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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

TIKOA CARTER, an individual, on behalf of
herself and others similarly situated,

PLAINTIFF,

v.

SPEECH AND LANGUAGE PATHOLOGY
ASSOCIATES, INC.; and DOES 1 thru 50,
inclusive,

DEFENDANTS.

CASE NO. 21STCV44618

[Case Assigned for All Purposes to Hon.
Kenneth R. Freeman in Dept. 14]

**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: October 10, 2023

Time: 10:00 A.M.

Dept.: 14

Complaint Filed: December 8, 2021

FAC Filed: May 19, 2022

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on October 10, 2023 at 10:00 A.M. in Department 14 of the above-entitled court, Plaintiff TIKOA CARTER will move the Court for an Order granting Preliminary Approval of the Class Action and PAGA Settlement Agreement (“Settlement”), a copy of which is filed concurrently herewith.

By this Motion, Plaintiff requests that the Court:

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

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

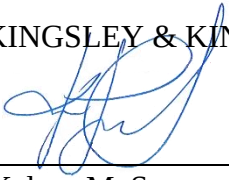
(3) Schedule a hearing on final approval of the proposed Settlement and Plaintiff’s counsel’s application for an award of attorney’s fees and litigation costs at which Class Members may be heard (“Final Approval Hearing”).

The Motion will be made on the grounds that the proposed Settlement 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 Kelsey M. Szamet, the Settlement 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: September 11, 2023

KINGSLEY & KINGSLEY, APC

By: 

Kelsey M. Szamet
Attorneys for Plaintiff TIKOA CATER and the
proposed class

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff TIKOA CARTER (“Plaintiff”) submits this Memorandum of Points and
4 Authorities in support of Plaintiff’s Motion for Preliminary Approval of the Class Action and
5 PAGA Settlement Agreement reached between Plaintiff and Defendant SPEECH AND
6 LANGUAGE PATHOLOGY ASSOCIATES, INC. (“Defendant”) (Plaintiff and Defendant
7 together, the “Parties”).

8 By this Motion, Plaintiff requests that the Court:

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

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

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

18 **II. FACTUAL BACKGROUND**

19 A. Litigation Overview and Procedural History

20 On December 8, 2021, Plaintiff commenced this Action by filing a Complaint alleging
21 causes of action against Defendant for (1) failure to provide rest breaks pursuant to Labor Code
22 section 226.7; (2) failure to reimburse business-related expenses under Labor Code section 2802;
23 (3) failure to provide accurate itemized wage statements pursuant to Labor Code section 226(a);
24 (4) waiting time penalties pursuant to Labor Code section 203; and (5) violation of Business &
25 Professions Code section 17200. (Declaration of Kelsey M. Szamet (“Szamet Decl.”) ¶4.) Also on
26 December 8, 2021, pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave written notice
27 to Defendant and the LWDA of the facts and allegations at issue. (Szamet Decl. ¶5.)

28 On May 19, 2022, Plaintiff filed a First Amended Complaint alleging an additional cause

1 of action against Defendant for penalties pursuant to the Private Attorney General Act of 2004
2 (“PAGA”) (Lab. Code § 2699 et seq.). (Szamet Decl. ¶6.) The First Amended Complaint is the
3 operative complaint in the Action (the “Operative Complaint”). Defendant denies the allegations
4 in the Operative Complaint, denies any failure to comply with the laws identified in in the
5 Operative Complaint and denies any and all liability for the causes of action alleged. (Szamet Decl.
6 ¶7.)

7 B. The Discovery Process and Mediation

8 On June 28, 2022, the Parties participated in an all-day mediation presided over by Todd
9 A. Smith, Esq. which led to this Agreement to settle the Action. (Szamet Decl. ¶8.)

10 Prior to mediation, Plaintiff obtained, through informal discovery, pertinent documents and
11 data for the Class and PAGA Members so that the Parties could fully investigate the claims at issue
12 and understand their strengths and weaknesses. (Szamet Decl. ¶9.) Plaintiff and her Counsel
13 contend that the investigation was sufficient to satisfy the criteria for court approval set forth in
14 *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker*
15 *Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”). (Szamet Decl. ¶10.)

16 Defendant denies any liability or wrongdoing of any kind associated with the claims
17 alleged in the action, disputes the damages and penalties claimed by Plaintiff, and further contends
18 that, for any purpose other than settlement, Plaintiff’s claims are not appropriate for class or
19 representative action treatment. (Szamet Decl. ¶11.) Defendant contends, among other things,
20 that, at all times, it has complied with the California Labor Code, and the Industrial Wage
21 Commission Orders. (*Id.*)

22 Based on their own independent investigation and evaluation, Class Counsel is of the
23 opinion that the Settlement with Defendant is fair, reasonable and adequate, and in the best interest
24 of the settlement classes in light of all known facts and circumstances, including the risk of
25 significant delay, defenses asserted by Defendant, uncertainties regarding a class and
26 representative action trial on the merits, and numerous potential appellate issues. (Szamet Decl.
27 ¶12.) Although Defendant denies any liability, Defendant is agreeing to this Settlement solely to
28 avoid the cost of litigation. (*Id.*) Accordingly, the Parties and their counsel desire to fully, finally,

1 and forever settle, compromise and discharge all disputes and claims arising from or relating to
2 the Action on the terms set forth here. (*Id.*)

3 **III. THE PROPOSED SETTLEMENT CLASS SHOULD BE CERTIFIED FOR** 4 **SETTLEMENT PURPOSES**

5 Originally creatures of equity, class actions have been statutorily embraced by the
6 Legislature whenever “the question [in a case] is one of a common or general interest, of many
7 persons, or when the parties are numerous, and it is impracticable to bring them all before the
8 court” (Code Civ. Proc. § 382; *see, e.g., Fireside Bank v. Sup. Court* (2007) 40 Cal.4th 1069,
9 1078.) They serve an important function by “establishing a technique whereby the claims of many
10 individuals can be resolved at the same time” thereby “eliminat[ing] the possibility of repetitious
11 litigation and provid[ing] small claimants with a method of obtaining redress.” (*Richmond v. Dart*
12 *Industries, Inc.* (1981) 29 Cal.3d 462, 469.) Public policy supports the use of class actions to
13 enforce wage and overtime laws for the benefit of workers. (*See Sav-on Drug Stores, Inc. v. Sup.*
14 *Court* (2004) 34 Cal.4th 319, 340.)

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

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

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

4 A. The Proposed Classes Are Ascertainable and Sufficiently Numerous

5 1. Ascertainability

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

11 Here, Plaintiff maintains that the proposed settlement class is ascertainable for several
12 reasons: First, Defendant has agreed in the Settlement to provide a class list to the Administrator
13 containing the name, last-known mailing address, Social Security number, and number of
14 Workweeks during the Covered Period and PAGA Pay Periods for all putative class members after
15 issuance of the preliminary approval order. (Szamet Decl. ¶13; Ex. 1 at ¶1.1.8.) Second, the
16 settlement class consists of Defendant’s hourly employees, and Defendant is required to keep
17 records of its hourly employees’ names, home addresses, and social security numbers. (*See Wage*
18 *Order 4-2001*, subsection 7(c); Szamet Decl. ¶14.) Third and finally, Defendant informally
19 produced Plaintiff’s personnel file and pay statements, relevant policies, and a sampling of shift
20 data, pay data, and wage statements for Settlement Class Members, which confirms that all
21 Settlement Class Member may be readily identified based on Defendant’s records. (Szamet Decl.
22 ¶15.) Plaintiff is confident she will be able to establish that the proposed settlement class is
23 ascertainable. (Szamet Decl. ¶16.)

24 2. Numerosity

25 There is no set number that is required as a matter of law to maintain a class action. (*See,*
26 *e.g., Rose v. City of Hayward, supra*, 126 Cal.App.3d at p. 934.) Here, the proposed settlement
27 class contains, based upon information and belief, approximately 622 hourly non-exempt
28 employees in the State of California. (Ex. 1 at § IV, ¶4.1.) Therefore, Plaintiff is confident she

will be able to establish that the proposed settlement class is sufficiently numerous. (Szamet Decl. ¶17.)

B. 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 argues that there are questions of law and fact common to the proposed settlement class that predominate over any questions affecting only individual Settlement Class Members. (Szamet Decl. ¶18.) These common questions include:

- 1) Whether Defendant failed to provide lawfully required rest periods and/or failed to compensate employees one (1) hour’s wages in lieu thereof;
- 2) Whether Defendant failed to reimburse business-related expenses;
- 3) Whether Defendant failed to provide accurate itemized wage statements;
- 4) Whether Defendant failed to pay compensation due and owing upon termination of employment;
- 5) Whether Defendant engaged in unfair competition; and,
- 6) Whether Defendant violated § 2699, et seq. of the Labor Code by engaging in the acts previously alleged.

(Szamet Decl. ¶19.)

Defendant maintained a company handbook containing uniform rest break policies for all hourly employees. (Szamet Decl. ¶20.) Plaintiff maintains that the presence of a company-wide

1 meal and rest policy suggests that Defendant applied the same policies to all employees, which
2 would weigh in favor of class certification. (Szamet Decl. ¶21.)

3 Plaintiff's challenge to Defendant's uniform policies and practices involves common
4 factual and legal issues that are amenable to class treatment. (Szamet Decl. ¶22.) As the California
5 Supreme Court has emphasized, "[c]laims alleging that a uniform policy consistently applied to a
6 group of employees is in violation of the wage and hour laws are of the sort routinely, and properly,
7 found suitable for class treatment." (*Brinker, supra*, 53 Cal.4th at 1033; *see also Bradley v.*
8 *Networkers International, LLC* (2012) 211 Cal.App.4th 1129, 1141-1146.) Moreover, a class of
9 similarly situated employees may be certified based on common questions of fact or law, even if
10 each employee has to establish the amount of his or her damages. (*See Bell v. Farmers Ins. Exch.*
11 (2004) 115 Cal.App.4th 715, 741; *Sav-On Drug Stores, Inc. v. Superior Court, supra*, 34 Cal.4th
12 at 340.)

13 Here, Plaintiff maintains that the proposed Settlement Class Members suffered the same
14 injuries, in the same manner: (1) Settlement Class Members did not receive their rest periods as
15 required by law; (2) Settlement Class Members were not provided accurate itemized wage
16 statements; (3) Settlement Class Members were not reimbursed for business-related expenses; and
17 (4) Settlement Class Members were not paid all wages owed upon termination/resignation.
18 (Szamet Decl. ¶23.) Plaintiff alleges that Settlement Class Members worked in the same or similar
19 capacity for the same employer and were subject to the same employment policies and practices,
20 the questions of fact and claims regarding the status of these employees are the same for each
21 member of the settlement class. (Szamet Decl. ¶24.) Accordingly, for purposes of settlement, the
22 evidence reviewed by Class Counsel demonstrates that common rest policies and wage policies
23 applied to the proposed Settlement Class Members and certification for settlement purposes is
24 appropriate. (Szamet Decl. ¶25.)

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

26 A putative class representative's claim must be "typical," but not necessarily identical, to
27 the claims of other class members. The test of typicality "is whether other members have the same
28 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 as a speech therapist in the Studio City, California area, from approximately April 2018 through July 6, 2020, earning \$27.56 per hour. (Szamet Decl. ¶26.) Plaintiff alleges that she: (1) worked without being provided rest periods as required by law; (2) worked without being reimbursed for costs associated with materials, personal cell-phone usage, and incurred mileage from driving personal vehicle; (3) worked without being provided accurate itemized wage statements; and (4) worked without being paid all wages due upon separation. She also alleges that she experienced derivative claims for unfair business competition (B&P Code §17200) and Labor Code §2699, et seq. (Szamet Decl. ¶27.) As such, Plaintiff contends that her claims are typical of those of the settlement class. (Szamet Decl. ¶28.)

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

A putative class representative must show that she 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 she is capable of fairly representing and adequately protecting the interests of the proposed Settlement Class Members. (Szamet Decl. ¶29.) Plaintiff’s interests in this litigation are coextensive with the interests of the proposed Settlement Class Members. The

1 members of the proposed settlement class all worked for Defendant during the relevant time period
2 and incurred the same type of alleged damages with regard to Defendant’s alleged violations of
3 the law. (Szamet Decl. ¶30.) Moreover, Plaintiff has agreed to serve as Class Representative and
4 has retained qualified Counsel who is experienced in prosecuting wage and hour class actions.
5 (Szamet Decl. ¶31.) This demonstrates her commitment to bringing about the best possible results
6 for the benefit of the proposed settlement class. (Szamet Decl. ¶32.) Plaintiff has provided her
7 Counsel with all necessary and pertinent information. (Szamet Decl. ¶33.) She has been a very
8 active participant in the litigation including having frequent contact with Settlement Class
9 Members and working closely with Class Counsel to develop the theories of liability. (Szamet
10 Decl. ¶34.) Plaintiff has provided her Counsel with all necessary and pertinent information.
11 (Szamet Decl. ¶35.) Therefore, Plaintiff believes that she has and will continue to adequately
12 represent the proposed Settlement Class Members. (Szamet Decl. ¶36.) Plaintiff has provided her
13 Counsel with all necessary and pertinent information. (Szamet Decl. ¶37.)

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

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

1 Plaintiff maintains that class treatment would be the superior method of managing this case.
2 A class action is superior to individual litigation “when numerous parties suffer injury of
3 insufficient size to warrant individual action and when denial of class relief would result in unjust
4 advantage to the wrongdoer.” (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.) In
5 cases such as this, where individual damages may be small, the class action device is the most
6 feasible method of recovery. (*See, e.g. Lockheed Martin, supra*, 29 Cal.4th at 1131.) In this regard,
7 the superiority of class treatment is evident here because individual pursuit of class members’
8 claims may not be economically viable. (Szamet Decl. ¶38.) The only alternative to certification
9 would be to force over 622 employees to join this action, file individual, uniform actions, or
10 abandon their legal rights altogether. (Szamet Decl. ¶39.) Plaintiff maintains that this economic
11 reality would result in a windfall for Defendant if this case were not certified. (Szamet Decl. ¶40.)

12 **IV. THE PROPOSED SETTLEMENT**

13 **A. The Settlement Class**

14 For purposes of Settlement, the settlement class is defined as: “all persons who are
15 employed or have been employed as an hourly employee by SPEECH AND LANGUAGE
16 PATHOLOGY ASSOCIATES, INC., in the State of California who worked one or more pay
17 periods during the Covered Period.” (“Class”) (Szamet Decl. ¶41; Settlement, Ex. 1 at ¶1.1.5.)

18 The Covered Period is December 8, 2017 through July 31, 2022 (Szamet Decl. ¶42; Ex. 1
19 at ¶1.1.12.) Based on documents and other information produced by Defendant, there are
20 approximately 622 Settlement Class Members. (Szamet Decl. ¶43; Ex. 1 at ¶9.)

21 **B. The Aggrieved Employees**

22 For purposes of the Agreement, the Aggrieved Employees are defined as: “all persons who
23 are employed or have been employed as an hourly employee by SPEECH AND LANGUAGE
24 PATHOLOGY ASSOCIATES, INC., in the State of California who worked one or more pay
25 periods from December 8, 2020 to July 31, 2022.” (“Aggrieved Employees” or “PAGA
26 Members”) (Szamet Decl. ¶44; Settlement, Ex. 1 at ¶1.1.4.)

27 The PAGA Period is December 8, 2020 through July 31, 2022. Szamet Decl. ¶45; Ex. 1 at
28 ¶1.1.31.) Based on documents and other information produced by Defendant, there are

approximately 367 PAGA Members. (Szamet Decl. ¶46, Ex. 1 at ¶9)

C. Gross Settlement Amount

As detailed fully in the Settlement Agreement, Defendant shall pay a Gross Settlement Amount of \$565,450.00, which includes the sum of the Individual Class Payments, the Class Representative service award, the Class Counsel Award, PAGA Payment, and the Settlement Administration Costs. (Szamet Decl. ¶47; Ex. 1 at ¶1.1.22.)

The Net Settlement Amount is the Gross Settlement Amount, less Class Counsel Award, Class Representative Enhancement, PAGA Payment, and Settlement Administration Costs. (Szamet Decl. ¶48; Ex. A at ¶3.3.)

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

Gross Settlement Amount:	\$	565,450.00
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Less Class Representative Enhancement:	\$	5,000.00
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Less Class Counsel's Fees:	\$	186,598.50
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Less Class Counsel's Costs:	\$	15,000.00
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Less PAGA Payment:	\$	15,000.00
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*(\$11,250.00 to the LWDA and
\$3,750.00 to remain in the Net
Settlement Amount)*

<u>Less Administrator Costs:</u>	<u>\$</u>	<u>20,000.00</u>
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Anticipated Net Settlement Amount	\$	327,601.50
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(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 Covered Period. (Ex. 1 at ¶1.1.23; *see also* Ex. A to the Settlement [Class Notice].) This individual amount shall be determined according to the settlement payment formula set forth in the Settlement. (*See* Ex. 1 at ¶3.2.4; *Id.* at Ex. A to the

1 Settlement [Class Notice].) The Settlement provides for a specific and detailed Workweek dispute
2 process. (See Ex. 1 at ¶8.6.)

3 The individual PAGA settlement amount of each PAGA Member will be paid from the
4 twenty-five percent (25%) of the PAGA Payment to be paid to aggrieved employees (or \$3,750.00)
5 and is an individualized amount that is based on the number of Workweeks worked by the
6 Aggrieved Employee during the PAGA Period. (See Ex. 1 at ¶3.2.5.)

7 E. Process for Administering Settlement after Preliminary Approval

8 The Parties have agreed to use a reputable third-party claims administrator, ILYM Group,
9 Inc., to administer the Settlement. (Ex. 1 at ¶1.1.2.) The detailed Notice Procedure established by
10 the Settlement will efficiently and accurately ensure that Notice is provided to the Settlement Class
11 Members. (Ex. 1 at ¶8.4.)

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

13 Settlement Class Members will have an opportunity to request exclusion from the
14 Settlement (i.e. opt out) and to object to the Settlement at the Final Approval Hearing. (See Ex. 1
15 at ¶¶8.5; 8.7; *see also* Ex. A to the Settlement at pp. 2-5; 7-8 [Class Notice].) The Settlement and
16 Class Notice contain details about the process to request exclusion or object. (*Id.*)

17 PAGA Members will not be provided with the opportunity to opt out of the PAGA
18 Settlement. If the Court approves the PAGA Payment, the Claims Administrator will mail out
19 checks and the PAGA Letter, which shall explain the PAGA Payment, to the PAGA Members at
20 the same time the Settlement Class Members are mailed their Individual Settlement Payments.

21 G. The Release

22 The Release by Participating Class Members Who Are Not Aggrieved Employees is
23 defined as: “any and all claims, debts, liabilities, demands, obligations, penalties, guarantees, costs,
24 expenses, attorney’s fees, damages, action or causes of action of whatever kind or nature, whether
25 known or unknown, contingent or accrued, that are alleged, or that reasonably could have arisen
26 out of the same facts alleged in the Action, including: (1) failure to provide rest breaks pursuant to
27 Labor Code section 226.7; (2) failure to reimburse business-related expenses under Labor Code
28 section 2802; (3) failure to provide accurate itemized wage statements pursuant to Labor Code

section 226(a); (4) waiting time penalties pursuant to Labor Code section 203; (5) violation of Business & Professions Code section 17200; and (6) penalties pursuant to Labor Code section 2699. (collectively, the “Released Claims”) 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 Covered Period.” (Ex. 1 at ¶6.2.)

The Release by Non-Participating Class Members Who Are Aggrieved Employees is defined as: any and “all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint, the PAGA Notice and ascertained in the course of the Action including, violations of Labor Code sections 201, 202, 203, 226(a), 226.7, and 2802.” (Ex. 1 at ¶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.

The proposed settlement satisfies each of these factors. (Szamet Decl. ¶49.) Class Counsel conducted extensive informal discovery before entering into meaningful settlement negotiations in this matter. (*Id* at Szamet Decl. ¶¶8-12.) This discovery permitted Class Counsel to fairly evaluate the strength of the case and the risks associated with ongoing litigation. (Szamet Decl. ¶50.) Class Counsel is experienced in handling wage and hour class actions and, after weighing all of the following factors, supports this Settlement. (Szamet Decl. ¶51.)

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1 1. The Strength of Plaintiff's Case

2 a) The Risks Associated with the Rest Break Claim

3 Labor Code section 226.7, subdivision (c), requires an employer to pay an additional hour
4 of compensation for each workday the employer fails to provide a rest period according to law.
5 Employees are entitled to a paid ten (10) minute rest break for every four (4) hours worked, or
6 major fraction thereof. (Cal. Code Regs., tit. 8, § 11050, subd. 12(A).) Plaintiff and the Class
7 Members' rest period claims arise from a common course of conduct wherein Defendant did not
8 provide employees with the opportunity to take all rest periods in compliance with California law.
9 (Szamet Decl. ¶52.) Plaintiff alleges that Defendant further violated California's rest period laws
10 by not paying Plaintiff and Class Members an extra hour of wages for each missed or improper
11 rest period. (Szamet Decl. ¶53.)

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

18 The Court also clarified what steps an employer has to take to "make available" rest breaks
19 to its employees. Under *Brinker*,

20 An employer is required to authorize and permit the amount of rest break
21 time called for under the wage order for its industry. If it does not—if, for
22 example, it adopts a uniform policy authorizing and permitting only one rest
23 break for employees working a seven-hour shift when two are required—it
24 has violated the wage order and is liable. No issue of waiver ever arises for
25 a rest break that was required by law but never authorized; if a break is not
26 authorized, an employee has no opportunity to decline to take it.

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

28 Employers must authorize and permit a net ten-minute paid rest period for every four hours,

1 or major fraction thereof, of work for its employees. If an employer does not, then the employer
2 must pay the employee one hour of pay at the employee's regular rate of pay for each workday
3 that the rest period is not provided. (Cal. Code Regs., tit. 8, § 11050, subd. 12(B).) Plaintiff and
4 the Class Members consistently worked shifts of 3.5+ hours and were not authorized or permitted
5 to take rest breaks. (Szamet Decl. ¶54.) Therefore, for each rest period Plaintiff and the Class
6 Members were not provided with, Defendant is liable for one (1) additional hour of pay at the
7 employee's regular rate of compensation. (Lab. Code, § 226.7, subd. (b).)

8 Here, Plaintiff maintains that: she and other Class Members were not able to take compliant
9 rest periods as required based on the length of the shift. (Szamet Decl. ¶55.) However, Plaintiff
10 had to acknowledge there are cognizable risks as to recovery on this claim. (Szamet Decl. ¶56.)

11 First, there is no record keeping requirement for rest periods under California law and there
12 generally are no records associated with rest periods (Szamet Decl. ¶57.) As such, Plaintiff had to
13 acknowledge that Defendant could potentially defeat certification of this claim if it was able to
14 gather testimonial evidence from Class Members indicating that they were provided the
15 opportunity to take all required rest breaks each day. (Szamet Decl. ¶58.) Though Plaintiff does
16 not believe this was the case, Plaintiff must acknowledge it poses risks for the Class. (Szamet Decl.
17 ¶59.) There is certainly risk as to both sides as to what multiple declarations and depositions of
18 class members might reveal. (Szamet Decl. ¶60.)

19 Second, without admitting liability, Defendant contends that Plaintiff may have been
20 unique with respect to rest periods. (Szamet Decl. ¶61.) Plaintiff tended to worker shorter shifts,
21 in a home setting with clients, while other Class Members worked in a variety of settings including
22 office settings and school settings, among others. (Szamet Decl. ¶62.) Defendant argued that
23 certainly in those settings, Class Members were regularly afforded the opportunity to take all
24 compliant rest periods. (Szamet Decl. ¶63.) If Defendant could establish that Plaintiff's
25 experiences with rest periods were not common to all Class Members, this could defeat class
26 certification and pose great potential risk that there would be no classwide recovery at all. (Szamet
27 Decl. ¶64.) For these reasons, Plaintiff believes that discounting this claim was appropriate.
28 (Szamet Decl. ¶65.)

1 b) The Risks Associated with the Reimbursement Claim

2 Labor Code section 2802 provides that an employer must “indemnify his or her employee
3 for all necessary expenditures or losses incurred by the employee in direct consequence of the
4 discharge of his or her duties” (Lab. Code, § 2802, subd. (a).)

5 Here, Plaintiff contends that Defendant has failed to reimburse Plaintiff and Class Members
6 for business-related expenses, including for use of their cell phones, personal vehicles, and internet
7 and necessary educational materials such as, but not limited to, learning flash cards, activity cards
8 and supplies, and crayons necessary in executing Class Members’ duties under Defendant’s
9 employ. (Szamet Decl. ¶66.) Plaintiff contends that, at minimum, she and the Proposed Class
10 should be reimbursed for a proportion of their cell phones and home computers, respective cell
11 phone and internet bills, any/all purchased applications, and any/all purchased learning and/or
12 educational materials.

13 Defendant strongly opposed this claim and provided evidence that it maintained a lawful
14 written reimbursement policy. (Szamet Decl. ¶67.) Defendant maintained that Plaintiff and all
15 Class Members simply had to apply for reimbursement of any business expenses and would be
16 reimbursed accordingly. (Szamet Decl. ¶68.) Defendant also argued that personal laptop and
17 cellphone usage were not required as it provided phones and computers in its offices and that if
18 Plaintiff did, it was by choice. (Szamet Decl. ¶69.) As such, Defendant argued that if Plaintiff did
19 occasionally need to use her personal laptop, she may not have been typical of other class members
20 as she worked in client’s homes and all she had to do was request reimbursement. (Szamet Decl.
21 ¶70.) Further, Defendant provided evidence that Plaintiff was reimbursed for expenses on different
22 occasions throughout the term of her employment. (Szamet Decl. ¶71.) In light of these
23 arguments, Plaintiff believes that discounting this claim significantly is appropriate. (Szamet Decl.
24 ¶72.)

25 c) The Risks Associated with the Inaccurate Wage Statement Claim

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

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

7 (1) Plaintiff Contends That Defendant Is Liable for Violation of
8 Labor Code §§ 226(a)(2) and (9)

9 Plaintiff maintains that Defendant issued wage statements that violate Labor Code §§
10 226(a)(2) and (9). (Szamet Decl. ¶73.) Labor Code § 226(a) specifically requires that the employer
11 shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees,
12 an accurate itemized statement in writing showing all applicable hourly rates in effect during the
13 pay period and the corresponding number of hours worked at each hourly rate by the employee.
14 Plaintiff alleges that she and Class Members are issued wage statements that do not properly
15 include the rates and the number of hours worked at the corresponding rate. (Szamet Decl. ¶74.)

16 (2) Plaintiff Does Not Need to Prove Injury to be Awarded Damages
17 for Defendant's Wage Statement Violations

18 Plaintiff is not required to prove injury to be awarded damages for these violations. First,
19 under Labor Code § 226(e)(2)(B):

20 (B) An employee is deemed to suffer injury for purposes of this subdivision
21 if the employer fails to provide accurate and complete information as
22 required by any one or more of items (1) to (9), inclusive, of subdivision (a)
and the employee cannot promptly and easily determine from the wage
statement alone one or more of the following:

23 (i) The amount of the gross wages or net wages paid to the employee during
24 the pay period or any of the other information required to be provided on
25 the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and
(9) of subdivision (a).

26 Plaintiff alleged that the wage statements provided to Class Members did not contain the
27 accurate total hours worked or all applicable hourly rates in effect during the pay period and the
28 corresponding number of hours worked at each hourly rate by the employee as discussed above.

(Szamet Decl. ¶75.) Plaintiff contends this information was not easily ascertainable from the wage statement alone, because it was completely missing or inaccurate. (*Id.*) Thus, Plaintiff and the Class Members are “deemed to suffer injury.” Pursuant to Labor Code sections 226(a) and 226(e), Employees are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and reasonable attorneys’ fees.

Further, for the purposes of a PAGA claim under Labor Code section 2699, it is immaterial whether Plaintiff 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.)

The wage statement claim is largely derivative of the rest break claim discussed above and the risk analysis flows therefrom. (Szamet Decl. ¶76.) Plaintiff contends that because Defendant failed to provide all required rest periods or pay one hour of premium pay in lieu thereof, that the itemized wage statements issued to her and the class were not accurate. *See Naranjo v. Spectrum Security Services, Inc.* (2022) 13 Cal.5th 93, 120 [“In that situation, both that additional credited hour of work and the corresponding premium pay owed must be reported on the wage statement. Failure to do so deprives the employee of information needed to evaluate whether the payment is correct, and in so doing results in injury under the terms of the statute.] (Szamet Decl. ¶77.) However, if Plaintiff is not able to establish that she and Class Periods were not provide the opportunity to take all required rest periods, then the Class arguably cannot prevail on the Section 226(a) claim and the recovery could be nothing. (Szamet Decl. ¶78.) For this reason, Plaintiff determined that a discount was appropriate. (Szamet Decl. ¶79.)

d) The Risks Associated with the Waiting Time Penalty Claim

This claim alleges that Defendant failed to pay all wages due and owing upon termination or resignation. Labor Code § 203(a) provides:

1 If an employer willfully fails to pay ... any wages of an employee
2 who is discharged or who quits, the wages of the employee shall
3 continue as a penalty from the due date thereof at the same rate until
4 paid or until an action therefor is commenced; but the wages shall
5 not continue for more than 30 days.

6 Under Labor Code § 203, a “‘willful’ failure to pay wages ... occurs when an employer
7 intentionally fails to pay wages to an employee when those wages are due.” Cal. Code Regs., tit.
8 8, § 13520; *see also Diaz v. Grill Concepts Services, Inc.* (2018) 23 Cal.App.5th 859 (“willful”
9 simply means that “the employer intentionally failed or refused to perform an act which was
10 required to be done[.] Willful ... does not necessarily imply anything blameable, or any malice or
11 wrong toward the other party”).

12 Plaintiff alleged that Defendant owes waiting time penalties by not paying former alleged
13 employees all wages owed and all premium payments for non-compliant rest periods, Labor Code
14 § 226.7. Pursuant to *Murphy v. Kenneth Cole Productions, Inc.* (2002) 40 Cal.4th 1094, 1120,
15 Plaintiff contended that break premium payments constitute “wages” under Labor Code § 203.
16 (“We hold that section 226.7’s plain language, the administrative and legislative history, and the
17 compensatory purpose of the remedy compel the conclusion that the ‘additional hour of pay’ is a
18 premium wage, not a penalty”). (Szamet Decl. ¶80.) Further, to establish liability for waiting time
19 penalties, Plaintiff would have to establish not only that the underlying violations occurred, but
20 also that Defendant’s conduct was “willful.” Labor Code § 203. (Szamet Decl. ¶81.)

21 As with the itemized wage statement claim, the waiting time penalty claim is derivative of
22 the rest break claim discussed above the risk analysis flows therefrom. (Szamet Decl. ¶82.)
23 Because Plaintiff had concerns about her ability to prove the rest break claim on classwide basis,
24 Plaintiff believes that a significant discount of this claim is appropriate. (Szamet Decl. ¶83.)

25 e) The Risks Associated with the PAGA Claim

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

1 Plaintiff discounted the PAGA claim for multiple reasons. (Szamet Decl. ¶84.) First, the
2 aggrieved employees' PAGA claims are derivative of all the foregoing class claims. (Szamet Decl.
3 ¶85.) Second, a court has discretion to award less than the maximum penalty. (Szamet Decl. ¶86.)
4 Labor Code § 2699(e)(2) ("a court may award a lesser amount than the maximum civil penalty
5 amount specified by this part if, based on the facts and circumstances of the particular case, to do
6 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory"). See
7 *e.g., Carrington v. Starbucks Corporation* (2018) 30 Cal.App.5th 504, 241 Cal.Rptr.3d 647, 669
8 (affirming award of 10% of maximum PAGA penalty). Finally, the settlement class is arguably
9 already compensated for these violations in the proposed Settlement, and thus any PAGA recovery
10 for these same violations could be construed as duplicative. (Szamet Decl. ¶87.) As such, Plaintiff
11 contends that the Settlement's contemplated PAGA payment of \$15,000.00 is appropriate. (Szamet
12 Decl. ¶88.) See *Nordstrom Commissions Cases*, 186 Cal.App.4th 576, 589 (2010) (affirming
13 settlement allocating \$0 of \$6.4 million settlement to PAGA penalties).

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

15 There is significant expense associated with the class certification process, which the
16 Parties can avoid by entering into the contemplated Settlement now. (Szamet Decl. ¶89.) If the
17 Court did eventually certify a wage statement class, trial of a case involving approximately 622
18 Settlement Class Members would require the retention of expensive expert witnesses, the accrual
19 of extensive litigation costs, and a significant time overlay by the parties. (Szamet Decl. ¶90.)
20 Moreover, given the complexity and unsettled nature of the issues in this case it is likely that any
21 outcome at trial would have resulted in a lengthy and costly appeal. (Szamet Decl. ¶91.) An
22 appeal would result in further delay for the Settlement Class Members who are waiting for a
23 resolution in this matter. (*Id.*)

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

25 This case has not been certified to be tried as a class action. (Szamet Decl. ¶92.) While
26 Plaintiff believes there is strong evidence to support certification of several possible subclasses,
27 certification is always hard fought and subject to judicial discretion. Moreover, in class actions,
28 decertification is always a possibility. (*Id.*) In attempting to certify a class, the parties would need

1 to conduct multiple depositions, including of the Class Representative and of several person(s)
2 most knowledgeable regarding Defendant's wage and rest policies. (*Id.*) There is a risk for both
3 sides as to what these depositions will reveal and whether they will support class certification to
4 the extent expected. (*Id.*)

5 4. The Amount Offered in Settlement

6 It was very difficult for the Parties to reach this Settlement of \$565,450.00. (Szamet Decl.
7 ¶93.) This Settlement is the result of adversarial, non-collusive, and arms-length negotiations.
8 (Szamet Decl. ¶94.) The Parties arrived at it after extensive investigation and discovery, careful
9 evaluation of the law, risks, and all information substantiating the amount of penalties reasonably
10 likely to be awarded to the class were the trier of fact to find Defendant liable, and the assistance
11 of an experienced mediator. (*Id.*)

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

13 Per Plaintiff's Counsel's analysis of the time and pay records, the full value of the Rest
14 Period claim, without any discount, was approximately \$2,430,544. (Szamet Decl. ¶95.) As there
15 are no records associated with rest periods, this amount assumes a 50% rest break violation rate
16 for all class members. (Szamet Decl. ¶96.) However, if Defendant Plaintiff's allegations were
17 unique to her and that Class Members were provided the opportunity to take all required rest
18 periods, this amount could be reduced to \$0. (Szamet Decl. ¶97.) For the reasons above, Plaintiff
19 determined that accepting a discount of the value of the rest claim was appropriate. (Szamet Decl.
20 ¶98.)

21 With regard to the Reimbursement Claim analysis, Plaintiff believed that it was reasonable
22 to value the potential reimbursement at \$25 per month, per employee, for reimbursement of
23 personal cell phone usage, personal vehicles, and internet and necessary educational materials.
24 This assumption results in damages for this claim of \$360,675. (Szamet Decl. ¶99.) However, if
25 the amount is reduced to \$5/month per Class Member, the amount is reduced to \$72,135. (Szamet
26 Decl. ¶100.) If Defendant could prove that it maintained a valid reimbursement policy, reimbursed
27 upon request as necessary, and made all other necessary items available such as laptops and
28 phones, this amount could be reduced to \$0. For the reasons above, Plaintiff determined that

1 accepting a discount of the value of the reimbursement claim was appropriate. (Szamet Decl.
2 ¶101.)

3 Plaintiff valued the Wage Statement Claim, without discount, at \$912,100. (Szamet
4 Decl. ¶102.) Plaintiff used \$50 for the initial and \$100 for each subsequent wage statement issued
5 during the relevant liability period. (Szamet Decl. ¶103.) Due to the risk discussed above on the
6 underlying rest period claim, Plaintiff determined that a steep discount of this claim was fair for
7 settlement purposes. (Szamet Decl. ¶104.)

8 Plaintiff valued the Waiting Time Claim, tied to the rest period claim, at \$1,369,181.
9 (Szamet Decl. ¶105.) Considering the derivate nature of Labor Code §203 and the dispute over
10 whether class members were owed any premium pay wages, Plaintiff determined that accepting a
11 discount on this claim was appropriate. (Szamet Decl. ¶106.)

12 Finally, Plaintiff calculated the value of the PAGA claim at \$931,000 for Settlement Class
13 Members (using \$100 per pay period) for the 9,311 pay periods during the PAGA liability period.
14 (Szamet Decl. ¶107.) This assumes that the Court would not permit “stacking” of multiple
15 penalties for each of the underlying Labor Code Violations alleged. (Szamet Decl. ¶108.) The
16 main risk taken into account with PAGA is the discretionary nature of the penalty award. (Szamet
17 Decl. ¶109.) A judge can award the statutory maximum of \$100 for the initial violation and \$200
18 thereafter or – in theory – one cent per wage statement. (Szamet Decl. ¶110.) While there is a
19 dearth of available authority, in Plaintiff’s view, were she to succeed on any of the underlying
20 Labor Code violations, it is not likely that a court would also award a large amount of penalties of
21 top of any damages recovered. (Szamet Decl. ¶111.)

22 Per Plaintiff’s assessment, the maximum potential value of all of Plaintiff’s and the
23 Settlement Class Members’ claims was approximately \$6,003,500. (Szamet Decl. ¶112.) Clearly,
24 this number is driven by the rest period claim and the wage statement and waiting time penalty
25 claims tied thereto. (Szamet Decl. ¶113.) However, as discussed above, Plaintiff perceived acute
26 risks as the viability of recovery on this claim and as result of the forgoing risks on the merits,
27 Class Counsel believes the Gross Settlement Amount of \$565,450.00 is fair and reasonable base
28 on the facts at hand. (Szamet Decl. ¶114.)

1 5. The Experience and Views of Counsel

2 Counsel’s experience and success in similar class actions also weigh in favor of preliminary
3 approval. *See Wershba, supra*, 91 Cal.App.4th at 245. Kingsley & Kingsley, APC is very
4 experienced in prosecuting complex employment litigation, and the firm has focused its practice
5 since the year 2000 on complex wage, hour, and working condition violations. (Szamet Decl.
6 ¶¶115-117.) The firm is well versed in class action litigation and has diligently and aggressively
7 pursued this action. (*Id.*) Kingsley & Kingsley, APC currently serves as Class Counsel for dozens
8 of pending class action lawsuits in Northern, Central, and Southern California. (*Id.*) A list of
9 representative cases that Kingsley & Kingsley, APC has handled is included in the accompanying
10 declaration of Kelsey M. Szamet. (*Id.*) After factoring in the risks explained above, Class Counsel
11 believes that the proposed settlement is fair and reasonable. (Szamet Decl. ¶118.)

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

13 Plans of allocation are subject to the same standard of review as class action settlements;
14 they must be “fair, adequate and reasonable.” (*See, e.g., Officers for Justice v. Civil Service*
15 *Comm’n* (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the proposed plan of allocation
16 compensates Settlement Class Members pro rata based on the number of Workweeks worked by
17 the Settlement Class Member during the Covered Period. The lump sum payment to each
18 Settlement Class Member not excluding him/ herself will be determined on an individualized basis
19 based upon the Workweeks worked by the Settlement Class Member. (Ex. 1 at ¶3.2.4.) This
20 allocation distributes Settlement funds proportionally to each class member’s potential damages
21 and should therefore be approved as fair, adequate, and reasonable. (Szamet Decl. ¶119.)

22 7. The Proposed Notice Fairly Apprises the Settlement Class Members of the
23 Terms of the Settlement and of the Class Members’ Rights under the
24 Settlement

25 Plaintiff requests that the Court approve the proposed plan and form of Class Notice. The
26 standard for determining the adequacy of notice is whether the notice has “a reasonable chance of
27 reaching a substantial percentage of the class members.” (*Cartt v. Superior Court* (1975) 50
28 Cal.App.3d 960, 974.) Pursuant to the Settlement, the Notice will be sent to the last known address

1 of all Settlement Class Members, or to an updated address if one is located in the National Change
2 of Address Database. (Ex. 1 at ¶4.4.1). If any Notices are returned as undeliverable, the
3 Administrator will undertake another reasonable address verification measure to locate a valid
4 mailing address and will promptly send the Notice to the new address. (*Id.*) As such, the Notice
5 is likely to reach most, if not all, Settlement Class Members.

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

12 Here, the Notice clearly explains the proposed Settlement and the options to opt out of the
13 Settlement or object to it at the Final Approval Hearing. (Ex. 1 at ¶8.4-8.7; *see also* Ex. A to the
14 Settlement at pp. 2-5, 8 [Class Notice].) In short, the Court should approve the proposed Class
15 Notice because it describes the proposed settlement with enough specificity to allow Settlement
16 Class Members to make an informed choice regarding whether to participate.

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

18 The Class Representative is entitled to an enhancement for her valiant effort and time
19 expended in this matter. (Szamet Decl. ¶120.) The time spent by TIKOA CARTER is significant
20 and includes researching and retaining competent counsel; providing information to Class Counsel
21 regarding the nature of the work at Defendant; compiling relevant documents; working closely
22 with Class Counsel to develop the theories of liability and martial relevant evidence; regularly
23 discussing the status of the case with Class Counsel; being available throughout the full-day of
24 mediation; and responding promptly to Class Counsel’s communications regarding settlement.
25 (*Id.*) Thus, in addition to the sums paid to Settlement Class Members, Plaintiff requests a proposed
26 litigation enhancement in the amount of \$5,000.00, to be paid from the Gross Settlement Amount.
27 (Ex. 1 at ¶3.2.1.) As set forth in the Settlement, Plaintiff will also be entering into a general release
28 of liability pursuant to Civil Code Section 1542. (Szamet Decl. ¶121; Ex. 1 at ¶6.)

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

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

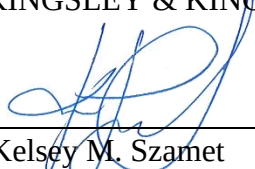
7 As indicated on the Proof of Service, Plaintiff's Motion for Approval of Class Action
8 Settlement ("Motion") will be concurrently uploaded to the Labor and Workforce Development
9 Agency's ("LWDA") website on the date this Motion is filed as required by statute. Proof of
10 submission of Plaintiff's Motion, all related documents, and copy of the email from the LWDA
11 confirming receipt is attached to the Declaration of Kelsey M. Szamet as Exhibit "2." (Szamet
12 Decl. ¶123.)

13 **VIII. CONCLUSION**

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

21
22 DATED: September 11, 2023

KINGSLEY & KINGSLEY, APC

23
24 By: 

25 Kelsey M. Szamet
26 Attorneys for Plaintiff TIKOA CARTER and the
27 Proposed Class
28

(PROOF OF SERVICE)
[CCP 1013(a)(3)]

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On September 12, 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:

LEWIS BRISBOIS BISGAARD & SMITH LLP

Nima Darouian, Esq.

Nima.Darouian@lewisbrisbois.com

Sahra "Nadine" Agharezaei, Esq.

Sahra.Agharezaei@lewisbrisbois.com

633 West 5th Street, Suite 4000

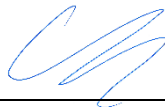
Los Angeles, California 90071

[XX] BY ELECTRONIC MAIL THROUGH CASE ANYWHERE: On interested parties set forth on the attached service list.

[XX] (BY ELECTRONIC SERVICE) I caused a true and correct copy thereof to be electronically filed using the Labor and Workforce Development Agency Electronic Filing ("EF") System (<https://dir.tfaforms.net/315>) and service was completed by electronic means by transmittal of the documents referenced herein on the EF System.

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

Executed on September 12, 2023, at Encino, California.



Michelle Tanzer