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

*[Filed concurrently with Motion for Approval
of Attorneys' Fees and Costs; Declarations of
Kelsey M. Szamet, Tikoa Carter, and Makenna
Snow, Proposed Order, and Judgment]*

Date: April 30, 2024

Time: 11:00 AM

Dept.: 14

Complaint Filed: December 8, 2021

Trial Date: None set

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

2 PLEASE TAKE NOTICE that on April 30, 2024, at 11:00 AM in Department 14 of the
3 above-entitled court, Plaintiff TIKOA CARTER (“Plaintiff”) will, and hereby does, move the
4 Court for an Order of Final Approval of the Class Settlement in this case. Plaintiff moves the
5 Court for an order:

6 1. Granting final approval of the settlement in the case pursuant to the Class Action
7 and PAGA Settlement Agreement (“Settlement Agreement”), a copy of which is attached to the
8 concurrently-filed Declaration of Kelsey M. Szamet as Exhibit “1”;

9 2. Affirming Kingsley & Kingsley, APC as Class Counsel;

10 3. Affirming TIKOA CARTER as Class Representative and awarding an
11 enhancement award of \$5,000.00;

12 4. Awarding ILYM Group, Inc. claims administration fees of \$20,000.00 for its
13 services as Administrator; and,

14 5. Entering judgment.

15 This Motion will be made pursuant to Code of Civil Procedure section 382 and California
16 Rule of Court, rule 3.769 on the grounds that the proposed Settlement Agreement is fair, adequate,
17 reasonable, and in the best interest of the Settlement Class Members and the parties.

18 The Motion will be based on this Notice of Motion, the attached Memorandum of Points
19 and Authorities, the Declarations of Kelsey M. Szamet, TIKOA CARTER, Makenna Snow of
20 ILYM Group, Inc., all other papers and records on file in this action, and on such oral and
21 documentary evidence as may be presented at the hearing on this Motion.

22 DATED: March 29, 2024

KINGSLEY & KINGSLEY, APC

23
24 By: 

25 Kelsey M. Szamet
26 Attorneys for Plaintiff TIKOA CARTER and the
27 proposed class
28

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff TIKOA CARTER (“Plaintiff”) submits this Motion for Final Approval of Class
4 Settlement and requests that the Court:

5 1. Grant final approval of the settlement in this case pursuant to the Class Action and
6 PAGA Settlement Agreement (“Settlement Agreement”), a copy of which is attached to the
7 concurrently-filed Declaration of Kelsey M. Szamet as Exhibit “1”;

8 2. Award attorneys’ fees and costs as detailed in the concurrently-filed Motion for
9 Attorneys’ Fees and Costs;

10 3. Award ILYM Group, Inc. claims administration fees of \$20,000.00 for its services
11 as Administrator;

12 4. Affirm named Plaintiff TIKOA CARTER as Class Representative and award a
13 cumulative Class Representative payment of \$5,000.00; and

14 5. Enter judgment.

15 **II. FACTUAL BACKGROUND**

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

17 On December 8, 2021, Plaintiff commenced this Action by filing a Complaint alleging
18 causes of action against Defendant for (1) failure to provide rest breaks pursuant to Labor Code
19 section 226.7; (2) failure to reimburse business-related expenses under Labor Code section 2802;
20 (3) failure to provide accurate itemized wage statements pursuant to Labor Code section 226(a);
21 (4) waiting time penalties pursuant to Labor Code section 203; and (5) violation of Business &
22 Professions Code section 17200. (Declaration of Kelsey M. Szamet (“Szamet Decl.”) ¶5.) Also on
23 December 8, 2021, pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave written notice
24 to Defendant and the LWDA of the facts and allegations at issue. (Szamet Decl. ¶6.)

25 On May 19, 2022, Plaintiff filed a First Amended Complaint alleging an additional cause
26 of action for penalties pursuant to the Private Attorney General Act of 2004 (“PAGA”) (Lab. Code
27 § 2699 et seq.). (Szamet Decl. ¶7.) The First Amended Complaint is the operative complaint in the
28 Action (the “Operative Complaint”). Defendant denies the allegations in the Operative Complaint,

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

B. The Discovery Process

On June 28, 2022, the Parties participated in an all-day mediation presided over by Todd A. Smith, Esq. which led to this Agreement to settle the Action. (Szamet Decl. ¶9.) Prior to mediation, Plaintiff obtained, through informal discovery, pertinent documents and data for the Class and PAGA Members so that the Parties could fully investigate the claims at issue and understand their strengths and weaknesses. (Szamet Decl. ¶10.) Plaintiff and her Counsel contend that the 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*”). (Szamet Decl. ¶11.)

Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in the action, disputes the damages and penalties claimed by Plaintiff, and further contends that, for any purpose other than settlement, Plaintiff’s claims are not appropriate for class or representative action treatment. (Szamet Decl. ¶12.) Defendant contends, among other things, that, at all times, it has complied with the Labor Code and Industrial Wage Commission Orders. (*Id.*)

Based on their own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement 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. (Szamet Decl. ¶13.) Although Defendant denies any liability, Defendant is agreeing to this Settlement 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.*)

C. Preliminary Approval

On November 20, 2023, the Court issued an Order preliminarily approving the settlement in this case, approving the proposed Class Notice, ordering that the Administrator send notice to

the Class, and setting a date for the Final Approval and Fairness Hearing. (Szamet Decl. ¶14.)

III. THE PRELIMINARILY APPROVED SETTLEMENT

A. The Settlement Class

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

The Covered Period is December 8, 2017 through July 31, 2022 (Szamet Decl. ¶16; Ex. 1 at ¶1.1.12.) Based on documents and other information produced by Defendant, there are approximately 622 Settlement Class Members. (Szamet Decl. ¶17; Ex. 1 at ¶9.)

The Class contains 612 individuals. (Snow Decl. ¶7, ¶14.)

B. The Aggrieved Employees

For purposes of the Agreement, the Aggrieved Employees are defined as: “all persons who are employed or have been employed as an hourly employee by SPEECH AND LANGUAGE PATHOLOGY ASSOCIATES, INC., in the State of California who worked one or more pay periods from December 8, 2020 to July 31, 2022.” (“Aggrieved Employees” or “PAGA Members”) (Szamet Decl. ¶18; Settlement, Ex. 1 at ¶1.1.4.)

The PAGA Period is December 8, 2020 through July 31, 2022. (Szamet Decl. ¶19; Ex. 1 at ¶1.1.31.) Based on documents and other information produced by Defendant, there are approximately 367 PAGA Members. (Szamet Decl. ¶20, 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. ¶21; Ex. 1 at ¶1.1.22.) Plaintiff now requests final approval of the allocation of the Gross Settlement Amount to determine the Net Settlement Amount for distribution to the Class as follows:

///

Gross Settlement Amount:	\$	565,450.00
Less Class Representative Enhancement:	\$	5,000.00
Less Class Counsel's Fees:	\$	186,598.50
Less Class Counsel's Costs:	\$	15,000.00
Less PAGA Penalty:	\$	15,000.00
		<i>(\$11,250.00 to the LWDA; \$3,750.00 to remain in the Net Settlement Amount)</i>
Less Administrator Costs:	\$	<u>20,000.00</u>
Net Settlement Amount:	\$	327,601.50

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

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

Based on these calculations, the average potential recovery is \$530.04 per Class Member. (Snow Decl. ¶17.)

E. Class Notice

The Court approved the proposed Class Notice and directed the mailing of the Notice by first-class mail to Class Members in accordance with the proposed implementation schedule. (Szamet Decl. ¶22) The procedures for giving notice to the Class Members, as set forth in the Settlement Agreement and Plaintiffs' Motion for Preliminary Approval and approved by the Court, have been fully and properly carried out. (Snow Decl. ¶7.)

To date, ILYM Group, Inc. received two (2) requests to be excluded ("opt-outs") from the proposed Settlement Agreement and zero (0) objections. (Snow Decl. ¶¶11- 12.)

1 F. Check Mailed Settlement – No Reversion

2 The Parties agreed to, and the Court preliminary approved, a checks-mailed settlement
3 without the possibility of reversion of settlement funds to Defendant. Under the Settlement
4 Agreement, every Settlement Class Member will receive a settlement check and Settlement Class
5 Member do not need to submit a claim in order to receive a settlement check. Any funds that
6 remain uncashed after the void date shall be turned over by the Administrator, with information
7 for each Settlement Class Member who failed to timely cash his/her settlement check, to the State
8 of California Controller’s Office Unclaimed Property Fund. (Ex. 1 at ¶4.43.)

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

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

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

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

22 As to the first *Dunk* factor, this settlement is the result of adversarial, non-collusive, and
23 arm’s-length negotiations overseen by an experienced mediator. All settlement discussions were
24 made by experienced and informed counsel, who believe that this settlement represents a favorable
25 resolution for the Class Members. (Szamet Decl. ¶23.) The settlement negotiations have been, at
26 all times, adversarial and non-collusive, with the aid of a mediator, and no self-dealing or other
27 type of misconduct by either side has taken place. (Szamet Decl. ¶24.)

28 Second, the Parties engaged in informal discovery that permitted Class Counsel to fairly

1 evaluate the strength of the case and the risks associated with ongoing litigation. In addition,
2 Defendant produced additional data and documents informally for purposes of settlement. This
3 included relevant policies and procedures, the number of allegedly violating itemized wage
4 statements at issue, the class size, and all versions of itemized wage statements issued to the Class
5 Members. (Szamet Decl. ¶25.) Receipt of appropriate discovery allowed Class Counsel to fairly
6 evaluate the exposure and risks associated with each claim alleged in the lawsuit. (Szamet Decl.
7 ¶26.)

8 Third, Class Counsel have significant experience in cases of this type, including several
9 years prosecuting wage, hour, and working condition violations. (Szamet Decl. ¶27.) Class
10 Counsel is thus qualified to evaluate the class claims and viability of the defenses. Class Counsel
11 believes that the settlement is fair, reasonable, adequate, and in the best interests of the class and
12 that the average recovery for each Class Member of over \$530.04 is substantial, given the risks
13 inherent in litigation and the defenses asserted. (Szamet Decl. ¶28.)

14 Finally, the fourth *Dunk* factor considers the percentage of objectors. Here, there were two
15 (2) requests to be excluded and no objectors. (Snow Decl. ¶¶11-12.) As all of the *Dunk* factors are
16 satisfied, this settlement is entitled to a presumption of fairness.

17 B. The Court Should Approve This Class Action Settlement Because it Satisfies Each
18 of the *Kullar* Factors

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

26 The proposed settlement satisfies each of these factors. (Szamet Decl. ¶29.) Class Counsel
27 conducted extensive informal discovery before entering into meaningful settlement negotiations
28 in this matter. (*Id* at Szamet Decl. ¶¶9-12.) This discovery permitted Class Counsel to fairly

1 evaluate the strength of the case and the risks associated with ongoing litigation. (Szamet Decl.
2 ¶30.) Class Counsel is experienced in handling wage and hour class actions and, after weighing all
3 of the following factors, supports this Settlement. (Szamet Decl. ¶31.)

4 1. The Strength of Plaintiffs' Case

5 a) The Risks Associated with the Rest Break Claim

6 Labor Code section 226.7, subdivision (c), requires an employer to pay an additional hour
7 of compensation for each workday the employer fails to provide a rest period according to law.
8 Employees are entitled to a paid ten (10) minute rest break for every four (4) hours worked, or
9 major fraction thereof. (Cal. Code Regs., tit. 8, § 11050, subd. 12(A).) Plaintiff and the Class
10 Members' rest period claims arise from a common course of conduct wherein Defendant did not
11 provide employees with the opportunity to take all rest periods in compliance with California law.
12 (Szamet Decl. ¶32.) Plaintiff alleges that Defendant further violated California's rest period laws
13 by not paying Plaintiff and Class Members an extra hour of wages for each missed or improper
14 rest period. (Szamet Decl. ¶33.)

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

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

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

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. ¶34.) 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. ¶35.) However, Plaintiff
10 had to acknowledge there are cognizable risks as to recovery on this claim. (Szamet Decl. ¶36.)

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. ¶37.) 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. ¶38.) Though Plaintiff does
16 not believe this was the case, Plaintiff must acknowledge it poses risks for the Class. (Szamet Decl.
17 ¶39.) There is certainly risk as to both sides as to what multiple declarations and depositions of
18 class members might reveal. (Szamet Decl. ¶40.)

19 Second, without admitting liability, Defendant contends that Plaintiff may have been
20 unique with respect to rest periods. (Szamet Decl. ¶41.) 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. ¶42.) Defendant argued that
23 certainly in those settings, Class Members were regularly afforded the opportunity to take all
24 compliant rest periods. (Szamet Decl. ¶43.) 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. ¶44.) For these reasons, Plaintiff believes that discounting this claim was appropriate.
28 (Szamet Decl. ¶45.)

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. ¶46.) 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. ¶47.) 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. ¶48.) 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. ¶49.) 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 ¶50.) Further, Defendant provided evidence that Plaintiff was reimbursed for expenses on different
22 occasions throughout the term of her employment. (Szamet Decl. ¶51.) In light of these arguments,
23 Plaintiff believes that discounting this claim significantly is appropriate. (Szamet Decl. ¶52.)

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

25 California Labor Code §226(a) requires Defendant to provide its employees with an
26 accurate, itemized written wage statement that shows, in relevant part, all applicable hourly rates
27 and the corresponding number of hours worked. An employee “suffering injury,” like Plaintiff and
28 Class Members, can recover penalties for an employer’s “knowing and intentional failure” to

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

6 Plaintiff maintains that Defendant issued wage statements that violate Labor Code §§
7 226(a)(2) and (9). (Szamet Decl. ¶53.) Labor Code § 226(a) specifically requires that the employer
8 shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees,
9 an accurate itemized statement in writing showing all applicable hourly rates in effect during the
10 pay period and the corresponding number of hours worked at each hourly rate by the employee.
11 Plaintiff alleges that she and Class Members are issued wage statements that do not properly
12 include the rates and the number of hours worked at the corresponding rate. (Szamet Decl. ¶54.)

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

15 (B) An employee is deemed to suffer injury for purposes of this subdivision
16 if the employer fails to provide accurate and complete information as
17 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:

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

21 Plaintiff alleged that the wage statements provided to Class Members did not contain the
22 accurate total hours worked or all applicable hourly rates in effect during the pay period and the
23 corresponding number of hours worked at each hourly rate by the employee as discussed above.
24 (Szamet Decl. ¶55.) Plaintiff contends this information was not easily ascertainable from the wage
25 statement alone, because it was completely missing or inaccurate. (*Id.*) Thus, Plaintiff and the
26 Class Members are “deemed to suffer injury.” Pursuant to Labor Code sections 226(a) and 226(e),
27 Employees are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the
28 initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in

1 a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000).
2 They are also entitled to an award of costs and reasonable attorneys' fees.

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

9 The wage statement claim is largely derivative of the rest break claim discussed above
10 and the risk analysis flows therefrom. (Szamet Decl. ¶56.) Plaintiff contends that because
11 Defendant failed to provide all required rest periods or pay one hour of premium pay in lieu
12 thereof, that the itemized wage statements issued to her and the class were not accurate. See
13 *Naranjo v. Spectrum Security Services, Inc.* (2022) 13 Cal.5th 93, 120 [“In that situation, both
14 that additional credited hour of work and the corresponding premium pay owed must be reported
15 on the wage statement. Failure to do so deprives the employee of information needed to evaluate
16 whether the payment is correct, and in so doing results in injury under the terms of the statute.]
17 (Szamet Decl. ¶57.) However, if Plaintiff is not able to establish that she and Class Periods
18 were not provide the opportunity to take all required rest periods, then the Class arguably cannot
19 prevail on the Section 226(a) claim and the recovery could be nothing. (Szamet Decl. ¶58.) For
20 this reason, Plaintiff determined that a discount was appropriate. (Szamet Decl. ¶59.)

21 d) The Risks Associated with the Waiting Time Penalty Claim

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

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

27 Under Labor Code § 203, a “‘willful’ failure to pay wages ... occurs when an employer
28 intentionally fails to pay wages to an employee when those wages are due.” Cal. Code Regs., tit.

8, § 13520; see also *Diaz v. Grill Concepts Services, Inc.* (2018) 23 Cal.App.5th 859 (“willful” simply means that “the employer intentionally failed or refused to perform an act which was required to be done[.] Willful ... does not necessarily imply anything blameable, or any malice or wrong toward the other party”).

Plaintiff alleged that Defendant owes waiting time penalties by not paying former alleged employees all wages owed and all premium payments for non-compliant rest periods, Labor Code § 226.7. Pursuant to *Murphy v. Kenneth Cole Productions, Inc.* (2002) 40 Cal.4th 1094, 1120, Plaintiff contended that break premium payments constitute “wages” under Labor Code § 203. (“We hold that section 226.7’s plain language, the administrative and legislative history, and the compensatory purpose of the remedy compel the conclusion that the ‘additional hour of pay’ is a premium wage, not a penalty”). (Szamet Decl. ¶60.) Further, to establish liability for waiting time penalties, Plaintiff would have to establish not only that the underlying violations occurred, but also that Defendant’s conduct was “willful.” Labor Code § 203. (Szamet Decl. ¶61.)

As with the itemized wage statement claim, the waiting time penalty claim is derivative of the rest break claim discussed above the risk analysis flows therefrom. (Szamet Decl. ¶62.) Because Plaintiff had concerns about her ability to prove the rest break claim on classwide basis, Plaintiff believes that a significant discount of this claim is appropriate. (Szamet Decl. ¶63.)

e) The Risks Associated with the PAGA Claim

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

Plaintiff discounted the PAGA claim for multiple reasons. (Szamet Decl. ¶64.) First, the aggrieved employees’ PAGA claims are derivative of all the foregoing class claims. (Szamet Decl. ¶65.) Second, a court has discretion to award less than the maximum penalty. (Szamet Decl. ¶66.) 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 arguably already compensated for these violations in the proposed Settlement, and thus any PAGA recovery for these same violations could be construed as duplicative. (Szamet Decl. ¶67.) As such, Plaintiff contends that the Settlement’s contemplated PAGA payment of \$15,000.00 is appropriate. (Szamet Decl. ¶68.) 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 Settlement now. (Szamet Decl. ¶69.) If the Court did eventually certify a wage statement class, trial of a case involving approximately 622 Settlement Class Members would require the retention of expensive expert witnesses, the accrual of extensive litigation costs, and a significant time overlay by the parties. (Szamet Decl. ¶70.) Moreover, given the complexity and unsettled nature of the issues in this case it is likely that any outcome at trial would have resulted in a lengthy and costly appeal. (Szamet Decl. ¶71.) An appeal would result in further delay for the Settlement Class Members who are waiting for a resolution in this matter. (*Id.*)

3. The Risk of Maintaining Class Action Status through Trial

This case has not been certified to be tried as a class action. (Szamet Decl. ¶72.) While Plaintiff believes there is strong evidence to support certification of several possible subclasses, certification is always hard fought and subject to judicial discretion. Moreover, in class actions, decertification is always a possibility. (*Id.*) In attempting to certify a class, the parties would need to conduct multiple depositions, including of the Class Representative and of several person(s) most knowledgeable regarding Defendant’s wage and 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.*)

///

1 4. The Amount Offered in Settlement

2 It was very difficult for the Parties to reach this Settlement of \$565,450.00. (Szamet Decl.
3 ¶73.) This Settlement is the result of adversarial, non-collusive, and arms-length negotiations.
4 (Szamet Decl. ¶74.) The Parties arrived at it after extensive investigation and discovery, careful
5 evaluation of the law, risks, and all information substantiating the amount of penalties reasonably
6 likely to be awarded to the class were the trier of fact to find Defendant liable, and the assistance
7 of an experienced mediator. (*Id.*)

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

9 Per Plaintiff's Counsel's analysis of the time and pay records, the full value of the Rest
10 Period claim, without any discount, was approximately \$2,430,544. (Szamet Decl. ¶75.) As there
11 are no records associated with rest periods, this amount assumes a 50% rest break violation rate
12 for all class members. (Szamet Decl. ¶76.) However, if Defendant could establish that Plaintiff's
13 allegations were unique to her and that Class Members were provided the opportunity to take all
14 required rest periods, this amount could be reduced to \$0. (Szamet Decl. ¶77.) For the reasons
15 above, Plaintiff determined that accepting a discount of the value of the rest claim was appropriate.
16 (Szamet Decl. ¶78.)

17 With regard to the Reimbursement Claim analysis, Plaintiff believed that it was reasonable
18 to value the potential reimbursement at \$25 per month, per employee, for reimbursement of
19 personal cell phone usage, personal vehicles, and internet and necessary educational materials.
20 This assumption results in damages for this claim of \$360,675. (Szamet Decl. ¶79.) However, if
21 the amount is reduced to \$5/month per Class Member, the amount is reduced to \$72,135. (Szamet
22 Decl. ¶80.) If Defendant could prove that it maintained a valid reimbursement policy, reimbursed
23 upon request as necessary, and made all other necessary items available such as laptops and
24 phones, this amount could be reduced to \$0. (Szamet Decl. ¶81.) For the reasons above, Plaintiff
25 determined that accepting a discount of the value of the reimbursement claim was appropriate.
26 (Szamet Decl. ¶82.)

27 Plaintiff valued the Wage Statement Claim, without discount, at \$912,100. (Szamet Decl.
28 ¶83.) Plaintiff used \$50 for the initial and \$100 for each subsequent wage statement issued during

1 the relevant liability period. (Szamet Decl. ¶84.) Due to the risk discussed above on the underlying
2 rest period claim, Plaintiff determined that a steep discount of this claim was fair for settlement
3 purposes. (Szamet Decl. ¶85.)

4 Plaintiff valued the Waiting Time Claim, tied to the rest period claim, at \$1,369,181.
5 (Szamet Decl. ¶86.) Considering the derivate nature of Labor Code §203 and the dispute over
6 whether class members were owed any premium pay wages, Plaintiff determined that accepting a
7 discount on this claim was appropriate. (Szamet Decl. ¶87.)

8 Finally, Plaintiff calculated the value of the PAGA claim at \$931,000 for Settlement Class
9 Members (using \$100 per pay period) for the 9,311 pay periods during the PAGA liability period.
10 (Szamet Decl. ¶88.) This assumes that the Court would not permit “stacking” of multiple penalties
11 for each of the underlying Labor Code Violations alleged. (Szamet Decl. ¶89.) The main risk taken
12 into account with PAGA is the discretionary nature of the penalty award. (Szamet Decl. ¶90.) A
13 judge can award the statutory maximum of \$100 for the initial violation and \$200 thereafter or –
14 in theory – one cent per wage statement. (Szamet Decl. ¶91.) While there is a dearth of available
15 authority, in Plaintiff’s view, were she to succeed on any of the underlying Labor Code violations,
16 it is not likely that a court would also award a large amount of penalties on top of any damages
17 recovered. (Szamet Decl. ¶92.)

18 Per Plaintiff’s assessment, the maximum potential value of all of Plaintiff’s and the
19 Settlement Class Members’ claims was approximately \$6,003,500. (Szamet Decl. ¶93.) Clearly,
20 this number is driven by the rest period claim and the wage statement and waiting time penalty
21 claims tied thereto. (Szamet Decl. ¶94.) However, as discussed above, Plaintiff perceived acute
22 risks as to the viability of recovery on these claims and as result of the forgoing risks on the merits,
23 Class Counsel believes the Gross Settlement Amount of \$565,450.00 is fair and reasonable based
24 on the facts at hand. (Szamet Decl. ¶95.)

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

26 As outlined above, Class Counsel conducted a thorough investigation into the facts of the
27 claims alleged. (Szamet Decl. ¶96.) The agreement to settle did not occur until Class Counsel
28 exchanged and possessed sufficient information to make an informed judgement regarding the

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

3 6. The Experience and Views of Counsel

4 Kingsley & Kingsley is very experienced in prosecuting and defending employment
5 litigation, and the firm has focused its practice since 2000 on wage, hour, and working condition
6 violations. (Szamet Decl. ¶¶97-99.) The firm is well versed in class action litigation and has
7 diligently and aggressively pursued this action. (*Ibid.*) Kingsley & Kingsley, APC currently serves
8 as Class Counsel for dozens of pending class action lawsuits in Northern, Central, and Southern
9 California. (*Ibid.*) A list of representative cases that Kingsley & Kingsley, APC has handled is
10 included in the accompanying declaration of Kelsey M. Szamet. (Szamet Decl. ¶¶97-98.) After
11 factoring in the risks explained above, Class Counsel believes that the proposed settlement is fair
12 and reasonable. (Szamet Decl. ¶99.)

13 7. The Presence of a Governmental Participant

14 There is no governmental participant in this action except arguably the LWDA. (Szamet
15 Decl. ¶100.)

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

17 Plans of allocation are subject to the same standard of review as class action settlements;
18 they must be “fair, adequate and reasonable.” (See, e.g., *Officers for Justice v. Civil Service*
19 *Comm’n* (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the proposed plan of allocation
20 compensates Settlement Class Members pro rata based on the number of Workweeks worked by
21 the Settlement Class Member during the Covered Period. The lump sum payment to each
22 Settlement Class Member not excluding him/ herself will be determined on an individualized basis
23 based upon the Workweeks worked by the Settlement Class Member. (Ex. 1 at ¶3.2.4.) This
24 allocation distributes Settlement funds proportionally to each class member’s potential damages
25 and should therefore be approved as fair, adequate, and reasonable. (Szamet Decl. ¶100.)

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

27 To date, there are only two (2) requests to be excluded from the proposed Settlement
28 Agreement and zero (0) objections. (Snow Decl. ¶¶11-12.) Such indicates that the reaction of Class

Members on the whole is very positive and weighs in favor of approval.

V. ENHANCEMENT TO PLAINTIFF

Plaintiff's Counsel request an enhancement of \$5,000.00 to the Class Representative TIKOA CARTER for her work on behalf of the Class. (Szamet Decl. ¶143.) "Courts routinely approve incentive awards to compensate named plaintiffs for the services they provide and the risks they incurred during the course of the class action litigation." *Ingram v. The Coca-Cola Company*, 200 F.R.D. 685, 694 (N.D. Ga 2001) (internal quotations and citations omitted); *see also Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995). In *Coca-Cola*, the Court approved service awards of \$300,000 to each named plaintiff in recognition of the services they provided to the class by responding to discovery, participating in the mediation process, and taking the risk of stepping forward on behalf of the class. *Coca-Cola*, 200 F.R.D. at 694; *see also, e.g. Van Vranken*, 901 F. Supp. at 299 (approving \$50,000 participation award to plaintiffs); *Glass v. UBS Financial Services, Inc.*, Case No. C-06-4068 MMC, 2007 WL 227862, at *17 (N.D. Cal. Jan. 26, 2007) (approving \$25,00 enhancement to each named plaintiff).

Ms. Carter is an adequate class representative because she has diligently, adequately and fairly represented the Class and has not placed her interests above any member of the Class. (*see* Declaration of TIKOA CARTER ("Carter Decl.") ¶¶5-10.)

Here, Class Counsel requests an enhancement for Ms. Carters' valiant effort and time expended in this matter. The time spent by TIKOA CARTER 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; being available throughout the full-day of mediation; and responding promptly to Class Counsel's communications regarding settlement. (Szamet Decl. ¶144; Carter Decl. ¶¶6-8.) As set forth in the Settlement Agreement, Plaintiff will also be entering into a general release of liability pursuant to Civil Code Section 1542. (Szamet Decl. ¶145; Ex. 1 at ¶6.)

Class Counsel considers this to be a fair and reasonable enhancement. (Szamet Decl. ¶146.)

1 The enhancement takes into consideration the time, effort, and expense incurred by Ms. Carter in
2 coming forward to litigate this matter on behalf of all Class Members. (Szamet Decl. ¶147.)
3 Additionally, the Class Representative was at risk for paying for Defendant’s legal fees and costs
4 in the event that Defendant prevailed at trial. (Szamet Decl. ¶148.)

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

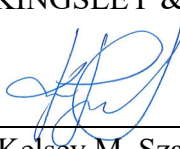
6 As indicated on the Proof of Service, Plaintiff’s Motion for Final Approval of Class Action
7 Settlement (“Motion”) will be concurrently uploaded to the Labor and Workforce Development
8 Agency’s (“LWDA”) website on the date this Motion is filed as required by statute. Proof of
9 submission of Plaintiff’s Motion, all related documents, and copy of the email from the LWDA
10 confirming receipt is attached to the Declaration of Kelsey M. Szamet as Exhibit “6.” (Szamet
11 Decl. ¶153.)

12 **VII. CONCLUSION**

13 Plaintiff respectfully submits that the proposed Settlement Agreement is fair, adequate, reasonable,
14 and in the best interest of the Class Members. Therefore, Plaintiff respectfully requests that the
15 Court (1) grant Final Approval of the Settlement Agreement and all of its terms; (2) award
16 attorneys’ fees and costs in the amount detailed in the concurrently filed Motion for Attorneys’
17 Fees and Costs; (3) award ILYM Group, Inc. claims administration fees of \$20,000.00; and (4)
18 award the Class Representative an enhancement of \$5,000.00; and (5) enter judgment.

19 DATED: March 29, 2024

KINGSLEY & KINGSLEY, APC

20
21 By: 

22 Kelsey M. Szamet
23 Attorneys for Plaintiff TIKOA CARTER and the
24 proposed class
25
26
27
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 March 29, 2024, I served all interested parties in this action the following documents described as: **NOTICE OF MOTION AND MOTION FOR FINAL 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:

O'HAGAN MEYER LLP
Katherine C. Den Bleyker
kdenbleyker@ohaganmeyer.com
550 S. Hope Street, Suite 2400
Los Angeles, CA 90071

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

[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 March 29, 2024, at Woodland Hills, California.



Michelle Tanzer