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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

JEFFREY HUANG QIXIAN, an individual, on behalf of himself, others similarly situated, and on behalf of the State of California, as a private attorney general,

PLAINTIFF,

v.

GITIBIN & ASSOCIATES, INC., DBA GO RENTALS; and DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO. 22CV020833

[Case Assigned for All Purposes to Hon. Somnath Raj Chatterjee in Dept. 21]

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 Eric B. Kingsley, Jeffrey Huang Qixian and Taylor Mitzner, Proposed Order, and Judgment]

Date: September 12, 2025
Time: 2:30 P.M.
Dept.: 21

Complaint Filed: October 31, 2022
Trial Date: None Set

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on September 12, 2025 at 2:30 P.M. in Department 21 of the above-entitled court, Plaintiff Jeffrey Huang Qixian ("Plaintiff") will, and hereby does, move the Court for an Order of Final Approval of the Class Settlement in this case. Plaintiff moves the Court for an order:

1. Granting final approval of the settlement in the case pursuant to the Joint Stipulation of Class Action and PAGA Settlement and Release ("Settlement"), a copy of which is attached to the concurrently-filed Declaration of Eric B. Kingsley as Exhibit "1";

2. Affirming Kingsley Szamet Employment Lawyers as Class Counsel;

3. Affirming Jeffrey Huang Qixian as Plaintiff and awarding an enhancement award of $10,000.00;

4. Awarding Phoenix Settlement Administrators claims administration fees of 10,000.00 for its services as Claims Administrator; and,

5. Entering judgment.

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

The Motion will be based on this Notice of Motion, the attached Memorandum of Points and Authorities, the Declarations of Eric B. Kingsley, Jeffrey Huang Qixian, Taylor Mitzner, all other papers and records on file in this action, and on such oral and documentary evidence as may be presented at the hearing on this Motion.

DATED: August 15, 2025

KINGSLEY SZAMET EMPLOYMENT LAWYERS

By: ______________________________
Eric B. Kingsley
Attorneys for Plaintiff JEFFREY HUANG QIXIAN and the proposed class

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Cases

State Cases

State Statutes

State Regulations

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Jeffrey Huang Qixian ("Plaintiff") submits this Motion for Final Approval of Class Settlement and requests that the Court:

1. Grant final approval of the settlement in this case pursuant to the Joint Stipulation of Class Action and PAGA Settlement and Release ("Settlement"), a copy of which is attached to the concurrently-filed Declaration of Eric B. Kingsley as Exhibit "1";

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

3. Award Phoenix Settlement Administrators claims administration fees of $10,000.00 for its services as Claims Administrator;

4. Affirm named Plaintiff Jeffrey Huang Qixian as Plaintiff and award a cumulative Plaintiff payment of $10,000.00; and

5. Enter judgment.

II. FACTUAL BACKGROUND

A. Litigation Overview and Procedural History

On October 31, 2022, Plaintiff filed the operative Class and Representative Action Complaint alleging causes of action for: (1) failure to pay wages and/or overtime; (2) failure to provide lawful meal breaks; (3) failure to provide accurate itemized wage statements; (4) waiting time penalties; (5) unfair business practices; and (6) penalties pursuant to Labor Code § 2699 the Private Attorneys General Act ("PAGA") for the above-mentioned violations. (Declaration of Eric B. Kingsley ("Kingsley Decl.") ¶5.)

On August 24, 2022, Plaintiff sent a notice letter, pursuant to Labor Code § 2699 (to the Labor Workforce Development Agency ("LWDA") regarding his intent to seek civil penalties for the same Labor Code violations above, under Labor Code § 2699, et seq. (Kingsley Decl. ¶6.)

Defendant provided Plaintiff's counsel with a copy of an arbitration agreement signed by Plaintiff during his employment with Defendant. (Kingsley Decl. ¶7.) On December 7, 2022, Defendant filed a motion to Compel Arbitration, which was denied by the Court on February 21,

2023. (Kingsley Decl. ¶8.)

On June 26, 2024, as a part of the settlement, Plaintiff submitted an amended notice letter to the LWDA and sent to Defendants, as proscribed by the Code, adding an additional claim for Defendant's alleged failure to properly pay sick pay in violation of Labor Code §§ 245.5 and 246. (Ly Decl. ¶9.) On September 11, 2024, Plaintiff filed a First Amended Class and Representative Action Complaint ("FAC") adding a claim for failure to properly pay sick pay in violation of Labor Code §§ 245.5 and 246. (Kingsley Decl. ¶10.) The FAC is the Operative Complaint in the Action. (Hereafter, the "Action"). (*Id.*)

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

The Parties briefly engaged in formal discovery but focused their efforts on resolving this case through early mediation. (Kingsley Decl. ¶11.) Plaintiff served his first set of Special Interrogatories and Requests for Production of Documents on May 18, 2023, and Defendant served its objections and responses to this discovery on July 12, 2023. (Kingsley Decl. ¶12.)

On March 13, 2024, the Parties participated in an all-day mediation presided over by Hon. Terry A. Green (Ret.) which led to this Agreement to settle the Action. (Kingsley Decl. ¶13.) For purposes of mediation, Defendant produced time and pay data as well as employee files. (Kingsley Decl. ¶14.) As such, the Parties engaged in extensive informal discovery that allowed the Parties to fully investigate the claims at issue and understand their strengths and weakness. (Kingsley Decl. ¶15.) Plaintiffs' 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*").

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. (Kingsley Decl. ¶16.) 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 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. (Kingsley Decl. ¶17.) 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. (Kingsley Decl. ¶18.)

C. Preliminary Approval

On February 11, 2025, the Court issued an Order preliminarily approving the settlement in this case, approving the proposed Class Notice, ordering that the Claims Administrator send notice to the Settlement Class, and setting a date for the Final Approval and Fairness Hearing. (Kingsley Decl. ¶19.)

III. THE PRELIMINARILY APPROVED SETTLEMENT

A. The Settlement Class

For purposes of Settlement, the settlement class is defined as: "all non-exempt, hourly workers who were employed by Gitibin & Associates, Inc, dba Go Rentals in California at any time from October 31, 2018 through and including the Preliminary Approval Date, or May 13, 2024, whichever comes earlier, and who executed the same arbitration agreement as Plaintiff or did not execute an arbitration agreement." ("Settlement Class Members" or "Settlement Class") (Kingsley Decl. ¶20; Ex. 1 at ¶1.45.) The "Settlement Class Members" specifically excludes any employee who previously brought a lawsuit against Gitibin & Associates, Inc., dba Go Rentals and which subsequently resulted in settlement. (*Id.*) The Settlement Class shall not include any person who submits a timely and valid Request for Exclusion as provided in this Agreement, or any person who previously released the Released Claims under a separate agreement. (Kingsley Decl. ¶21; Ex. 1 at ¶1.45.)

The Class Period is October 31, 2018, through May 31, 2024. (Kingsley Decl. ¶22; Ex. 1 at ¶1.8.) As of March 13, 2024 (the date of mediation), and based on documents and other information produced by Defendant, there are approximately 248 Settlement Class Members. (Kingsley Decl. ¶23.)

The final Settlement Class contained 251 individuals. (Mitzner Decl. ¶3.)

B. The Aggrieved Employees

For purposes of Settlement, the Aggrieved Employees are defined as: "any Settlement Class Member employed in California at any time from August 24, 2021 through and including the Preliminary Approval Date, or May 13, 2024, whichever comes earlier." (Kingsley Decl. ¶24; Ex. 1 at ¶1.28.)

The Aggrieved Employee Period is August 24, 2021, through May 13, 2024. (Kingsley Decl. ¶25; Ex. 1 at ¶1.9.)

C. Settlement Payments

As detailed fully in the Settlement, he Settlement provides for Defendant to pay a Gross Settlement Amount of $500,000.00, which includes the sum of the Individual Settlement Payments, the Class Representative Enhancement award, the Class Counsel Award, PAGA Allocation, and the Claims Administrator Costs. (Kingsley Decl. ¶26; Ex. 1 at ¶1.22.)

The Net Settlement Amount is the Gross Settlement Amount, less Class Counsel Award, Class Counsel Costs, Class Representative Enhancement Award, PAGA Allocation, and Claims Administrator Costs. (Kingsley Decl. ¶27; Ex. 1 at ¶1.29.)

Plaintiff now requests final approval of the allocation of the Gross Settlement Amount to determine the Net Settlement Amount for distribution to the Settlement Class as follows:

Gross Settlement Amount:	$	500,000.00
Attorneys' Fees (1/3):	$	166,666.66
Requested Case Costs:	$	20,000.00
Claims Administration:	$	10,000.00
PAGA Penalties:	$	10,000.00 *($7,500.00 to the LWDA; $2,500.00 to remain in the* Net Settlement Amount*)*
Named Plaintiff Enhancement:	$	10,000.00
Net Settlement Amount:	**$**	283,333.34

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D. Individual Settlement Payments

The amount of each Settlement Class Member's Individual Settlement Payment is determined on a pro rata basis based on the number of workweeks worked by each Participating Settlement Class Member. Defendant will calculate the total Compensable Work Weeks for all Settlement Class Member. The respective Compensable Work Weeks for each Settlement Class Member will be divided by the total Compensable Work Weeks for all Settlement Class Members, resulting in the Payment Ration for each Settlement Class Member. Each Settlement Class Member's Payment Ratio is then multiplied by the Net Settlement Amount to determine his or her estimated Individual Settlement Payment. (Kingsley Decl. ¶28; Settlement, ¶3.24.)

Based on these calculations, the average potential recovery is $1,128.82 per Settlement Class Member. (Mitzner Decl. ¶14.)

E. Payment Formula

Pursuant to the Payment Formula, overtime and meal period violations are weighted more heavily than putative Reimbursement Class Members, and waiting time penalties are weighted the most. (Kingsley Decl. ¶29; Ex. 1 at ¶3.22.) This allocation is because the wage claims and the waiting time penalties were the driving force for the settlement. (*Id*.)

F. Class Notice

The Court approved the proposed Class Notice, and directed the mailing of the Notice by first-class mail to Settlement Class Members in accordance with the proposed implementation schedule. (Kingsley Decl. ¶30.) The procedures for giving notice to the Settlement Class Members, as set forth in the Settlement and Plaintiffs' Motion for Preliminary Approval and approved by the Court, have been fully and properly carried out. (Mitzner Decl. ¶2.)

To date, Phoenix Settlement Administrators received zero (0) request to be excluded ("opt-outs") from the proposed Settlement and zero (0) objections. (Mitzner Decl. ¶¶10- 11.)

G. Check Mailed Settlement – No Reversion

The Parties agreed to, and the Court preliminary approved, a checks-mailed settlement without the possibility of reversion of settlement funds to Defendant. Under the Settlement, every Settlement Class Member will receive a settlement check and Settlement Class Members do not need to submit a claim in order to receive a settlement check. Any funds that remain uncashed after 180 days shall be turned over by the Claims Administrator, with information for each Settlement Class Member who failed to timely cash his/her settlement check, to Bet Tzedek. (Ex. 1 at § 3, ¶3.27.)

IV. THE COURT SHOULD ORDER FINAL APPROVAL OF THE SETTLEMENT

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

A. <u>The Settlement is Entitled to a Presumption of Fairness</u>

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

As to the first *Dunk* factor, this settlement is the result of adversarial, non-collusive, and arm's-length negotiations overseen by an experienced mediator. All settlement discussions were made by experienced and informed counsel, who believe that this settlement represents a favorable resolution for the Settlement Class Members. (Kingsley Decl. ¶31.) The settlement negotiations have been, at all times, adversarial and non-collusive, with the aid of a mediator, and no self-dealing or other type of misconduct by either side has taken place. (Kingsley Decl. ¶32.)

Second, the Parties engaged in formal and informal discovery that permitted Class Counsel to fairly evaluate the strength of the case and the risks associated with ongoing litigation. (Kingsley Decl. ¶33.) In addition, Defendant produced additional data and documents informally for purposes of settlement. (Id.) This included the number of workweeks and PAGA pay periods with alleged violations, as well as a sampling of time and pay records for the Settlement Class Members.

(*Id.*) Receipt of appropriate discovery allowed Class Counsel to fairly evaluate the exposure and risks associated with each claim alleged in the lawsuit. (Kingsley Decl. ¶34.)

Third, Class Counsel have significant experience in cases of this type, including several years prosecuting wage, hour, and working condition violations. (Kingsley Decl. ¶35.) Class Counsel is thus qualified to evaluate the class claims and viability of the defenses. Class Counsel believes that the settlement is fair, reasonable, adequate, and in the best interests of the class and that the average recovery for each Settlement Class Member of over $1,128.82 is substantial, given the risks inherent in litigation and the defenses asserted. (Kingsley Decl. ¶14.)

Finally, the fourth *Dunk* factor considers the percentage of objectors. Here, there were zero (0) request to be excluded and no objectors. (Mitzner Decl. ¶¶10-11.) As all of the *Dunk* factors are satisfied, this settlement is entitled to a presumption of fairness.

B. <u>The Court Should Approve This Class Action Settlement Because it Satisfies Each of the *Kullar* Factors</u>

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

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

The proposed settlement satisfies each of these factors. (Kingsley Decl. ¶36.) Class Counsel conducted extensive formal and informal discovery before entering into meaningful settlement negotiations in this matter. (*Id*. at Kingsley Decl. ¶¶11-19.) This discovery permitted Class Counsel to fairly evaluate the strength of the case and the risks associated with ongoing litigation. (Kingsley Decl. ¶37.) Class Counsel is experienced in handling wage and hour class actions and, after weighing all of the following factors, supports this Settlement. (Kingsley Decl. ¶38.)

1. The Strength of Plaintiffs' Case

a) The Risks Associated with the Overtime Claim

California employees are entitled to compensation for all hours worked, which means "the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so." (Title 8 Cal. Code of Regs., § 11050(2)(K); See *Troester v. Starbucks Corp.* (2018) 5 Cal.5th 829, 845, as modified on denial of reh'g (Aug. 29, 2018).) Time is compensable if an employee is "subject to the control of an employer" even if not working, or if an employee "is *suffered or permitted to work*" even if not "under the employer's control, provided the employer has or should have knowledge of the employee's work." (*Frlekin v. Apple Inc*. (2020) 8 Cal.5th 1038, 1046, reh'g denied (May 13, 2020) (citations omitted.) An employer controls an employee if the employer directs an employee and the employee is unable to use their time how they wish. (Id. at p. 1047.) Other factors courts may consider include whether the activity is required, "the location of the activity, the degree of the employer's control, whether the activity primarily benefits the employee or employer, and whether the activity is enforced through disciplinary measures." (*Id*. at p. 1056; *Cf. Gibbs v. TWC Administration, LLC* (S.D. Cal., Jan. 3, 2020, No. 17CV01513DMSAGS) 2020 WL 42768, at *9 (denying Defendant's motion for summary judgment when plaintiff-employees conducted off-the clock pre-shift activity in preparation to start work right when they clocked in).)

In *Troester*, employees spent four to ten minutes completing tasks to close up the store, such as setting the alarm and locking the door. (*Troester*, 5 Cal.5th 829 at p. 843.) The Court held that California law prohibits employers from requiring employees to work off the clock, even for minutes, without compensation. (*Id*. at p. 848.) The Court explained:

> An employer that requires its employees to work minutes off the clock on a regular basis or as a regular feature of the job may not evade the obligation to compensate the employee for that time by invoking the de minimis doctrine. As the facts here

> demonstrate, a few extra minutes of work each day can add up. . . . .What Starbucks calls "de minimis" is not de minimis at all to many ordinary people who work for hourly wages.

(*Id.* at p. 847.)

Plaintiff, the Proposed Class, and aggrieved employees were not paid at the proper corresponding rate for all hours worked, including overtime. (Kingsley Decl. ¶39.) Defendant failed to include all nondiscretionary "bonus" compensation when calculating their regular rate for the purpose of determining the correct overtime rates in pay periods in which they were paid non-discretionary "bonus" compensation and were also paid overtime. (*Id.*)

Plaintiff felt confident that the regular rate claim would be certified, but the value of that claim was small. (Kingsley Decl. ¶40.)

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

Moreover, employers have an obligation to both to provide meal breaks and to record having done so. (IWC Wage Order 5-2001(7)(a)(3) [requiring employer to keep time records showing when the employee begins and ends each work period and meal period.].) If the employer fails to properly record a valid meal period, it is presumed that no meal period was provided. (See Donohue v. AMN Services, LLC (2021) 11 Cal.5th 58, 76 [There is a rebuttable presumption of liability when the records "show noncompliant meal periods."].)

Here, when meal period premiums are provided, Defendant has had a consistent policy of paying meal period premiums at the base rate and not the blended rate in accordance with violation of California state wage and hour laws. (Kingsley Decl. ¶41.) On July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, the California Supreme Court set forth the formula for calculating the one extra hour of bonus pay that employees are owed if an employer fails to provide a compliant meal period or rest break. Specifically, the Court held that those bonus payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses, commissions, etc.), and cannot simply be paid at an employee's base hourly rate. However, upon review of the data by Plaintiff's expert, it appears that Defendant began "true-ups" in or around October 2021 for meal premiums. (Kingsley Decl. ¶42.) Due to this late attempt to cure its violations, there are employees prior to October 2021 who did not receive any true-up payments. (*Id*.)

Plaintiffs felt confident that this claim would be certified, but the value of this claim was also not as high in light of the "true-ups." (Kingsley Decl. ¶43.)

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c) The Risks Associated with the Inaccurate Wage Statement Claim

California Labor Code §226(a) requires that every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing, in relevant part, the total hours worked by the employee and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. (Labor Code § 226(a)(2) and (9).) Such itemized wage statements must list premium pay earned for unlawful breaks. (See *Naranjo v. Spectrum Security Services, Inc*. (2022) 13 Cal.5th 93, 121 [holding "that an employer's obligation under Labor Code section 226 to report wages earned includes an obligation to report premium pay for missed breaks."].)

As a result of the wages and overtime and meal and sick pay claims alleged above, Defendant engaged in a practice of failing to provide Plaintiff, proposed class members, and all aggrieved employees accurate itemized wage statements listing accurate total hours worked, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, and premium pay, in violation of Labor Code section 226(a). (Kingsley Decl. ¶44.) This is a derivative claim. (Kingsley Decl. ¶45.)

d) The Risks Associated with the Sick Pay Claim

Labor Code §245.5 and 246 provide that "[a]n employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages."

Here, Defendant has failed to properly pay sick pay at the accurate rate of pay. (Kingsley Decl. ¶46.) Plaintiff was confident that this claim would be certified, but the dollar value is not as high. (Kingsley Decl. ¶47.)

e) The Risks Associated with the Waiting Time Penalty

Labor Code section 203 provides that if an employer fails to provide wages at the time of an employee's termination or within 72 hours of his/her resignation, then such employee's wages shall continue as a penalty for up to thirty (30) days. "If an employer willfully fails to pay . . . any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid . . . but the wages shall not continue for more than 30 days." (Lab. Code, § 203, subd. (a).)

Here, some Class Members, including Plaintiffs, are no longer employed by Defendants. (Kingsley Decl. ¶48.) Plaintiffs contends that Defendants have failed to pay employees wages immediately or within 72 hours of termination and/or resignation by not paying all meal period premiums owed and wages. (Kingsley Decl. ¶49) Therefore, under California Law, Plaintiffs contends that "waiting time" penalties would be triggered for each former employee in the class. (Kingsley Decl. ¶50.) Labor Code section 203 reflects a public policy concern that favors the full and prompt payment of earned wages. (See, e.g., *Barnhill v. Robert Saunders & Co.* (1981) 125 Cal.App.3d 1, 7; *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.)

Defendant's actions were willful, as they have intentionally failed or refused to perform an act which was required to be done. (See Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1201.) "The failure to pay is willful if the employer 'knows what [it] is doing [and] intends to do what [it] is doing', and does not also require proof that the employer acted with "a deliberate evil purpose to defraud work[ers] of wages which the employer knows to be due.'" (*Diaz v. Grill Concepts Services, Inc*. (2018) 23 Cal.App.5th 859, 868.)

The risk analysis for the section 203 claim flows from the risk analysis for the underlying wage claims discussed above. (Kingsley Decl. ¶ 51.)

f) 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.

The Parties discounted the PAGA claim for multiple reasons. (Kingsley Decl. ¶52.) First, the aggrieved employees' PAGA claims are derivative of all the foregoing class claims. (Kingsley

Decl. ¶53.) Second, a court has discretion to award less than the maximum penalty. (Kingsley Decl. ¶54.) Labor Code § 2699(e)(2) ("a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory"). See e.g., *Carrington v. Starbucks Corporation* (2018) 30 Cal.App.5th 504, 241 Cal.Rptr.3d 647, 669 (affirming award of 10% of maximum PAGA penalty). Finally, the Settlement Class is compensated for these violations in the proposed Settlement, and thus any PAGA recovery for these same violations would be duplicative. (Kingsley Decl. ¶55.) As such, the Settlement's contemplated PAGA payment of $10,000.00 is appropriate. (Kingsley Decl. ¶56) 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. (Kingsley Decl. ¶57.) If the Court did eventually certify a meal or wage statement class, trial of a case involving approximately 248 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. (Kingsley Decl. ¶58.) 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. (Kingsley Decl. ¶59.) 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. (Kingsley Decl. ¶60.) While Plaintiff believes there is strong evidence to support certification of several possible subclasses, certification is always hard fought and subject to judicial discretion. Moreover, in class actions, decertification is always a possibility. (*Id.*) In attempting to certify a class, the parties would need to conduct multiple depositions, including of the Class Representative and of several person(s) most knowledgeable regarding Defendant's meal and wage policies. (*Id.*) There is a risk for both sides as to what these depositions will reveal and whether they will support class certification to the extent expected. (*Id.*)

4. The Amount Offered in Settlement

It was very difficult for the Parties to reach this Settlement of $500,000.00. (Kingsley Decl. ¶61.) This Settlement is the result of adversarial, non-collusive, and arms-length negotiations. (Kingsley Decl. ¶62.) The Parties arrived at it after extensive investigation and discovery, careful evaluation of the law, risks, and all information substantiating the amount of penalties reasonably likely to be awarded to the class were the trier of fact to find Defendant liable, and the assistance of an experienced mediator. (*Id.*).

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

Plaintiff assessed full value of the Overtime claim, without any discount, at approximately $17,866.00. (Kingsley Decl. ¶63.) This was determined by analyzing the pay data and identifying the pay periods and wages not blended accurately. (Kingsley Decl. ¶64.)

The full value of the Meal Period claim, without any discount, was approximately $76,226.00. (Kingsley Decl. ¶65.) This amount was determined by identifying late, missed, or short breaks in the time data. (Kingsley Decl. ¶66.) For the reasons above, Plaintiff determined that accepting a discount of the full amount was appropriate. (Kingsley Decl. ¶67.)

With regard to the Sick Pay Claim analysis, Plaintiff identified $61,381 in sick pay that was not calculated at the correct rate of pay. (Kingsley Decl. ¶68.)

Plaintiff valued the Wage Statement Claim, without discount, at $785,500. (Kingsley Decl. ¶69.) Plaintiff used $100 for each wage statement issued (pay period). (Kingsley Decl. ¶70.) This figure is overstated because Labor Code §226(e)(1) uses $50 for the initial pay period (not $100) and puts a $4,000 cap on wage statement penalties per employee. (Kingsley Decl. ¶71.) Additionally, not every pay period would have a violation. (Kingsley Decl. ¶72.) Due to the risk discussed above that 226(a) liability wouldn't attach a steep discount of this claim was fair for settlement purposes. (Kingsley Decl. ¶73.)

Plaintiff valued the Waiting Time Claim at $704,315. (Kingsley Decl. ¶74.) 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. (Kingsley Decl. ¶75.)

Finally, Plaintiff calculated the value of the PAGA claim at $916,300.00. (Kingsley Decl. ¶76.) The PAGA pay periods associated with the Waiting Time claim amounted to $16,500.00. (*Id.*) The PAGA pay periods associated with the meal break claims amounted to $21,000.00. (*Id.*) The PAGA pay periods associated with the wage statement claims amounted to $801,300.00. (*Id.*) Finally the PAGA pay periods associated withs the sick pay claim amounted to $77,500.00. (*Id.*) These amounts were calculated by multiplying the number of pay periods where each violation occurred for each claim by $100.00. (*Id.*) The main risk taken into account with PAGA is the discretionary nature of the penalty award. (Kingsley Decl. ¶77.) A judge can award the statutory maximum of $100 for the initial violation and $200 thereafter or – in theory – one cent per wage statement. (Kingsley Decl. ¶78.) While there is a dearth of available authority, in Plaintiff's view, were he 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. (Kingsley Decl. ¶79.)

Per Plaintiff's assessment, the maximum potential value of all of Plaintiff's and the Settlement Class Members' claims was approximately $2,561,588. (Kingsley Decl. ¶80.) The value of the wage claims, without any penalties, was $155,473.00. (Kingsley Decl. ¶81.) However, as a result of the forgoing risks on the merits, Class Counsel believes the Gross Settlement Amount of $500,000.00 is fair and reasonable. (Kingsley Decl. ¶82.)

5. <u>The Extent of Discovery Completed and Stage of the Proceedings</u>

As outlined above, Class Counsel conducted a thorough investigation into the facts of the claims alleged. (Kingsley Decl. ¶83.) The agreement to settle did not occur until Class Counsel exchanged and possessed sufficient information to make an informed judgement regarding the likelihood of success on the merits and the results that could be obtained through further litigation. (*Id.*)

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6. The Experience and Views of Counsel

Kingsley Szamet Employment Lawyers is very experienced in prosecuting employment litigation, and the firm has focused its practice since 2000 on wage, hour, and working condition violations. (Kingsley Decl. ¶¶84-85.) The firm is well versed in class action litigation and has diligently and aggressively pursued this action. (*IbId.*) Kingsley Szamet Employment Lawyers currently serves as Class Counsel for dozens of pending class action lawsuits in Northern, Central, and Southern California. (*Ibid.*) A list of representative cases that Kingsley Szamet Employment Lawyers has handled is included in the accompanying declaration of Eric B. Kingsley. (*Ibid.*) After factoring in the risks explained above, Class Counsel believes that the proposed settlement is fair and reasonable. (Kingsley Decl. ¶86.)

7. The Presence of a Governmental Participant

There is no governmental participant in this action. (Kingsley Decl. ¶87.)

8. The Proposed Plan of Allocation Is Fair and Reasonable

Plans of allocation are subject to the same standard of review as class action settlements; they must be "fair, adequate and reasonable." (See, e.g., *Officers for Justice v. Civil Service Comm'n* (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the proposed plan of allocation compensates Settlement Class Members pro rata based on the number of work weeks worked by the Settlement Class Member during the Class Period, and weight is given the claims that were the most impactful for the Class. (Kingsley Decl. ¶88; Ex. 1 at ¶3.2.2.).

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

To date, there are zero (0) request to be excluded from the proposed Settlement and zero (0) objections. (Mitzner Decl. ¶¶10-11.) Such indicates that the reaction of Settlement Class Members on the whole is positive and weighs in favor of approval.

V. ENHANCEMENT TO PLAINTIFF

Plaintiff's Counsel request an enhancement of $10,000.00 to the Plaintiff Jeffrey Huang Qixian for his work on behalf of the Settlement Class. (Kingsley Decl. ¶133.) "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 Richfiled 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).

Mr. Huang Qixian is an adequate class representative because he has diligently, adequately and fairly represented the Settlement Class and has not placed his interests above any member of the Settlement Class. (*see* Declaration of Jeffrey Huang Qixian ("Huang Qixian Decl.") ¶¶8-12.)

Here, Class Counsel requests an enhancement for Mr. Huang Qixian's valiant effort and time expended in this matter. The time spent by Mr. Huang Qixian includes identifying competent counsel, providing information to Class Counsel regarding his relevant employment experiences, compiling relevant employment documents, conducting many in person and telephone meetings and conferences with Class Counsel to discuss the status of the case and the theories of liability, maintaining regular contact with class members about the status of the case, and reviewing settlement documents. (Kingsley Decl. ¶135; Huang Qixian Decl. ¶¶5-7.) As set forth in the Settlement, Plaintiff will also be entering into a general release of liability pursuant to Civil Code Section 1542. (Kingsley Decl. ¶136; Ex. 1 at § 1, ¶1.38.)

Class Counsel considers this to be a fair and reasonable enhancement. (Kingsley Decl. ¶137.) The enhancement takes into consideration the time, effort, and expense incurred by Mr. Huang Qixian in coming forward to litigate this matter on behalf of all Settlement Class Members. (Kingsley Decl. ¶138.) Additionally, the Plaintiff was at risk for paying for Defendant's legal fees and costs in the event that Defendant prevailed at trial. (Kingsley Decl. ¶139.)

VI. SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY

As indicated on the Proof of Service, Plaintiff's Motion for Final Approval of Class Action Settlement ("Motion") will be concurrently uploaded to the Labor and Workforce Development

Agency's ("LWDA") website on the date this Motion is filed as required by statute. Proof of submission of Plaintiff's Motion, all related documents, and copy of the email from the LWDA confirming receipt is attached to the Declaration of Eric B. Kingsley as Exhibit "6." (Kingsley Decl. ¶144.)

VII. CONCLUSION

Plaintiff respectfully submits that the proposed Settlement is fair, adequate, reasonable, and in the best interest of the Settlement Class Members. Therefore, Plaintiff respectfully requests that the Court (1) grant Final Approval of the Settlement and all of its terms; (2) award attorneys' fees and costs in the amount detailed in the concurrently filed Motion for Attorneys' Fees and Costs; (3) award Phoenix Settlement Administrators claims administration fees of $10,000.00; and (4) award the Plaintiff an enhancement of $10,000.00; and (5) enter judgment.

DATED: August 15, 2025

KINGSLEY SZAMET EMPLOYMENT LAWYERS

By: ______________________

Eric B. Kingsley
Attorneys for Plaintiff JEFFREY HUANG QIXIAN
and the proposed class

(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 August 15, 2025, 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:

David L. Cheng
dcheng@fordharrison.com
Min K. Kim
mkim@fordharrison.com
FORD & HARRISON LLP
350 S. Grand Avenue, Suite 2300
Los Angeles, CA 90071
Attorneys for Defendant

Emil Davtyan
emil@d.law
D.LAW, INC.
400 N. Brand Blvd, 7th Floor
Glendale, CA 91203
Attorneys for Plaintiff

[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/432 and service was completed by electronic means by transmittal of the documents referenced herein on the EF System.

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

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

Executed on August 15, 2025, at Encino, California.

Leslie Sanchez