at the employees’ regular rate of compensation for
12 each workday that the first meal period was not provided within the first (5) hours of the shift in
13 violation of Labor Code §§ 226.7 and 512. (Szamet Decl. ¶61.) On July 15, 2021, in *Ferra v. Loews*
14 *Hollywood Hotel, LLC*, the California Supreme Court set forth the formula for calculating the one extra
15 hour of premium pay that employees are owed if an employer fails to provide a compliant meal period
16 or rest break. Specifically, the Court held that those premium payments must include the hourly value
17 of any nondiscretionary earnings (such as commission pay), and cannot simply be paid at an
18 employee’s base hourly rate. Here, Plaintiff contends that when Defendant paid meal period premiums,
19 it did not pay them at the properly blended rate. (Szamet Decl. ¶62.)

20 In response, first and foremost, Defendant argued that Class Members were provided with
21 legally compliant meal periods. (Szamet Decl. ¶63.) In addition, Plaintiff anticipated that Defendant
22 would assert that such an argument would pose individual issues and Defendant would be entitled to
23 inquire of each class member, on each day whether or not they were provided with compliant meal
24 periods. (Szamet Decl. ¶64.) Plaintiff was confident that Defendant would attempt to gather
25 testimonial evidence from class members indicating that Class Members were provided and took
26 compliant meal breaks or that Class Members chose to take late breaks or miss breaks on occasion.
27 (Szamet Decl. ¶65.) Though Plaintiff does not believe this was the case, Plaintiff must
28 acknowledge it certainly poses risks for the Class. (Szamet Decl. ¶66.) There is risk as to both

sides as to what declarations and depositions of class members might reveal. (Szamet Decl. ¶67.)
Indeed, Plaintiff had to consider that Defendant could secure declarations from Class Members
giving Defendant an opportunity to disprove the allegations. (Szamet Decl. ¶68.)

c) Plaintiff Contends That Defendant Did Not Provide Class Members
with Lawful Rest Breaks

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

Plaintiff Quiros contends that the Class Members' rest period claims arise from a common
course of conduct wherein Defendant did not provide employees with the opportunity to take first
or second 10-minute rest breaks in compliance with California law. (Szamet Decl. ¶69.) Plaintiff
Quiros alleges that he and the Class Members' consistently worked shifts of 3.5+ hours and were
not authorized or permitted to take rest breaks therefore Defendant violated Labor Code §226.7.
(Szamet Decl. ¶70.)

The same risk analysis does not apply as with the meal periods, though, because there
generally are no records associated with rest periods. (Szamet Decl. ¶71.) As such, Plaintiff had
to acknowledge that it could potentially be easier for Defendant to defeat certification of this claim
if it was able to gather testimonial evidence from class members indicating that they were able to
take all required rest breaks each day. (Szamet Decl. ¶72.) Though Plaintiff does not believe this
was the case, Plaintiff must acknowledge it poses risks for the Class. (Szamet Decl. ¶73.) Just as
with meal periods, there is risk as to both sides as to what declarations and depositions of class
members might reveal. (Szamet Decl. ¶74.)

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

California Labor Code §226(a) requires Defendant to provide its employees with an accurate,
itemized written wage statement that shows, in relevant part, all applicable hourly rates and the
corresponding number of hours worked. Plaintiff contends that Defendant issued wage statements

1 that violate Labor Code §§ 226(a)(2) and (9). (Szamet Decl. ¶75.) Labor Code § 226(a) requires
2 that the employer shall, semimonthly or at the time of each payment of wages, furnish each of his
3 or her employees, an accurate itemized statement in writing showing all applicable hourly rates in
4 effect during the pay period and the corresponding number of hours worked at each hourly rate by
5 the employee. Plaintiff Quiros contends that he and Class Members are issued wage statements
6 that do not include the applicable overtime rate and the number of hours worked at the
7 corresponding rate. (Szamet Decl. ¶76.)

8 Here, Plaintiff anticipated that Defendants would argue its conduct was not “knowing and
9 intentional” and all required information was show on the paystubs and if there were ever any
10 errors it was the result of clerical error, omission, or oversight. (Szamet Decl. ¶77.) It was
11 anticipated that Defendant would argue that Plaintiffs claims were merely derivative of the
12 underlying wage and meal period claims, but that all record of payment actually received by a
13 Class Member was shown on the paystubs as required. (Szamet Decl. ¶78.)

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

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

21 Here, Plaintiff Quiros alleges that he and numerous Class Members are no longer employed by
22 Defendant. Due to Defendant’s failure to pay all wages and meal and rest period premiums as detailed
23 above, Plaintiff alleges that Defendant failed to pay all wages owed and due upon their termination
24 and/or resignation. (Szamet Decl. ¶79.) Plaintiff contends that Defendant’s actions were willful, as
25 they have intentionally failed or refused to perform an act which was required to be done. (Szamet
26 Decl. ¶80; see *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201.) “The failure to pay
27 is willful if the employer ‘knows what [it] is doing [and] intends to do what [it] is doing’, and does not
28 also require proof that the employer acted with “a deliberate evil purpose to defraud work[ers] of wages

1 which the employer knows to be due.” (*Diaz v. Grill Concepts Services, Inc.* (2018) 23 Cal.App.5th
2 859, 868.)

3 However, to establish liability for waiting time penalties, Plaintiff would have to establish
4 not only that the underlying violations occurred, but also that Defendants’ conduct was “willful.”
5 Labor Code § 203. Plaintiff contends that Defendants were fully aware of its payment policies and
6 practices and intended to carry out said policies and practices, but this would certainly be a
7 vigorously contested issue. (Szamet Decl. ¶81.) Therefore, Plaintiff believed that discounting this
8 claim was appropriate for settlement purposes. (Szamet Decl. ¶82.)

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

11 California’s Private Attorneys General Act (“PAGA”), Labor Code § 2698, *et seq.*, permits
12 private litigants to recover civil penalties for violations of the Labor Code. PAGA provides that
13 plaintiffs may recover previously established civil penalties (section 2699(a)) or, if none were
14 established, plaintiffs may recover default penalties provided in section 2699(f) in the amount of
15 \$100 per employee per pay period for the initial violation and \$200 for subsequent violations.

16 In addition to the wage, meal period, rest period, itemized wage statement, and penalty claims
17 alleged in detail above, Plaintiff Gomez also alleges an additional violation for timely wages under
18 Labor Code sections 204(d) and 210 as the basis for a PAGA claim on behalf of the aggrieved
19 employees. (Szamet Decl. ¶83.) Plaintiff alleges that Defendant did not pay Plaintiff Gomez and the
20 aggrieved employees. (Szamet Decl. ¶84.) As such, Plaintiff Gomez seeks PAGA penalties
21 available for violations under Labor Code sections 201, 202, 203, 204, 210, 226(a), 226.7, 510,
22 512, 1194, 1194.2, and 1199.

23 Plaintiff discounted the PAGA claim for multiple reasons. First, the aggrieved employees’
24 PAGA claims are derivative of all the foregoing class claims. Second, a court has discretion to
25 award less than the maximum penalty. Labor Code § 2699(e)(2) (“a court may award a lesser
26 amount than the maximum civil penalty amount specified by this part if, based on the facts and
27 circumstances of the particular case, to do otherwise would result in an award that is unjust,
28 arbitrary and oppressive, or confiscatory”). *See e.g., Carrington v. Starbucks Corporation* (2018)

30 Cal.App.5th 504, 241 Cal.Rptr.3d 647, 669 (affirming award of 10% of maximum PAGA penalty). Finally, the settlement class is 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 \$5,000.00 is appropriate. (Szamet Decl. ¶85.) 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. ¶86.) If the Court did eventually certify a wage or meal period class, trial of a case involving approximately 81 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. ¶87.) 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. ¶88.) 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. ¶89.) 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, meal, and rest 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 \$90,000.00. (Szamet Decl. ¶90.) This Settlement is the result of adversarial, non-collusive, and arms-length negotiations.

(Szamet Decl. ¶91.) The Parties arrived at it after extensive investigation and discovery, careful evaluation of the law, risks, and all information substantiating the amount of penalties reasonably likely to be awarded to the class were the trier of fact to find Defendant liable, and the assistance of an experienced mediator, Todd A. Smith. (*Id.*)

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

Plaintiff assessed the full value of the wage/overtime claim, without any discount, at approximately \$4,204. (Szamet Decl. ¶92.) This calculation was determined by looking at allegedly unpaid wages in the data stemming from commission pay earned during the same pay period as overtime. (Szamet Decl. ¶93.) As set forth above, Plaintiff acknowledges that any actual wages in dispute would be relatively small. (Szamet Decl. ¶94.)

Plaintiff assessed the full value of the meal period claim, without any discount, at approximately \$35,248. (Szamet Decl. ¶95.) This amount is comprised of allegedly non-compliant meal periods (missed, late short) in the data. (Szamet Decl. ¶96.) The data showed that Defendant paid meal period premiums totaling \$4,709. (Szamet Decl. ¶97.)

Plaintiff assessed the full value of the rest period claim, without any discount, at approximately \$32,871.80. (Szamet Decl. ¶98.) This amount assumes each Class Member had a rest period violation on 20% of shifts worked. (Szamet Decl. ¶99.)

Plaintiff valued the wage statement claim, without discount, at \$98,950. (Szamet Decl. ¶100.) Plaintiff's analysis uses \$50 for the initial pay period and \$100 for each wage statement issued with a \$4,000 cap on wage statement penalties per employee pursuant to Labor Code §226(e)(1). (Szamet Decl. ¶101.)

Plaintiff valued the waiting time penalty claim (Labor Code §203), without discount, at \$232,581. (Szamet Decl. ¶102.) This calculation assumes 65 former employees during the relevant three-year statutory period. (Szamet Decl. ¶103.)

Finally, Plaintiff calculated the value of the PAGA claim at \$197,900 for aggrieved employees using \$100 for the initial per pay period and \$200 thereafter. (Szamet Decl. ¶104.) The main risk taken into account with PAGA is the discretionary nature of the penalty award. (Szamet Decl. ¶105.) A judge can award the statutory maximum of \$100 for the initial violation and \$200

thereafter or – in theory – one cent per wage statement. (Szamet Decl. ¶106.) While there is a dearth of available authority, in Plaintiffs’ view, were they to succeed on any of the underlying Labor Code violations, it is not likely that a Judge would also award a large amount of penalties of top of any damages recovered. (Szamet Decl. ¶107.)

Based on the above, per Plaintiff’s assessment, the maximum potential value of all of the Settlement Class Members’ claims was approximately \$601,754.80. (Szamet Decl. ¶108.) However, as a result of the forgoing risks on the merits, Class/PAGA Counsel believes the Gross Settlement Amount of \$90,000.00 is fair and reasonable. (Szamet Decl. ¶109.) One of the main risks taken into account and not already discussed above, was the solvency issue. (Szamet Decl. ¶110.) Defendant operates a small chain of wireless/cellular phone stores. (Szamet Decl. ¶111.) The business operates locally and the Parties worked with the mediator to come to a Settlement that was fair and reasonable, but that could be paid by Defendant’s and still allow the company to operate. (Szamet Decl. ¶112.)

5. The Experience and Views of Counsel

Plaintiffs’ Counsel’s experience and success in similar class actions also weigh in favor of preliminary approval. *See Wershba, supra*, 91 Cal.App.4th at 245. Kingsley & Kingsley, APC is very experienced in prosecuting complex employment litigation, and the firm has focused its practice since the year 2000 on complex wage, hour, and working condition violations. (Szamet Decl. ¶¶113-115.) The firm is well versed in class action litigation and has diligently and aggressively pursued this action. (*Id.*) Kingsley & Kingsley, APC currently serves as Class/PAGA Counsel for dozens of pending class action lawsuits in Northern, Central, and Southern California. (*Id.*) A list of representative cases that Kingsley & Kingsley, APC has handled is included in the accompanying declaration of Kelsey M. Szamet. (*Id.*) After factoring in the risks explained above, Class/PAGA Counsel believes that the proposed settlement is fair and reasonable. (Szamet Decl. ¶116.)

6. The Proposed Plan of Allocation Is Fair and Reasonable

Plans of allocation are subject to the same standard of review as class action settlements; they must be “fair, adequate and reasonable.” (*See, e.g., Officers for Justice v. Civil Service*

1 *Comm’n* (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the proposed plan of allocation
2 compensates Settlement Class Members pro rata by (a) dividing the Net Settlement Amount by
3 the total number of Workweeks worked by all Participating Class Members during the Class
4 Settlement Period and (b) multiplying the result by each Participating Class Member’s
5 Workweeks. (Ex. 1 at ¶3.2.4.) This allocation distributes Agreement funds proportionally to each
6 class member’s potential damages and should therefore be approved as fair, adequate, and
7 reasonable. (Szamet Decl. ¶117.)

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

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

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

26 Here, the Notice clearly explains the proposed Agreement and the options to opt out of the
27 Settlement or object to it at the Final Approval Hearing. (Ex. 1 at ¶8.5; 8.7; *see also* Ex. A to the
28 Agreement at pp. 26, 29-32 [Class Notice].) In short, the Court should approve the proposed Class

1 Notice because it describes the proposed settlement with enough specificity to allow Settlement
2 Class Members to make an informed choice regarding whether to participate.

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

4 The Class Representative is entitled to an enhancement for his valiant effort and time
5 expended in this matter. (Szamet Decl. ¶118.) The time spent by Baron Quiros is significant and
6 includes researching and retaining competent counsel; providing information to Class/PAGA
7 Counsel regarding the nature of the work at Defendant; compiling relevant documents; working
8 closely with Class/PAGA Counsel to develop the theories of liability and martial relevant
9 evidence; regularly discussing the status of the case with Class/PAGA Counsel; discussing the
10 case via telephone with many Settlement Class Members; making himself available to attend a
11 full-day of mediation; and responding promptly to Class/PAGA Counsel’s communications
12 regarding settlement. (*Id.*) Thus, in addition to the sums paid to Settlement Class Members,
13 Plaintiff requests a proposed litigation enhancement in the amount of \$5,000.00, to be paid from
14 the Gross Settlement Amount. (Ex. 1 at ¶3.2.1.) As set forth in the Agreement, Plaintiff will also
15 be entering into a general release of liability pursuant to Civil Code Section 1542. (Szamet Decl.
16 ¶119; Ex. 1 at ¶6.)

17 Class/PAGA Counsel considers this to be a fair and reasonable enhancement. (Szamet
18 Decl. ¶120.) The enhancement takes into consideration the time, effort, and expense incurred by
19 Plaintiffs in coming forward to litigate this matter on behalf of all Settlement Class Members. (*Id.*)
20 Plaintiffs will provide a detailed declaration with the Final Approval Motion detailing their
21 participation and further justification for the enhancement. (*Id.*)

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

23 As indicated on the Proof of Service, Plaintiff’s Motion for Approval of Class Action
24 Settlement (“Motion”) will be concurrently uploaded to the LWDA website on the date this Motion
25 is filed as required by statute. Proof of submission of Plaintiff’s Motion, all related documents,
26 and copy of the email from the LWDA confirming receipt is attached to the Declaration of Kelsey
27 M. Szamet as Exhibit “2.” (Szamet Decl. ¶121.)

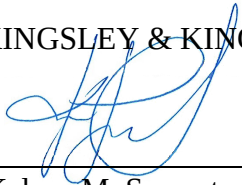
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1 **VIII. CONCLUSION**

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

9 DATED: March 29, 2023

KINGSLEY & KINGSLEY, APC

10
11 By: 

12 Kelsey M. Szamet
13 Attorneys for Plaintiffs, the proposed class, and the
14 aggrieved employees
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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 March 29, 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:

BOUTIN JONES INC. Bruce M. Timm btimm@boutinjones.com 555 Capitol Mall, Suite 1500 Sacramento, CA 95814 <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 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/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 March 29, 2023, at Encino, California.



Michelle Tanzer