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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

LEONARD OCAMPO, an individual, on behalf of himself, others similarly situated, and on behalf of the State of California, as a private attorney general

PLAINTIFF,

v.

PARKING CONCEPTS, INC.; and DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO. 30-2022-01246363-CU-OE-CXC

[Case Assigned for All Purposes to Hon. Randall J. Sherman in Dept. CX-105]

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 Liane Katzenstein Ly, Declaration of Jodey Lawrence of Phoenix Class Action Administration Solutions, and Proposed Order]

Date: August 4, 2023
Time: 10:00 AM
Dept.: CX-105
Reservation Number: 74010708

Complaint Filed: February 14, 2022
SAC Filed: April 18, 2023
Trial Date: None Set

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 4, 2023 at 10:00 AM in Department CX-105 of the above-entitled court, Plaintiff will move the Court for an Order of Preliminary Approval of the Class Action and PAGA Settlement Agreement ("Agreement"), a copy of which is filed concurrently herewith.

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

The Motion will be based on this Notice of Motion, the attached Memorandum of Points and Authorities, the Declaration of Liane Katzenstein Ly, the Agreement and Release, all other papers and records on file in this action, and on such oral and documentary evidence as may be presented at the hearing on this Motion.

DATED: May 9, 2023

KINGSLEY & KINGSLEY, APC

By: ______________________

Liane Katzenstein Ly
Attorneys for Plaintiff, the proposed class, and the aggrieved employees

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff ("Plaintiff") submits this Memorandum of Points and Authorities in support of Plaintiff's Motion for Preliminary Approval of the Class Action and PAGA Settlement Agreement reached between Plaintiff and Defendant ("Defendant") (Plaintiff and Defendant together, the "Parties").

By this Motion, Plaintiff requests that the Court:

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

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

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

II. FACTUAL BACKGROUND

A. Litigation Overview and Procedural History

On February 14, 2022, Plaintiff Leonard Ocampo filed a Representative Action Complaint alleging a single claim for penalties pursuant to the Private Attorney General's Act of 2004 ("PAGA"), seeking recovery for: (1) failure to provide meal breaks pursuant to Labor Code sections 226.7 and 512; (2) failure to provide rest breaks pursuant to Labor Code section 226.7; (3) failure to reimburse expenses pursuant to Labor Code section 2802; (4) failure to provide accurate itemized wage statements pursuant to Labor Code section 226(a); (5) penalties under Labor Code section 203. (Declaration of Liane Katzenstein Ly ("Ly Decl.") ¶4.) Also on December 10, 2021, Plaintiff Ocampo sent a notice letter, pursuant to Labor PAGA, to the Labor Workforce Development Agency ("LWDA") regarding his intent to seek civil penalties for the same Labor Code violations above. (Ly Decl. ¶5.)

On April 13, 2022, Plaintiff Ocampo filed a First Amended Representative Action Complaint, removing language referencing "prejudgment interest." (Ly Decl. ¶6.)

On April 18, 2023, pursuant to the Agreement, Plaintiff filed a Second Amended Class and Representative Action Complaint, adding class claims for (1) failure to provide meal breaks pursuant to Labor Code sections 226.7 and 512; (2) failure to provide rest breaks pursuant to Labor Code section 226.7; (3) failure to reimburse expenses pursuant to Labor Code section 2802; (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. (Ly Decl. ¶7.) (Hereafter, the "Action" or "Operative Complaint")

Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint and denies any and all liability for the causes of action alleged. (Ly Decl. ¶8.)

B. <u>The Discovery Process</u>

The Parties engaged in informal discovery in the interest of resolving this case through early mediation. (Ly Decl. ¶9.) On December 13, 2022, the Parties participated in an all-day mediation presided over by the Steven J. Rottman, Esq., which led to this Agreement to settle the Action. (Ly Decl. ¶10.) In preparation for mediation, both parties informally exchanged documents relating to Plaintiff's representative and individual claims. (Ly Decl. ¶11.) Defendant informally produced a sampling of time and pay data and wage statements for mediation purposes only. (*Id.*) Prior to mediation, Plaintiff obtained from Defendant, through informal discovery, pertinent documents and data for the Class and PAGA Employees so that the Parties could fully investigate the claims at issue and understand their strengths and weaknesses. Plaintiff's investigation was sufficient to satisfy the criteria for Court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").

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

III. THE PROPOSED SETTLEMENT CLASS SHOULD BE CERTIFIED FOR SETTLEMENT PURPOSES

Originally creatures of equity, class actions have been statutorily embraced by the Legislature whenever "the question [in a case] is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court . . . ." (Code Civ. Proc. § 382; *see, e.g., Fireside Bank v. Sup. Court* (2007) 40 Cal.4th 1069, 1078.) They serve an important function by "establishing a technique whereby the claims of many individuals can be resolved at the same time" thereby "eliminat[ing] the possibility of repetitious litigation and provid[ing] small claimants with a method of obtaining redress." (*Richmond v. Dart Industries, Inc*. (1981) 29 Cal.3d 462, 469.) Public policy supports the use of class actions to enforce wage and overtime laws for the benefit of workers. (*See Sav-on Drug Stores, Inc. v. Sup. Court* (2004) 34 Cal.4th 319, 340.)

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

The California Supreme Court has identified three certification requirements: (1) "the existence of an ascertainable and sufficiently numerous class"; (2) "a well-defined community of interest"; and, (3) "substantial benefits from certification that render proceeding as a class superior to the alternatives." (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.)

The "community of interest" requirement includes three additional requirements: (1) common questions of law or fact predominant over individual questions; (2) the class representatives have claims or defenses typical of the class; and (3) the class representatives can adequately represent the class. (*Ibid*, *citing Fireside Bank, supra,* 40 Cal.4th at 1089.)

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

A. <u>The Proposed Classes Are Ascertainable and Sufficiently Numerous</u>

1. <u>Ascertainability</u>

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

Here, Plaintiff maintains that the proposed Settlement Class is ascertainable for several reasons: First, Defendant has agreed in the Agreement to provide a class list to the Administrator containing the name, last known mailing address, social security number, and start and end dates of employment, and number of Pay Periods for the Class Period and PAGA Period for all putative class members and aggrieved employees after issuance of the preliminary approval order. (Ly Decl. ¶13; Ex. 1 at § 1, ¶1.4.) Second, Settlement Class Members 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 4-2001, subsection 7(c); Ly Decl. ¶14.) Third and finally, Defendant informally produced Plaintiff's personnel file and pay statements, relevant time and pay data, meal waivers, and wage statements for Settlement Class Members, which confirms that all Settlement Class Member may be readily identified based on Defendant's records. (Ly Decl. ¶15.)

2. <u>Numerosity</u>

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 913 hourly non-exempt employees in the State of California. (Ex. 1 at § 4, ¶4.1.) Therefore, Plaintiff is confident he will be able to establish that the proposed Settlement Class is ascertainable and sufficiently numerous. (Ly Decl. ¶16.)

B. <u>There Is a Well-Defined Community of Interest</u>

1. <u>There Are Predominant Questions of Law and Fact</u>

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 argues that there are questions of law and fact common to the proposed Settlement Class that predominate over any questions affecting only individual Class Members. (Ly Decl. ¶17.) These common questions include:

1) Whether Defendant failed to provide lawfully required meal periods and/or failed to compensate employees one (1) hour's wages in lieu thereof;

2) Whether Defendant failed to provide lawfully required rest periods and/or failed to compensate employees one (1) hour's wages in lieu thereof;

3) Whether Defendant failed to reimburse business-related expenses;

4) Whether Defendant failed to provide accurate itemized wage statements;

5) Whether Defendant failed to pay compensation due and owning upon termination of employment;

6) Whether Defendant engaged in unfair competition; and,

7) Whether Defendant violated § 2699, et seq. of the Labor Code by engaging in the acts previously alleged.

(Ly Decl. ¶18.)

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

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

Here, Plaintiff maintains that the proposed Settlement Class Members suffered the same injuries, in the same manner: (1) Settlement Class Members did not receive their meal and rest periods as required; (2) Settlement Class Members were not reimbursed for business-related expenses; (3) Settlement Class Members were not provided accurate itemized wage statements; (4) Settlement Class Members were not paid all wages owed upon termination/resignation. (Ly Decl. ¶21.) Plaintiff alleges that Settlement Class Members worked in the same capacity for the same employer and were subject to the same employment policies and practices, the questions of fact and claims regarding the status of these employees are the same for each member of the Settlement Class. Accordingly, for purposes of settlement, the evidence reviewed by Class Counsel demonstrates that common meal and rest policies and wage policies applied to the proposed Settlement Class Members and certification for settlement purposes is appropriate. (Ly

Decl. ¶22.)

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

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

Plaintiff worked as an "hourly employee" for Defendant in Defendant's Market Square parking garage. (Ly Decl. ¶23.) Plaintiff alleges that he: (1) worked without being provided meal and rest periods as required by law; (2) worked without being reimbursed for costs associated with personal cell-phone usage; (3) worked without being provided accurate itemized wage statements; and (4) worked without being paid all wages due upon separation. He also alleges that he experienced derivative claims for unfair business competition (B&P Code §17200) and Labor Code §2699, et seq. (Ly Decl. ¶24.) Plaintiff also contends that his claims are typical of those of the Settlement Class. (Ly Decl. ¶25.)

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

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

Plaintiff believes that he is capable of fairly representing and adequately protecting the interests of the proposed Settlement Class Members. (Ly Decl. ¶26.) Plaintiff's interests in this litigation are coextensive with the interests of the proposed Settlement Class Members. The members of the proposed Settlement Class all worked for Defendant during the relevant time period and incurred the same type of alleged damages with regard to Defendant's alleged violations of the law. (Ly Decl. ¶27.) Moreover, Plaintiff has agreed to serve as Class Representative and has retained qualified Counsel who is experienced in prosecuting wage and hour class actions. (Ly Decl. ¶28.) This demonstrates his commitment to bringing about the best possible results for the benefit of the proposed Settlement Class. (Ly Decl. ¶29.) Plaintiff has provided his Counsel with all necessary and pertinent information. (Ly Decl. ¶30.) Plaintiff has been a very active participant in the litigation including having frequent contact with Settlement Class Members and working closely with Class Counsel to develop the theories of liability. (Ly Decl. ¶31.) Plaintiff has provided his Counsel with all necessary and pertinent information. He also made himself available for the full-day mediation in this matter and was informed of and involved in all of the Settlement negotiations. (Ly Decl. ¶32.) Therefore, Plaintiff believes that he has and will continue to adequately represent the proposed Settlement Class Members. (Ly Decl. ¶33.) Plaintiff has provided his Counsel with all necessary and pertinent information.

C. <u>The Class Action Vehicle Is Superior to the Alternatives</u>

"The ultimate question in every case of this type is 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." (*Lockheed Martin*, *supra*, 29 Cal.App.4th at 1104–1105.) The California Supreme Court has directed the courts to utilize the class action device to fashion "an effective and inclusive group remedy." (*Richmond v. Dart Indus., Inc*. (1981) 29 Cal.3d 462, 469.) Normally, in making its class certification decision, the Court must determine that a class action would be superior to alternate means for a fair and efficient adjudication. If the causes of action may be adjudicated in a single proceeding, thereby saving time, reducing waste, and limiting duplication of effort, class certification is superior to individual litigation. (*See, e.g.*, *Vasquez v.*

Superior Court (1971) 4 Cal.3d 800, 816.) Since the Parties agreed to a settlement in principal and now seek Court approval of that Settlement, Plaintiff submits that there is not as much need as there would be in an ordinary motion for class certification for the Court to determine that the case can be manageably tried.

Plaintiff maintains that class treatment would be the superior method of managing this case. A class action is superior to individual litigation "when numerous parties suffer injury of insufficient size to warrant individual action and when denial of class relief would result in unjust advantage to the wrongdoer." (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.) In cases such as this, where individual damages may be small, the class action device is the most feasible method of recovery. (*See, e.g. Lockheed Martin*, *supra*, 29 Cal.4th at 1131.) In this regard, the superiority of class treatment is evident here because individual pursuit of class members' claims may not be economically viable. (Ly Decl. ¶34.) The only alternative to certification would be to force over 913 employees to join this action, file individual, uniform actions, or abandon their legal rights altogether. (Ly Decl. ¶35.) Plaintiff maintains that this economic reality would result in a windfall for Defendant if this case were not certified. (Ly Decl. ¶36.)

IV. THE PROPOSED SETTLEMENT

A. The Settlement Class

For purposes of Agreement, the settlement class is defined as: "all non-exempt employees employed by Defendant in California at any time during the Class Period." ("Class" or "Settlement Class Members") (Ly Decl. ¶37.) The "Settlement Class Members" shall not include any person who submits a timely and valid Request for Exclusion as provided in this Agreement, or any person who previously released the Released Claims under a separate agreement. (*Id.*; Agreement, Ex. 1 at § 1, ¶1.25.)

The Class Period is from December 10, 2020 to October 1, 2022. (Ly Decl. ¶38; Ex. 1 at § 1, ¶1.8.) As of December 13, 2022 (the date of mediation), and based on documents and other information produced by Defendant, there are approximately 913 Settlement Class Members. (Ly Decl. ¶39; Ex. 1 at § 4, ¶4.1.)

B. The Aggrieved Employees

For purposes of the Agreement, the Aggrieved Employees are defined as: “all non-exempt employees employed by Defendant in California at any time during the PAGA Period.” (“Aggrieved Employees” or “PAGA Members”) (Ly Decl. ¶40; Settlement, Ex. 1 at § 1, ¶1.4)

The PAGA Period is December 10, 2020 through October 1, 2022. (Ly Decl. ¶41; Ex. 1 at § 1, ¶1.28.) Based on documents and other information produced by Defendant, there are approximately 913 PAGA Members. (Ly Decl. ¶42, Ex. 1 at § 4, ¶4.1.)

D. Gross Settlement Amount

As detailed fully in the Agreement, the Settlement provides for Defendant to pay a Gross Settlement Amount of $435,000.00, which includes the sum of the Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Litigation Expenses, Class Representative Service Payment and the Administrator’s Expenses. (Ly Decl. ¶43; Ex. 1 at § 1, ¶1.18.)

The Net Settlement Amount is the Gross Settlement Amount, less Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment (Ly Decl. ¶44; Ex. 1 at § 1, ¶1.24.)

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

Gross Settlement Amount:	$	435,000.00
Less Class Representative Service Payment:	$	10,000.00
Less Class Counsel Fees Payment :	$	145,000.00
Less Class Counsel Litigation Expenses Payment:	$	17,000.00
Less LWDAPAGA Payment:	$	25,000.00 *($18,750.00 to the LWDA and $6,250.00 to remain in the Net Settlement Amount)*
Less Administrator Expenses Payment:	$	30,000.00
Anticipated Net Settlement Amount	$	214,250.00

(Ex. 1 at § 1, ¶1.24.)

D. Individual Settlement Payments

The Individual Class Payment amount of each Participating Class Member is an individualized amount that is based on the number of Pay Periods worked by the Participating

Class Member during the Class Period. (Ex. 1 at § 3, ¶3.2.4; *see also* Ex. A to the Agreement [Class Notice].) Specifically, Individual Class Payments will be paid from the Net Settlement Amount and shall be paid pursuant to the settlement formula as follows: (1) First, using the Class Information, the Administrator will compute the total number of Pay Periods worked by all Participating Class Members during the Class Period; this sum shall be known as the Pay Period total; (2) Second, the Administrator will divide the Net Settlement Amount by the Pay Period total to determine the settlement value for each eligible Pay Period (the "Pay Period Value"); and (3) Third, the Administrator will multiply the number of eligible Pay Periods of a Participating Class Member during the Class Period by the Pay Period Value to determine that Settlement Class Member's Individual Class Payment. (*Id*.)

Twenty percent (20%) of the Gross Settlement Amount to each Participating Class Member shall be deemed payment for settlement of claims for wages and will be subject to appropriate deductions and withholdings calculated and made by the Administrator. (Ex. 1 at § 3, ¶3.2.4.1.) Eighty percent (80%) of the Gross Settlement Amount to each Participating Class Member shall be deemed payment for settlement of claims for penalties and interest and other non-wage payments not subject to withholdings. (*Id*.)

The Agreement provides for a specific and detailed dispute process regarding Individual Class Payments. (*See* Ex. 1 at § 8, ¶8.6.)

The Individual PAGA Payment will be a pro rata share of the twenty-five percent (25%) of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked during the PAGA Period (*See* Ex. 1 at § 1, ¶1.20.)

E. <u>Process for Administering Settlement after Preliminary Approval</u>

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, ¶8.4.) The Parties have agreed to use a reputable third-party claims administrator, Phoenix Settlement Administrators, to administer the Agreement. (Ex. 1 at § 8, ¶8.1.)

F. <u>Process for Settlement Class Members to Respond to Class Notice</u>

Settlement Class Members will have an opportunity to request exclusion from the

Settlement Class (i.e. opt out) and to object to the Settlement at the Final Approval Hearing. (Ex. 1 at § 8, ¶8.5.)

Settlement Class Members who do not opt out of the Settlement Class may object to the Agreement by mailing written objections to the Administrator no later than sixty (60) calendar days after the mailing of the Notice Packet. (Ex. 1 at § 8, ¶8.7.) This deadline applies notwithstanding any argument regarding alleged late receipt or non-receipt of the Notice Packet. (Ex. 1 at § 8, ¶8.7.)

Any Settlement Class Member wishing to appear at the final approval hearing to object to the Agreement shall expressly indicate this in his or her written objections. (*Ibid.*) The making of an objection to this Agreement does not affect the Settlement Class Members' ability to return a valid Claim Form if the Agreement is finally approved. (*Ibid.*)

G. The Release

The Released Claims by Participating Class Members are defined as: "any and all claims that were pled in the Second Amended Complaint, or which could have been pled in the Second Amended Complaint based on the factual allegations therein, that arose during the Class Period (collectively, the "Released Class Claims"). Except as set forth in Paragraph 6.2 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period." (Ex. 1 at § 6, ¶6.2.)

The Released Claims by Participating Class Members who are Aggrieved Employees are defined as: "all civil penalties, attorneys' fees, and costs under PAGA for all Labor Code provisions included in the PAGA Notice (as well as the Operative Complaint, the Complaint, and the First Amended Complaint) (collectively, the "PAGA Claims") that arose during the PAGA Period, regardless of their decision to participate in the Class Settlement." (Ex. 1 at § 6, ¶6.3.)

V. ARGUMENT

A. Plaintiff Requests Approval of This Class Action Settlement

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

In *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles (2010) 186 Cal. App. 4th 399, 409*, the court clarified that a Kullar showing does not require the parties to submit the outer reaches of maximum possible recovery without taking into account the actual risks of certification, decertification, dispositive motions, and trial, so long as there is a record which allows "an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." *Munoz, 186 Cal. App. 4th at 409.*

The proposed settlement satisfies each of these factors. (Ly Decl. ¶45.) Class Counsel conducted extensive informal discovery before entering into meaningful settlement negotiations in this matter. (*Id* at Ly Decl. ¶¶9-12; 46.) This discovery permitted Class Counsel to fairly evaluate the strength of the case and the risks associated with ongoing litigation. (*Id.*) Class Counsel is experienced in handling wage and hour class actions and, after weighing all of the following factors, supports this Agreement. (Ly Decl. ¶47.)

1. <u>The Strength of Plaintiff's Case</u>

a) The Risks Associated with the Meal Break Claim

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 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 Ocampo, the Proposed Class, and the Aggrieved Employees consistently worked shifts over five (5) hours. (Ly Decl. ¶48.) Defendant failed to provide Plaintiff Ocampo, the Proposed Class and the Aggrieved Employees with proper meal periods of not less than thirty (30) minutes as required by the Labor Code during the relevant time period. (Ly Decl. ¶49.) Often times Plaintiff Ocampo, the Proposed Class and the Aggrieved Employees were required to clock out for lunch, but due to the workload, were instructed to wait until after the customer rush to take their breaks. (Ly Decl. ¶50.) Plaintiff Ocampo's lunches were regularly cut short or missed entirely. (*Id.)* To put it plainly, Defendant has rampant meal period violations and simply did not provide proper meal periods of not less than thirty (30) minutes within the first five hours of work as required by the Labor Code. (Ly Decl. ¶51.) As such, Plaintiff Ocampo contends that he, the

Proposed Class, and the Aggrieved Employees are not relieved of all duties nor are they free from Defendant's control during meal periods. (*Id*.)

Upon review of the records, the meal break theory most amenable to class action treatment was the claim for second meal periods. (Ly Decl. ¶52.) Defendant produced a meal waiver form for first meal periods. (Ly Decl. ¶53.) The bulk of the violations in the records were for first meal periods between the fifth and sixth hour (those covered by the waiver forms) and second meal periods. (Ly Decl. ¶54.) Plaintiff intended to argue that the waivers were invalid, but there was substantial risk associated with those meal period violations. (Ly Decl. ¶55.) Additionally, Defendant paid a substantial number of meal premiums, which could be a factor for class certification. (Ly Decl. ¶56.) Plaintiff felt the second meal period claim was the strongest. (Ly Decl. ¶57.)

b) The Risks Associated with the Rest Break Claim

Labor Code section 226.7, subdivision (c), requires an employer to pay an additional hour of compensation for each workday the employer fails to provide a rest period according to law. 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 Ocampo, the Proposed Class, and the Aggrieved Employees' 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. (Ly Decl. ¶58.) Plaintiff Ocampo, the Proposed Class, and the Aggrieved Employees' consistently worked shifts of 3.5+ hours and were not authorized or permitted to take rest breaks. (Ly Decl. ¶59.) Therefore, Defendant violated Labor Code §226.7 by failing to provide proper rest periods and pay Plaintiff Ocampo, the Proposed Class, and the Aggrieved Employees' one hour of compensation at their regular rate for rest period premium wages. (Ly Decl. ¶60.)

Defendant systemically denied its employees the opportunity to take compliant, paid rest breaks every four hours, or major fraction thereof, and in violation of the California Labor Code and applicable Wage Orders. (Ly Decl. ¶61.) Plaintiff Ocampo contends that Defendant never allowed its employees to take rest periods at all. (Ly Decl. ¶62.) In fact, Plaintiff contends that

Defendant required Plaintiff, the Proposed Class and the Aggrieved Employees to sign off that they were receiving their rest breaks but were not actually being provided actual rest breaks. (Ly Decl. ¶63.) As a result of these contentions, a 100% rest break violation rate is assumed and Defendant owes both Plaintiff and the Aggrieved Employees rest period penalties for each shift of over 3.5 hours.

Given that Defendant maintained a complaint written rest period policy, Plaintiff discounted this claim after factoring in the risks on certification and the merits. (Ly Decl. ¶64.)

c) The Risks Associated with the Reimbursement Claim

Labor Code section 2802 provides that an employer must "indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties . . . ." (Lab. Code, § 2802, subd. (a).) Again, Defendant did not maintain a written expense reimbursement policy until 2020. Here, Plaintiff Ocampo alleges that Defendant failed to reimburse the Proposed Class and Aggrieved Employees for business-related expenses, including for use of their personal cell phone and vehicles, necessary in executing their duties under Defendant's employ. (Ly Decl. ¶65.) Plaintiff Ocampo, the Proposed Class, and the Aggrieved Employees were required to be available by cell phone and answer/use their cell phones while working. (Ly Decl. ¶66.)

Thus, pursuant to Labor Code section 2802, Defendant is required to reimburse Plaintiff Ocampo, the Proposed Class, and the Aggrieved Employees for all out-of-pocket expenses incurred by them in the performance of their job duties. At minimum, they should be reimbursed for a proportion of their cell phones, respective cell phone bills.

Defendant argued that cell phone usage was not mandatory, but given the fact that Plaintiff used his cell phone daily, Plaintiff felt confident that he would prevail on this claim. (Ly Decl. ¶67.)

d) The Risks Associated with the Inaccurate Wage Statement Claim

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. An employee "suffering injury," like Plaintiff, the

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

This is a derivative claim. (Ly Decl. ¶68.) All of the risks detailed above were present for this claim. Additionally, Defendant could argue that Plaintiff needs to prove injury to be awarded damages for this claim. (*Id.*)

Further, for the purposes of a PAGA claim under Labor Code section 2699, it is immaterial whether Plaintiff Ocampo and the Aggrieved Employees suffered an injury as defined by Labor Code section 226(e). (*Lopez v. Friant & Associates, LLC* (2017) 15 Cal.App.5th 773, 788 ["a Plaintiff seeking civil penalties under PAGA for a violation of section 226(a) does not have to satisfy the 'injury' and 'knowing and intentional' requirements of section 226(e)(1)."].; *Raines v. Coastal Pacific Food Distributors, Inc.* (2018) 23 Cal.App.5th 667, 682.)

e) The Risks Associated with the Waiting Time Penalty Claim

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

Here, Plaintiff Ocampo, the Proposed Class, and numerous Aggrieved Employees are no longer employed by Defendant. (Ly Decl. ¶69.) Due to Defendant's failure to pay all wages and meal and rest period premiums as detailed above, Defendant failed to pay all wages owed and due upon their termination and/or resignation. (Ly Decl. ¶70.) Defendant's actions were willful, as they have intentionally failed or refused to perform an act which was required to be done. (Ly

Decl. ¶71.) (*See Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201.) "The failure to pay is willful if the employer 'knows what [it] is doing [and] intends to do what [it] is doing', and does not also require proof that the employer acted with "a deliberate evil purpose to defraud work[ers] of wages which the employer knows to be due.'" (*Diaz v. Grill Concepts Services, Inc.* (2018) 23 Cal.App.5th 859, 868.) Defendant was fully aware of its payment policies and practices and intended to carry out said policies and practices. Therefore, Defendant is liable for waiting time penalties.

Defendant would likely argue that even if the Court determined that there was an underlying violation, waiting time penalties would not apply, because the alleged violation was not willful.

f) The Risks Associated with the PAGA Claim

PAGA's statutory penalties are available for violations of Labor Code sections 201-203, 226(a), 226.7, 510, 512, 1194, 1199, and 2802, as stated in Labor Code section 2699.5. Labor Code section 2699(f) provides, in relevant part, "[f]or all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation." In addition, the statute provides that "[a]ny employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs." (Labor Code § 2699(g)(1).)

The Parties discounted the PAGA claim for multiple reasons. (Ly Decl. ¶72.) First, the aggrieved employees' PAGA claims are derivative of all the foregoing class claims. (Ly Decl. ¶73.) Second, a court has discretion to award less than the maximum penalty. (Ly Decl. ¶74.) Labor Code § 2699(e)(2) ("a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory"). *See e.g.*, *Carrington v. Starbucks Corporation* (2018) 30 Cal.App.5th 504, 241 Cal.Rptr.3d 647, 669 (affirming award of 10% of maximum PAGA penalty). Finally, the Settlement Class is compensated for these violations in the proposed Agreement, and thus any PAGA recovery for these same violations would be duplicative. (Ly Decl. ¶75.) As such, the Agreement's contemplated PAGA payment of $25,000.00 is appropriate. (Ly Decl. ¶76.) *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. (Ly Decl. ¶77.) If the Court did eventually certify a class, trial of a case involving approximately 913 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. (Ly Decl. ¶78.) 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. (Ly Decl. ¶79.) 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. (Ly Decl. ¶80.) While Plaintiff believes there is strong evidence to support certification of several possible subclasses, certification is always hard fought and subject to judicial discretion. Moreover, in class actions, decertification is always a possibility. (*Id.*) In attempting to certify a class, the parties would need to conduct multiple depositions, including of the Class Representative and of several person(s) most knowledgeable regarding Defendant's meal 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 $435,000.00. (Ly Decl. ¶81.) This Settlement is the result of adversarial, non-collusive, and arms-length negotiations. (Ly Decl. ¶82.) 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, Steven J. Rottman, Esq. (*Id*.)

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

The full value of the Meal Period claim, without any discount, was approximately $141,425.76. (Ly Decl. ¶83.) This amount is comprised of 8,232 shifts over ten hours in length with an average hourly rate of $17.18 per hour. (Ly Decl. ¶84.) For the reasons above, Plaintiff determined that accepting a discount of the full amount was appropriate. (Ly Decl. ¶85.)

The full value of the Rest Period claim, without any discount, was approximately $3,355,150.90. (Ly Decl. ¶86.) This amount is comprised of 195,294 shifts over 3.5 hours in length at the average hourly rate of $17.18 per hour. (Ly Decl. ¶87.) For the reasons above, Plaintiff determined that accepting a steep discount of the full amount was appropriate. (Ly Decl. ¶88.)

With regard to the Reimbursement Claim analysis, Plaintiff believed that it was reasonable to value the potential reimbursement at $15.00 per month, per employee, for reimbursement of personal cell phone usage. (Ly Decl. ¶89.) This brought the damages for this claim to $155,467.50. (Ly Decl. ¶90.) Plaintiff estimated that there were approximately 10,364.5 months worked by the Class Members during the Class Period. (Ly Decl. ¶91.)

Plaintiff valued the Wage Statement Claim, without discount, at $2,072,900.00. (Ly Decl. ¶92.) Plaintiff used $100 for each wage statement issued (pay period), and there were approximately 20,729 pay periods in the relevant Time Period. (Ly Decl. ¶93.) This figure is overstated because Labor Code §226(e)(1) uses $50 for the initial pay period (not $100) and puts a $4,000 cap on wage statement penalties per employee. (Ly Decl. ¶94.) Due to the risk discussed above that 226(a) liability wouldn't attach, Plaintiff determined that a steep discount of this claim was fair for settlement purposes. (Ly Decl. ¶95.)

Plaintiff valued the Waiting Time Claim, at $939,316.50. (Ly Decl. ¶96.) This is based on 243 former employees, an average hourly rate of $17.18 per hour, and an average shift length of 7.5 hours. (Ly Decl. ¶97.) Considering the derivate nature of Labor Code §203 and the dispute over whether class members were owed any wages, Plaintiff determined that accepting a discount on this claim was appropriate. (Ly Decl. ¶98.)

Finally, Plaintiff calculated the value of the PAGA claim at a range of $2,072,900 to $8,291,600.00 for Aggrieved Employees (using $100 per pay period). (Ly Decl. ¶99.) The range takes into account whether stacking penalties is appropriate and whether Plaintiff succeeds on each underlying claim. The main risk taken into account with PAGA is the discretionary nature of the penalty award. (Ly Decl. ¶100.) A judge can award the statutory maximum of $100 for the initial violation and $200 thereafter or – in theory – one cent per wage statement. (Ly Decl. ¶101.) While there is a dearth of available authority, in Plaintiff's view, were Plaintiff 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. (Ly Decl. ¶102.)

Per Plaintiff's assessment, the maximum potential value of all of Plaintiff's and the Aggrieved Employees' claims was approximately $6,664,260.60 plus PAGA penalties. (Ly Decl. ¶103.) The underlying value of the non-penalty claims is $3,652,044.10. However, as a result of the forgoing risks on the merits, Class Counsel believes the Gross Settlement Amount of $435,000.00 is fair and reasonable. (Ly Decl. ¶104.)

5. The Experience and Views of Counsel

Finally, 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. (Ly Decl. ¶¶105-107.) 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 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 Liane Katzenstein Ly. (*Id.*) After factoring in the risks explained above, Class Counsel believes that the proposed settlement is fair and reasonable. (Ly Decl. ¶108.)

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 Comm'n* (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the proposed plan of allocation compensates Settlement Class Members pro rata based on the number of Pay Periods worked by the Settlement Class Member during the Class Period. The lump sum payment to each member of the Settlement Class not excluding him/ herself will be determined by dividing the Net Settlement Amount by the total number of Eligible Pay Periods worked by all members of the Settlement Class during the Settlement Period and then multiplying the result by the number of Pay Periods by the individual class member as determined by the Administrator. This allocation distributes Settlement funds proportionally to each class member's damages, and should therefore be approved as fair, adequate, and reasonable. (Ex. 1 at § 3, ¶3.2.4.)

7. <u>The Proposed Notice Fairly Apprises the Settlement Class Members of the Terms of the Settlement and of the Class Members' Rights under the Settlement</u>

Plaintiff requests that the Court approve the proposed plan and form of Class Notice. The standard for determining the adequacy of notice is whether the notice has "a reasonable chance of reaching a substantial percentage of the class members." (*Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974.) Pursuant to the Agreement, the Notice will be sent to the last known address of all Settlement Class Members, or to an updated address if one is located in the National Change of Address Database. (Ex. 1 at § 4, ¶4.4.1). If any Notices are returned as undeliverable, the Administrator will undertake another reasonable address verification measure to locate a valid mailing address and will promptly send the Notice to the new address. (*Id*.) As such, the Notice is likely to reach most, if not all, Settlement Class Members.

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

Here, the Notice clearly explains the proposed Agreement and the options to opt out of the Settlement or object to it at the Final Approval Hearing. (Ex. 1 at § 8, ¶8.5-8.6; *see also* Ex. A to the Agreement at pp. 2-3, 5 [Class Notice].) In short, the Court should approve the proposed Class Notice because it describes the proposed settlement with enough specificity to allow Settlement Class Members to make an informed choice regarding whether to participate.

VI. THE SERVICE AWARD TO THE NAMED PLAINTIFF

The Class Representative is entitled to an enhancement for his valiant effort and time expended in this matter. (Ly Decl. ¶109.) The time spent by is significant and includes researching and retaining competent counsel; providing information to Class Counsel regarding the nature of the work at Defendant; compiling relevant documents; working closely with Class Counsel to develop the theories of liability and martial relevant evidence; regularly discussing the status of the case with Class Counsel; discussing the case via telephone with many Settlement Class Members; making himself available for a full-day of mediation as necessary; and responding promptly to Class Counsel's communications regarding settlement. (*Id*.) Thus, in addition to the sums paid to Settlement Class Members, Plaintiff requests a proposed litigation enhancement in the amount of $10,000.00, to be paid from the Gross Settlement Amount. (Ex. 1 at § 3, ¶3.2.1.) As set forth in the Agreement, Plaintiff will also be entering into a general release of liability pursuant to Civil Code Section 1542. (Ly Decl. ¶110; Ex. 1 at § 6, ¶6.1.)

Class Counsel considers this to be a fair and reasonable enhancement. (Ly Decl. ¶111.) The enhancement takes into consideration the time, effort, and expense incurred by Plaintiff in coming forward to litigate this matter on behalf of all Settlement Class Members. (*Id*.) Plaintiff will provide a detailed declaration with the Final Approval Motion detailing his participation and further justification for the enhancement. (*Id*.)

VII. SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY

As indicated on the Proof of Service, Plaintiff's Motion for Approval of Class Action Settlement ("Motion") will be concurrently uploaded to the Labor and Workforce Development Agency's ("LWDA") website on the date this Motion is filed as required by statute. Proof of submission of Plaintiff's Motion, all related documents, and copy of the email from the LWDA confirming receipt is attached to the Declaration of Liane Katzenstein Ly as Exhibit "2." (Ly Decl. ¶112.)

VIII. CONCLUSION

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

DATED: May 9, 2023

KINGSLEY & KINGSLEY, APC

By: ______________________

Liane Katzenstein Ly
Attorneys for Plaintiff, the proposed class, and the aggrieved employees

(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 9, 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:

Tara C. Dudum
Tara.Dudum@ndlf.com
Harlye Carlton
Harlye.carlton@ndlf.com
Thomas Reilly
Thomas.reilly@ndlf.com
Jason L. Morris
Jason.morris@ndlf.com
Newmeyer & Dillion LLP
2033 N. Main Street, Suite 500
Walnut Creek, CA 94596

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

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

Executed on May 9, 2023, at Woodland Hills, California.

Michelle A. Tanzer