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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF NAPA**

MAYRA MORALES, an individual, on
behalf of herself and others similarly situated,

PLAINTIFF,

v.

EUROSTAMPA CALIFORNIA LLC; and
DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO. 22CV000095

[Case Assigned for All Purposes to Hon.
Cynthia P. Smith in Dept. A]

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

*[Filed concurrently with Declaration of Liane
Katzenstein Ly and Proposed Order]*

Date: December 6, 2022

Time: 8:30 AM

Dept.: A

Complaint Filed: January 27, 2022

FAC Filed: April 4, 2022

Trial Date: None Set

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

2 **PLEASE TAKE NOTICE** that on December 6, 2022 at 8:30 AM in Department A of the
3 above-entitled court, Plaintiff MAYRA MORALES will move the Court for an Order of
4 Preliminary Approval of the Stipulation for Settlement of Class and Representative Action
5 (“Settlement Agreement” or “Agreement”), a copy of which is filed concurrently herewith.

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

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

12
13 DATED: November 8, 2022

KINGSLEY & KINGSLEY, APC

14
15 By: 

16 Liane Katzenstein Ly
17 Attorneys for Plaintiff MAYRA MORALES and the
18 proposed class
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff MAYRA MORALES (“Plaintiff”) submits this Memorandum of Points and
4 Authorities in support of Plaintiff’s Motion for Preliminary Approval of the Stipulation for
5 Settlement of Class and Representative Action reached between Plaintiff and Defendant
6 Eurostampa California LLC (“Defendant”) (Plaintiff and Defendant together, the “Parties”).

7 By this Motion, Plaintiff requests that the Court:

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

11 (2) Approve the proposed Notice to Class Members, a copy of which is attached to the
12 Settlement Agreement as Exhibit “1,” and direct that the Notice be sent to Class Members in the
13 manner set forth in the Settlement Agreement;

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

17 **II. FACTUAL BACKGROUND**

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

19 Eurostampa California LLC (“Defendant”) operates throughout the United States,
20 providing various printing and publication services for global wine, food, and cosmetic based
21 industries. Plaintiff worked as a customer service representative in Defendant’s Napa, California
22 location during her employment, which was approximately from June 2017 until June 2021.

23 On January 27, 2022, Plaintiff Mayra Morales filed a Complaint against Defendant in the
24 Superior Court of the State of California, County of Napa, Case No. 22CV000095. (Declaration
25 of Liane Katzenstein Ly (“Ly Decl.”) ¶4.) On April 4, 2022, Plaintiff filed a First Amended
26 Complaint. (Ly Decl. ¶5.) In the First Amended Complaint, Plaintiff alleges the following claims
27 against Defendant: (1) Failure to Pay Wages and/or Overtime Under Labor Code §§ 510, 1194,
28 1194.2, and 1199; (2) Failure to Provide Meal Breaks Pursuant to Labor Code §§ 226.7 and 512;

(3) Failure to Provide Rest Breaks Pursuant to Labor Code §§ 226.7; (4) Failure to Reimburse Expenses Pursuant to Labor Code § 2802; (5) Violation of Labor Code § 226(a); (6) Penalties Pursuant to Labor Code § 203; (7) Violation of Business & Professions Code § 17200; and (9) Violation of the Private Attorneys General Act (“PAGA”) (Labor Code §§ 2698, *et seq.*) (“Action”) (*Id.*)

B. The Discovery Process

After the matter was at issue, the Parties engaged in extensive informal discovery, which included the Class Representative’s records and a sample of time and pay records for the Class Members working for Defendant during the liability period. (Ly Decl. ¶6.) Careful review and analysis of these records and sample data allowed Class Counsel to properly assess the claims in this lawsuit and ultimately reach settlement, which Class Counsel believes is adequate, fair, and reasonable, and is appropriate for approval by the Court. (*Id.*)

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. (Ly Decl. ¶7.) Defendant contends, among other things, that, at all times, it has complied with the California Labor Code, and the Industrial Wage Commission Orders. (*Id.*)

Based on their own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement Agreement with Defendant is fair, reasonable and adequate, and in the best interest of the settlement classes in light of all known facts and circumstances, including the risk of significant delay, defenses asserted by Defendant, uncertainties regarding a class and representative action trial on the merits, and numerous potential appellate issues. (Ly Decl. ¶8.) Although Defendant denies any liability, Defendant is agreeing to this Settlement Agreement solely to avoid the cost of litigation. (*Id.*) Accordingly, the Parties and their counsel desire to fully, finally, and forever settle, compromise and discharge all disputes and claims arising from or relating to the Action on the terms set forth here. (*Id.*)

III. THE PROPOSED SETTLEMENT CLASS SHOULD BE CERTIFIED FOR

SETTLEMENT PURPOSES

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

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

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

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

1 A. The Proposed Classes Are Ascertainable and Sufficiently Numerous

2 1. Ascertainability

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

8 Here, Plaintiff maintains that the proposed settlement class is ascertainable for several
9 reasons: First, Defendant has agreed in the Settlement Agreement to provide a class list to the
10 Settlement Administrator containing the full name, last known mailing address, last known
11 telephone number, social security number, and dates of employment for all putative class members
12 after issuance of the preliminary approval order. (Ly Decl. ¶9; Ex. A at § I, ¶d.) Second, the
13 settlement class consist of Defendant’s employees, and Defendant is required to keep records of
14 its employees’ names, home addresses, and social security numbers. (*See* Wage Order 1-2001,
15 subsection 7(c); Ly Decl. ¶10.) Third and finally, Defendant informally produced Plaintiff’s
16 personnel file, sampling time and pay data, and wage statements for Class Members containing
17 class member contact information, which confirms that all Class Member may be readily identified
18 based on Defendant’s records. (Ly Decl. ¶11.)

19 2. Numerosity

20 There is no set number that is required as a matter of law to maintain a class action. (*See*,
21 *e.g., Rose v. City of Hayward, supra*, 126 Cal.App.3d at p. 934.) Here, the proposed settlement
22 class contains, based upon information and belief, approximately 76 employees in the State of
23 California. (Ex. A at § XIX, ¶a.) Therefore, Plaintiff is confident she will be able to establish that
24 the proposed settlement class is ascertainable and sufficiently numerous. (Ly Decl. ¶12.)

25 B. There Is a Well-Defined Community of Interest

26 1. There Are Predominant Questions of Law and Fact

27 In deciding whether questions of common or general interest predominate, a court must
28 determine whether “the issues which may be jointly tried, when compared with those requiring

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

8 Here, Plaintiff argues that there are questions of law and fact common to the proposed
9 settlement class that predominate over any questions affecting only individual Class Members. (Ly
10 Decl. ¶13.) These common questions include:

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

23 (Ly Decl. ¶14.)

24 Plaintiff’s challenge to Defendant’s uniform policies and practices involves common
25 factual and legal issues that are amenable to class treatment. (Ly Decl. ¶15.) As the California
26 Supreme Court has emphasized, “[c]aims alleging that a uniform policy consistently applied to a
27 group of employees is in violation of the wage and hour laws are of the sort routinely, and properly,
28 found suitable for class treatment.” (*Brinker, supra*, 53 Cal.4th at 1033; *see also Bradley v.*

1 *Networkers International, LLC* (2012) 211 Cal.App.4th 1129, 1141-1146.) Moreover, a class of
2 similarly situated employees may be certified based on common questions of fact or law, even if
3 each employee has to establish the amount of his or her damages. (*See Bell v. Farmers Ins. Exch.*
4 (2004) 115 Cal.App.4th 715, 741; *Sav-On Drug Stores, Inc. v. Superior Court*, *supra*, 34 Cal.4th
5 at 340.)

6 Here, Plaintiff maintains that the proposed Class Members suffered the same injuries, in
7 the same manner: (1) Class Members were not properly paid all wages/overtime; (2) Class
8 Members did not receive their meal and rest periods as required; (3) Class Members were not
9 provided accurate itemized wage statements; (4) Class Members were not reimbursed for business-
10 related expenses; (5) Class Members were not paid all wages owed upon termination/resignation.
11 (Ly Decl. ¶16.) Plaintiff alleges that Class Members worked in the same capacity for the same
12 employer and were subject to the same employment policies and practices, the questions of fact
13 and claims regarding the status of these employees are the same for each member of the settlement
14 class. Accordingly, for purposes of settlement, certification for settlement purposes is appropriate.
15 (Ly Decl. ¶17.)

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

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

1 Plaintiff worked as a customer service representative for Defendant between approximately
2 June 2017 through June 2021, earning approximately \$31 per hour. (Ly Decl. ¶18.) Plaintiff
3 alleges that she: (1) worked without being paid all wages and/or overtime; (2) worked without
4 being provided meal/rest periods as required by law; (3) worked without being reimbursed for
5 costs associated with personal cell-phone usage and wi-fi; (4) worked without being provided
6 accurate itemized wage statements that share the same alleged defect of failing to show the total
7 hours worked, all applicable hourly rates in effect during the pay period and the corresponding
8 number of hours worked at each hourly rate, and accurate meal and rest premiums; and (5) worked
9 without being paid all wages due upon separation. She also alleges that she experienced derivative
10 claims for unfair business competition (B&P Code §17200) and Labor Code §2699, *et seq.* (Ly
11 Decl. ¶19.) Plaintiff also contends that her claims are typical of those of the settlement class. (Ly
12 Decl. ¶20.)

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

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

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

1 including having frequent contact with Class Members and working closely with Class Counsel to
2 develop the theories of liability. (Ly Decl. ¶26.) Plaintiff has provided her Counsel with all
3 necessary and pertinent information. She also was informed of and involved in all of the Settlement
4 negotiations. Therefore, Plaintiff believes that she has and will continue to adequately represent
5 the proposed Class Members. (Ly Decl. ¶27.) Plaintiff has provided her Counsel with all necessary
6 and pertinent information.

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

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

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

claims may not be economically viable. (Ly Decl. ¶28.) The only alternative to certification would be to force over 70 employees to join this action, file individual, uniform actions, or abandon their legal rights altogether. (Ly Decl. ¶29.) Plaintiff maintains that this economic reality would result in a windfall for Defendant if this case were not certified. (Ly Decl. ¶30.)

IV. THE PROPOSED SETTLEMENT

A. The Settlement Class

For purposes of settlement, the settlement class is defined as: “all non-exempt employees who are employed or have been employed by Defendant in the State of California who worked one or more pay periods from August 2, 2017 to December 15, 2022, or the date the Court grants preliminary approval of the settlement, whichever comes first.” (“Class Members”) (Ly Decl. ¶31; Ex. A at § I, ¶e.)

The Class Period is August 2, 2017 through December 15, 2022, or the date the Court grants preliminary approval of the settlement, whichever comes first. (“Class Period”) (Ly Decl. ¶32; Ex. A at § I, ¶f.) Based on documents and other information produced by Defendant, there are approximately 76 Class Members and 6,075 workweeks in the Class Period. (Ly Decl. ¶33; Ex. A at § XIX, ¶a.)

B. PAGA Group

For purposes of settlement, the PAGA group is defined as: “all non-exempt employees who are employed or have been employed by Defendant in the State of California who worked one or more pay periods from February 1, 2021 to December 15, 2022, or the date the Court grants preliminary approval of the settlement, whichever comes first.” (“PAGA Group Members”) (Ly Decl. ¶34; Ex. A at § I, ¶s.)

The PAGA Period is February 1, 2021 through December 15, 2022, or the date the Court grants preliminary approval of the settlement, whichever comes first. (“PAGA Period”) (Ly Decl. ¶35; Ex. A at § I, ¶t.) Based on documents and other information produced by Defendant, there are approximately 40 PAGA Group Members and 1,083 pay periods in the PAGA Period. (Ly Decl. ¶36; Ex. A at § XIX, ¶a.)

C. Gross Fund Value

As detailed fully in the Settlement Agreement, the Settlement provides for Defendant to pay a Gross Fund Value of \$155,000.00, which includes the sum of the Individual Settlement Payments, the Class Representative service award, the Class Counsel Award, PAGA Payment, and the Settlement Administration Costs. (Ly Decl. ¶37; Ex. A at § I, ¶h.)

The Net Settlement Amount is the Gross Fund Value, less Class Counsel Award, Class Representative Enhancement, PAGA Payment, and Settlement Administration Costs. (Ly Decl. ¶38; Ex. A at § I, ¶n.)

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

Gross Fund Value:	\$	155,000.00
Less Class Representative Enhancement:	\$	5,000.00
Less Class Counsel's Fees:	\$	51,666.67
Less Class Counsel's Costs:	\$	4,000.00
Less PAGA Payment:	\$	10,000.00
		<i>(\$7,500.00 to the LWDA and \$2,500.00 to remain in the Net Settlement Amount)</i>
<u>Less Settlement Administrator Costs:</u>	<u>\$</u>	<u>12,000.00</u>
Anticipated Net Settlement Amount	\$	74,833.33

(*Ibid.*)

D. Individual Settlement Payments

The Individual Settlement Payment amount of each Class Member is an individualized amount that is based on the number of compensable workweeks worked by the Class Member during the Class Period. (Ex. A at § VI; *see also* Ex. 1 to the Settlement Agreement [Class Notice].) Specifically, Individual Settlement Payments will be paid from the Net Settlement Amount and shall be paid pursuant to the settlement formula as follows: (1) First, using the Class List, the Settlement Administrator will compute the total number of eligible workweeks of all Settlement Class Members collectively during the Class Period; this sum shall be known as the workweek total; (2) Second, the Settlement Administrator will divide the Net Settlement Amount by the workweek total to determine the settlement value for each eligible workweek (the "Workweek Value"); and (3) Third, the Settlement Administrator will multiply the number of eligible workweeks of a Settlement Class Member during the Class Period by the Workweek Value to determine that Class Member's Individual Settlement Payment. (*Id.*)

One-third percent (33.33%) of the Gross Fund Value to each Settlement Class Member shall be deemed payment for settlement of claims for wages and will be subject to appropriate deductions and withholdings calculated and made by the Settlement Administrator. (Ex. A at § XII.) Two-Thirds percent (66.66%) of the Gross Fund Value to each Settlement Class Member shall be deemed payment for settlement of claims for penalties and interest and other non-wage payments not subject to withholdings. (*Id.*)

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

The individual PAGA payment amount of each PAGA Member is an individualized amount that is based on the number of compensable pay periods worked by the PAGA Member during the PAGA Period. (Ex. A at § VII; *see also* Ex. 1 to the Settlement Agreement [Class Notice].) Specifically, individual PAGA payments will be paid from the PAGA Settlement Fund and shall be paid pursuant to the settlement formula as follows: (1) First, using the Class List, the Settlement Administrator will compute the total number of eligible pay periods of all PAGA Group Members collectively during the PAGA Period; this sum shall be known as the pay period total; (2) Second, the Settlement Administrator will divide the PAGA Settlement Fund by the pay period total to determine the settlement value for each eligible pay period (the “Pay Period Value”); and (3) Third, the Settlement Administrator will multiply the number of eligible pay periods of a PAGA Group Member during the PAGA Period by the Pay Period Value to determine that PAGA Member’s individual PAGA payment. (*Id.*)

E. Process for Administering Settlement after Preliminary Approval

The detailed Notice Procedure established by the Settlement Agreement will efficiently and accurately ensure that Notice is provided to the Class Members. (Ex. A at § IX.) The Parties have agreed to use a reputable third-party claims administrator, ILYM Group, Inc., to administer the Settlement Agreement. (Ex. A at § I, ¶dd.)

F. Process for Class Members to Respond to Class Notice

Class Members will have an opportunity to request exclusion from the Settlement Class (i.e. opt out) and to object to the Settlement at the Final Approval Hearing. (Ex. A at § IX, ¶¶h-i.)

1 Class Members who do not opt out of the Settlement Class may object to the Settlement
2 Agreement by mailing written objections to the Settlement Administrator no later than sixty (60)
3 calendar days after the mailing of the Notice Packet. (Ex. A at § IX, ¶i.) This deadline applies
4 notwithstanding any argument regarding alleged late receipt or non-receipt of the Notice Packet.
5 (*Ibid.*) Any Class Member who fails to timely mail written objections in this manner shall be
6 deemed to have waived any objections and shall be foreclosed from making any objection to the
7 Settlement Agreement and from filing any appeal from any order granting final approval issued
8 by the Court. (*Ibid.*)

9 Class Member who timely and validly return a Request for Exclusion from the Settlement
10 Agreement shall have no right to object and shall be foreclosed from making any objection to the
11 Settlement Agreement. (*Ibid.*) The Settlement Administrator shall promptly provide any such
12 objections to Class Counsel and Defendant's Counsel, who in turn shall file them with the Court
13 in connection with the final approval motion. (*Ibid.*)

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

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

24 G. The Release

25 The Released Claims are defined as: "any and all claims, debts, liabilities, demands,
26 obligations, penalties, premium pay, guarantees, costs, expenses, attorney's fees, damages, actions
27 or causes of action of whatever kind or nature, whether known or unknown, contingent or accrued,
28 under any legal theory under federal and state law that are alleged in the Action, or could have

1 been alleged in the Action based on the facts alleged therein, for any alleged failure to pay all
2 wages due (including minimum wage and overtime wages), regular rate calculations, failure to pay
3 for all hours worked failure to provide meal and rest periods, short/late meal and rest periods,
4 failure to relieve of all duties during meal and rest periods, failure to timely pay wages and final
5 wages, failure to properly calculate the regular rate of pay, expense reimbursement claims, failure
6 to furnish accurate wage statements including claims derivative and/or related to these claims,
7 liquidated damages, record-keeping violations, failure to pay waiting time penalties that occurred
8 during the Class Period. This Release shall include all claims and theories that are alleged in the
9 Action, or could have been alleged in the Action based on the facts alleged therein arising under
10 the California Labor Code, wage orders, and applicable regulations, including Labor Code
11 Sections 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1194.2, 1199, and 2802 as well as claims
12 under Business and Professions Code section 17200 *et seq.*, and/or Labor Code Sections 2698 *et*
13 *seq.* based on alleged violations of the above Labor Code provisions. The release of claims shall
14 include a Civil Code Section 1542 release as to the released claims only. The release shall
15 expressly exclude all other claims, including claims for vested benefits under ERISA or Taft-
16 Hartley plans, wrongful termination, unemployment insurance, disability insurance, Social
17 Security, workers' compensation, and class claims outside of the class period.” (Ex. A at § I, ¶z.)

18 **V. ARGUMENT**

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

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

27 In *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal. App. 4th 399,
28 409, the court clarified that a Kullar showing does not require the parties to submit the outer

1 reaches of maximum possible recovery without taking into account the actual risks of certification,
2 decertification, dispositive motions, and trial, so long as there is a record which allows “an
3 understanding of the amount that is in controversy and the realistic range of outcomes of the
4 litigation.” *Munoz*, 186 Cal. App. 4th at 409.

5 The proposed settlement satisfies each of these factors. Class Counsel conducted extensive
6 informal discovery before entering into meaningful settlement negotiations in this matter. (*Id* at
7 Ly Decl. ¶¶39-40.) This discovery permitted Class Counsel to fairly evaluate the strength of the
8 case and the risks associated with ongoing litigation. (Ly Decl. ¶41.) Class Counsel is experienced
9 in handling wage and hour class actions and, after weighing all of the following factors, supports
10 this Settlement Agreement. (Ly Decl. ¶42.)

11 1. The Strength of Plaintiff’s Case

12 a. The Risks Associated with Wage/Overtime Claim

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

25 Plaintiff contends that Defendant maintained an unlawful policy of automatically
26 deducting (“auto-deduct”) for meal periods regardless of whether Defendant actually provided the
27 opportunity to take a compliant meal period. (Ly Decl. ¶43.) This auto-deduct policy resulted in
28 the unlawful withholding of wages and/or overtime for time actually worked. (Ly Decl. ¶44.) As

described, Defendant fails to pay Plaintiff and the Class Members for each and every hour worked.

Defendant has argued that despite the auto-deduct policy, employees were actually provided meal periods. (Ly Decl. ¶45.) If true, the auto-deduct wage claim is worth nothing. (Ly Decl. ¶46.)

b. The Risks Associated with the Meal Break Claim

California law requires employers to provide employees a duty-free, uninterrupted thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and it must be provided within the first five (5) hours the employee works. Lab. Code 512; IWC Wage Order 1-2001, §11(A) and (C); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Employers must also provide employees with a second duty-free, uninterrupted thirty (30) minute meal period when an employee works more than (10) hours in a workday, and it must be provided before the end of the 10th hour of work. *Ibid.* Meal periods can be waived, but only under the following circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more than six (6) hours, the required meal period may be waived by mutual consent of the employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived. *Ibid.*

Employers covered by Industrial Welfare Commission ("IWC") Wage Order 1-2001 have an obligation to both (1) relieve their employees for at least one meal period for shifts over five hours (see above), and (2) to record having done so. If the employer fails to properly record a valid meal period, it is presumed that no meal period was provided. IWC Wage Order 1-2001, §7(A)(3) ("Meal periods . . . shall also be recorded"); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053, citing §7(A)(3) ("If an employer's records show no meal period for a given shift over five hours, a rebuttable presumption arises that the employee was not relieved of duty and no meal period was provided").

Employers must pay employees an additional hour of wages at the employees' regular rate of pay for each missed or improper (e.g., less than 30 minutes, interrupted meal period, first meal

1 period provided after 5 hours, second meal period provided after 10 hours) meal period. Lab. Code
2 §226.7; IWC Wage Order 1-2001, §11(B) (“If an employer fails to provide an employee a meal
3 period in accordance with the applicable provisions of this order, the employer shall pay the
4 employee one (1) hour of pay at the employee’s regular rate of compensation for each workday
5 that the meal period is not provided”); *Brinker, supra*, 53 Cal.4th 1004.

6 Plaintiff and the Class Members consistently worked shifts over five (5) hours. (Ly Decl.
7 ¶47.) Plaintiff contends that Defendant failed to provide Plaintiff and the Class Members with
8 proper meal periods of not less than thirty (30) minutes as required by the Labor Code during the
9 relevant time period.

10 Indeed, due to the hectic nature of their job, Plaintiff was rarely able to ever take a meal
11 break. (Ly Decl. ¶48.) Because Plaintiff and Class Members were required to communicate with
12 and assist customers, answer calls, and schedule appointments for customers throughout their
13 shifts, they had no time to take lawful uninterrupted meal periods if they were to complete their
14 required assignments. (*Id.*) If Plaintiff or Class Members ever failed to complete their assignments,
15 their supervisors would question why their work was incomplete and they would be subject to
16 potential discipline up to and including termination. Thus, Plaintiff and Class Members were
17 routinely discouraged and prevented from taking uninterrupted meal periods in order to complete
18 their assignments to meet the high customer demand and workload and avoid the imposition of
19 potential disciplinary measures. (Ly Decl. ¶49.)

20 Further, for one year of the Class Period, Defendant violated California’s meal period laws
21 by automatically recording in every employee’s payroll records that a meal break was taken and
22 deducting one half-hour of time from each such employee’s hours worked for a meal break taken,
23 whether a meal break was provided or not. (Ly Decl. ¶50.) Defendant’s “auto-deduct” policy was
24 unlawful and did not account for whether the meal periods were actually provided, whether
25 Plaintiff and the Class Members were able to take their meal periods at all, whether they were able
26 to take timely meal periods, whether they took meal periods of less than sixty (60) minutes, and/or
27 whether they were free from interruption for the full thirty (30) minutes.

28 Defendant also violated California’s meal period laws by not paying Plaintiff and

1 aggrieved employees an extra hour of wages for each missed or improper meal period. (Ly Decl.
2 ¶51.)

3 Defendant argued that the employees did receive their meal periods, and presented
4 evidence that other employees would testify to that fact. (Ly Decl. ¶52.) Additionally, Defendant
5 maintained valid meal and rest period policies. (Ly Decl. ¶53.) This presented a risk on the meal
6 period claim that Plaintiff considered when evaluating this settlement.

7 c. The Risks Associated with the Rest Break Claim

8 Labor Code section 226.7, subdivision (c), requires an employer to pay an additional hour
9 of compensation for each workday the employer fails to provide a rest period according to law.
10 Employees are entitled to a paid ten (10) minute rest break for every four (4) hours worked, or
11 major fraction thereof. (Cal. Code Regs., tit. 8, § 11010, subd. 12(A).)

12 Plaintiff and the Class Members' rest period claims arise from a common course of conduct
13 wherein Defendant did not provide employees with the opportunity to take a second 10-minute
14 rest break for shifts between 6-8 hours, or a third 10-min rest break for shifts between 10-12 hours,
15 in compliance with California law. The California Supreme Court has held: "Employees are
16 entitled to 10 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for
17 shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14
18 hours, and so on." (*Brinker Rest. Corp. v. Superior Court, supra*, 53 Cal.4th at 1029.) In an eight-
19 hour work day, being denied the two paid rest breaks in a day is "essentially perform[ing] 20
20 minutes of 'free' work." (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094,
21 1104.)

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

24 An employer is required to authorize and permit the amount of rest break
25 time called for under the wage order for its industry. If it does not—if, for
26 example, it adopts a uniform policy authorizing and permitting only one rest
27 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.

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

1 Employers must authorize and permit a net ten-minute paid rest period for every four hours,
2 or major fraction thereof, of work for its employees. If an employer does not, then the employer
3 must pay the employee one hour of pay at the employee's regular rate of pay for each workday
4 that the rest period is not provided. (Cal. Code Regs., tit. 8, § 11010, subd. 12(B).) Plaintiff and
5 the Class Members consistently worked shifts of 6+ hours and were not authorized or permitted to
6 take second or third rest breaks. (Ly Decl. ¶54.) Therefore, Defendant violated Labor Code §226.7
7 by failing to provide proper rest periods and pay Plaintiff and the Class Members one hour of
8 compensation at their regular rate for rest period premium wages.

9 Defendant again raised the defense that employees received their rest breaks and presented
10 evidence that employees would testify as such. (Ly Decl. ¶55.) Given that the rest period policy
11 was accurate, Plaintiff considered this a viable risk. (Ly Decl. ¶56.)

12 d. The Risks Associated with the Reimbursement Claim

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

16 Plaintiff contends that Defendant has failed to reimburse her and the Class Members for
17 business-related expenses, including for use of their cell phone in executing Plaintiff and Class
18 Members' duties under Defendant's employ. (Ly Decl. ¶57.) Plaintiff and Class Members used
19 their cell phones daily to communicate with their supervisors about their job assignments and work
20 schedules. Pursuant to Labor Code section 2802, Defendant is required to reimburse Plaintiff and
21 the Class Members for all out-of-pocket expenses incurred by them in the performance of their job
22 duties. At minimum, they should be reimbursed for a proportion of their cell phone bills. (Ly Decl.
23 ¶58.)

24 One risk that Plaintiff considered was the fact that not all Class Members used their cell
25 phones for every pay period. (Ly Decl. ¶59.) This raised certification issues and meant that the
26 damages were relatively small. (Ly Decl. ¶60.)

27 e. The Risks Associated with the Inaccurate Wage Statement Claim

28 California Labor Code §226(a) requires Defendant to provide its employees with an

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

9 Plaintiff contends that Defendant issued wage statements that undeniably violate Labor
10 Code §§ 226(a)(2) and (9). Labor Code § 226(a) specifically requires that the employer shall,
11 semimonthly or at the time of each payment of wages, furnish each of his or her employees, an
12 accurate itemized statement in writing showing all applicable hourly rates in effect during the pay
13 period and the corresponding number of hours worked at each hourly rate by the employee. As a
14 result of the claims alleged above, Defendant violated this statute.

15 As this is a derivative claim, the same risks present for the above claims were present for
16 this claim. (Ly Decl. ¶61.)

17 f. The Risks Associated with the Waiting Time Penalty Claim

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

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

23 Under Labor Code § 203, a “‘willful’ failure to pay wages ... occurs when an employer
24 intentionally fails to pay wages to an employee when those wages are due.” Cal. Code Regs., tit.
25 8, § 13520; *see also Diaz v. Grill Concepts Services, Inc.* (2018) 23 Cal.App.5th 859 (“willful”
26 simply means that “the employer intentionally failed or refused to perform an act which was
27 required to be done[.] Willful ... does not necessarily imply anything blameable, or any malice or
28 wrong toward the other party”).

1 Here, Plaintiff contends that Defendant failed to properly pay overtime for any work in
2 excess of eight (8) hours per day and/or any work in excess of forty (40) hours per week. (Ly
3 Decl. ¶62.) The risk analysis for the section 203 claim flows from the risk analysis for the
4 underlying wage claim discussed above. (Ly Decl. ¶63.) If Defendant could prove, as it contends,
5 that class members were properly classified and paid for all hours worked, there would be no
6 recovery of wages and no waiting time penalties that flow therefrom. (Ly Decl. ¶64.)

7 Plaintiff also alleged that Defendant owes waiting time penalties by not paying former
8 alleged employees all wages owed and all premium payments for non-compliant meal or rest
9 periods. Labor Code § 226.7. Pursuant to *Murphy v. Kenneth Cole Productions, Inc.* (2002) 40
10 Cal.4th 1094, 1120, Plaintiff contended that break premium payments constitute “wages” under
11 Labor Code § 203. (“We hold that section 226.7’s plain language, the administrative and
12 legislative history, and the compensatory purpose of the remedy compel the conclusion that the
13 ‘additional hour of pay’ is a premium wage, not a penalty”). (Ly Decl. ¶65.)

14 Further, to establish liability for waiting time penalties, Plaintiff would have to establish
15 not only that the underlying violations occurred, but also that Defendant’s conduct was “willful.”
16 Labor Code § 203.

17 Plaintiff factored in the risk of establishing that any violation was “willful” and the fact
18 that this claim is derivative. (Ly Decl. ¶66.)

19 g. The Risks Associated with the PAGA Claim

20 California’s Private Attorneys General Act (“PAGA”), Labor Code § 2698, *et seq.*, permits
21 private litigants to recover civil penalties for violations of the Labor Code. PAGA provides that
22 plaintiffs may recover previously established civil penalties (section 2699(a)) or, if none were
23 established, plaintiffs may recover default penalties provided in section 2699(f) in the amount of
24 \$100 per employee per pay period for the initial violation and \$200 for subsequent violations.

25 The Parties discounted the PAGA claim for multiple reasons. First, the aggrieved
26 employees’ PAGA claims are derivative of all the foregoing class claims. Second, a court has
27 discretion to award less than the maximum penalty. Labor Code § 2699(e)(2) (“a court may award
28 a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts

1 and circumstances of the particular case, to do otherwise would result in an award that is unjust,
2 arbitrary and oppressive, or confiscatory”). *See e.g., Carrington v. Starbucks Corporation* (2018)
3 30 Cal.App.5th 504, 241 Cal.Rptr.3d 647, 669 (affirming award of 10% of maximum PAGA
4 penalty). Finally, the settlement class is compensated for these violations in the proposed
5 Settlement Agreement, and thus any PAGA recovery for these same violations would be
6 duplicative. As such, the Settlement Agreement’s contemplated PAGA payment of \$10,000.00 is
7 appropriate. (Ly Decl. ¶67.) *See Nordstrom Commissions Cases*, 186 Cal.App.4th 576, 589 (2010)
8 (affirming settlement allocating \$0 of \$6.4 million settlement to PAGA penalties).

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

10 There is significant expense associated with the class certification process, which the
11 Parties can avoid by entering into the contemplated Settlement Agreement now. (Ly Decl. ¶68.)
12 If the Court did eventually certify class, trial of a case involving approximately 76 Class Members
13 would require the retention of expensive expert witnesses, the accrual of extensive litigation costs,
14 and a significant time overlay by the parties. (Ly Decl. ¶69.) Moreover, given the complexity and
15 unsettled nature of the issues in this case it is likely that any outcome at trial would have resulted
16 in a lengthy and costly appeal. (Ly Decl. ¶70.) An appeal would result in further delay for the
17 Class Members who are waiting for a resolution in this matter. (*Id.*)

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

19 This case has not been certified to be tried as a class action. (Ly Decl. ¶71.) While Plaintiff
20 believes there is strong evidence to support certification of several possible subclasses,
21 certification is always hard fought and subject to judicial discretion. Moreover, in class actions,
22 decertification is always a possibility. (*Id.*) In attempting to certify a class, the parties would need
23 to conduct multiple depositions, including of the Class Representative and of several person(s)
24 most knowledgeable regarding Defendant’s policies. (*Id.*) There is a risk for both sides as to what
25 these depositions will reveal and whether they will support class certification to the extent
26 expected. (*Id.*)

27 4. The Amount Offered in Settlement

28 It was very difficult for the Parties to reach this Settlement of \$155,000.00. (Ly Decl. ¶72.)

1 This Settlement is the result of adversarial, non-collusive, and arms-length negotiations. (Ly Decl.
2 ¶73.) The Parties arrived at it after extensive investigation and discovery, careful evaluation of
3 the law, risks, and all information substantiating the amount of penalties reasonably likely to be
4 awarded to the class were the trier of fact to find Defendant liable. (*Id.*)

5 a. Plaintiff's Assessment of Defendant's Maximum Exposure

6 Plaintiff assessed full value of the Wage/Overtime claim, without any discount, at
7 approximately \$43,761.87. (Ly Decl. ¶74.) This calculation assumed that Class Members had a
8 thirty minute meal period deducted from their pay 4.5 days per week for one year of the Class
9 Period. (Ly Decl. ¶75.) Plaintiff used an hourly average rate of \$24.84. (Ly Decl. ¶76.)

10 The full value of the Meal Period claim, without any discount, was approximately
11 \$135,924.48. (Ly Decl. ¶77.) Plaintiff assumed one missed meal period per week. (Ly Decl. ¶78.)
12 For the reasons above, Plaintiff determined that accepting a discount of the full amount was
13 appropriate. (Ly Decl. ¶79.)

14 The full value of the Rest Period claim, without any discount, was approximately
15 \$135,924.48. (Ly Decl. ¶80.) Plaintiff assumed one missed rest period per week. (Ly Decl. ¶81.)
16 For the reasons above, Plaintiff determined that accepting a discount of the full amount was
17 appropriate. (Ly Decl. ¶82.)

18 With regard to the Reimbursement Claim analysis, Plaintiff believed that it was reasonable
19 to value the potential reimbursement at approximately \$25 per month (approximately \$6.25 per
20 week, per employee, for reimbursement of personal cell phone usage. This brought the damages
21 for this claim to \$34,000.00. (Ly Decl. ¶83.)

22 Plaintiff valued the Wage Statement Claim, without discount, at \$76,300.00. (Ly Decl.
23 ¶84.) Plaintiff used \$100 for each wage statement issued. (Ly Decl. ¶85.) This figure is overstated
24 because Labor Code §226(e)(1) uses \$50 for the initial pay period (not \$100) and puts a \$4,000
25 cap on wage statement penalties per employee. (Ly Decl. ¶86.) Due to the risk discussed above,
26 Plaintiff determined that a steep discount of this claim was fair for settlement purposes. (Ly Decl.
27 ¶87.)

28 Plaintiff valued the Waiting Time Claim, tied to the Wage/Overtime claim, at \$283,464.00.

(Ly Decl. ¶88.) Considering the derivate nature of Labor Code §203 and the dispute over whether class members were owed any wages, Plaintiff determined that accepting a discount on this claim was appropriate. (Ly Decl. ¶89.)

Finally, Plaintiff calculated the value of the PAGA claim at \$78,300 for Class Members (using \$100 per pay period). (Ly Decl. ¶90.) The main risk taken into account with PAGA is the discretionary nature of the penalty award. (Ly Decl. ¶91.) A judge can award the statutory maximum of \$100 for the initial violation and \$200 thereafter or – in theory – one cent per wage statement. (Ly Decl. ¶92.) While there is a dearth of available authority, in Plaintiff’s view, were she to succeed on any of the underlying Labor Code violations, it is not likely that a Judge would also award a large amount of penalties of top of any damages recovered. (Ly Decl. ¶93.)

Per Plaintiff’s assessment, the maximum potential value of all of Plaintiff’s and the Class Members’ claims was approximately \$742,674.83. (Ly Decl. ¶94.) However, as a result of the forgoing risks on the merits, Class Counsel believes the Gross Fund Value of \$155,000.00 is fair and reasonable. (Ly Decl. ¶95.)

5. The Experience and Views of Counsel

Finally, counsel’s experience and success in similar class actions also weigh in favor of preliminary approval. *See Wershba, supra*, 91 Cal.App.4th at 245. Kingsley & Kingsley, APC is very experienced in prosecuting complex employment litigation, and the firm has focused its practice since the year 2000 on complex wage, hour, and working condition violations. (Ly Decl. ¶¶96-97.) The firm is well versed in class action litigation and has diligently and aggressively pursued this action. (*Id.*) Kingsley & Kingsley, APC currently serves as Class Counsel for dozens of pending class action lawsuits in Northern, Central, and Southern California. (*Id.*) A list of representative cases that Kingsley & Kingsley, APC has handled is included in the accompanying declaration of Liane Katzenstein Ly. (*Id.*) After factoring in the risks explained above, Class Counsel believes that the proposed settlement is fair and reasonable. (Ly Decl. ¶98.)

6. The Proposed Plan of Allocation Is Fair and Reasonable

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

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

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

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

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

27 Here, the Notice clearly explains the proposed Settlement Agreement and the options to
28 opt out of the Settlement or object to it at the Final Approval Hearing. (Ex. A at § IX, ¶¶h-i; see

1 *also* Ex. 1 to the Settlement Agreement at pp. 1 and 3 [Class Notice].) In short, the Court should
2 approve the proposed Class Notice because it describes the proposed settlement with enough
3 specificity to allow Class Members to make an informed choice regarding whether to participate.

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

5 The Class Representative is entitled to an enhancement for her valiant effort and time
6 expended in this matter. (Ly Decl. ¶99.) The time spent by Mayra Morales is significant and
7 includes researching and retaining competent counsel; providing information to Class Counsel
8 regarding the nature of the work at Defendant; compiling relevant documents; working closely
9 with Class Counsel to develop the theories of liability and martial relevant evidence; regularly
10 discussing the status of the case with Class Counsel; discussing the case via telephone with many
11 Class Members; and responding promptly to Class Counsel’s communications regarding
12 settlement. (*Id.*) Thus, in addition to the sums paid to Class Members, Plaintiff requests a proposed
13 litigation enhancement in the amount of \$5,000.00, to be paid from the Gross Fund Value. (Ex. A
14 at § I, ¶g.) As set forth in the Settlement Agreement, Plaintiff will also be entering into a general
15 release of liability pursuant to Civil Code Section 1542. (Ly Decl. ¶100; *Id.*)

16 Class Counsel considers this to be a fair and reasonable enhancement. (Ly Decl. ¶101.)
17 The enhancement takes into consideration the time, effort, and expense incurred by Plaintiff in
18 coming forward to litigate this matter on behalf of all Class Members. (*Id.*) Plaintiff will provide
19 a detailed declaration with the Final Approval Motion detailing her participation and further
20 justification for the enhancement. (*Id.*)

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

22 As indicated on the Proof of Service, Plaintiff’s Motion for Approval of Class Action
23 Settlement (“Motion”) will be concurrently uploaded to the Labor and Workforce Development
24 Agency’s (“LWDA”) website on the date this Motion is filed as required by statute. Proof of
25 submission of Plaintiff’s Motion, all related documents, and copy of the email from the LWDA
26 confirming receipt is attached to the Declaration of Liane Katzenstein Ly as Exhibit “B.” (Ly Decl.
27 ¶102.)

28 **VIII. CONCLUSION**

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

8
9 DATED: November 9, 2022

KINGSLEY & KINGSLEY, APC

10
11 By: 

12 Liane Katzenstein Ly
13 Attorneys for Plaintiff MAYRA MORALES and the
14 proposed class
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1 (PROOF OF SERVICE)

2 [CCP 1013(a)(3)]

3 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

4 I am employed in the County of Los Angeles, State of California. I am over the age of 18
5 years and not a party to the within action. My business address is 16133 Ventura Boulevard, Suite
6 1200, Encino, California 91436.

7 On November 9, 2022, I served all interested parties in this action the following
8 documents described as: **NOTICE OF MOTION AND MOTION FOR PRELIMINARY
9 APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND
10 AUTHORITIES IN SUPPORT THEREOF** by placing a true copy thereof enclosed in a sealed
11 envelope addressed as follows:

12 William Zev Abramson, Esq.
13 **ABRAMSON LABOR GROUP**
14 3580 Wilshire Blvd., Ste 1260
15 Los Angeles, CA 90010-2513
16 wza@abramsonlabor.com

17 Andrew M. McNaught, Esq.
18 Robin E. Devaux, Esq.
19 **SEYFARTH SHAW LLP**
20 560 Mission Street., Ste 3100
21 San Francisco, CA 94105-2930
22 amcnaught@seyfarth.com
23 rdevaux@seyfarth.com

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

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

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

Executed on November 9, 2022, at Encino, California.



Michelle Tanzer