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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA

NICOLE PARIS, an individual, on behalf of
herself and others similarly situated,

PLAINTIFF,

v.

ALLERGY & ASTHMA MEDICAL
GROUP OF THE BAY AREA, INC.; and
DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO. MSC22-02359

[Case Assigned for All Purposes to Hon.
Charles Treat in Dept. 12]

**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
Liane Katzenstein Ly, Nicole Paris and Madely
Nava, Proposed Order, and Judgment]*

Date: September 12, 2024

Time: 9:00 A.M.

Dept.: 12

Complaint Filed: November 1, 2022

FAC Filed: March 7, 2023

Trial Date: None Set

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on September 12, 2024 at 9:00 A.M. in Department 12 of the above-entitled court, Plaintiff Nicole Paris (“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 Class Action and PAGA Settlement Agreement (“Agreement”), a copy of which is attached to the concurrently-filed Declaration of Liane Katzenstein Ly as Exhibit “1”;

2. Affirming Kingsley Szamet & Ly as Class Counsel;

3. Affirming Nicole Paris as Class Representative and awarding an enhancement award of \$10,000.00;

4. Awarding Apex claims administration fees of 7,500.00 for its services as 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 Agreement is fair, adequate, reasonable, and in the best interest of the 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 Liane Katzenstein Ly, Nicole Paris, Madely Nava, 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 19, 2024

KINGSLEY SZAMET & LY

By: 

Liane Katzenstein Ly
Attorneys for Plaintiff NICOLE PARIS and the
proposed class

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

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

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

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

10 3. Award Apex claims administration fees of \$7,500.00 for its services as
11 Administrator;

12 4. Affirm named Plaintiff Nicole Paris as Class Representative and award a
13 cumulative Class Representative payment of \$10,000.00; and

14 5. Enter judgment.

15 **II. FACTUAL BACKGROUND**

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

17 On November 1, 2022, Plaintiff NICOLE PARIS filed a Class Action Complaint seeking
18 recovery for: (1) failure to provide meal breaks pursuant to Labor Code sections 226.7 and 512;
19 (2) failure to provide rest breaks pursuant to Labor Code section 226.7; (3) failure to reimburse
20 business related expenses pursuant to Labor Code section 2802; (4) failure to issue accurate
21 itemized wage statements pursuant to Labor Code section 226(a); (4) penalties under Labor Code
22 section 203; and (5) violation of Business & Professions Code section 17200. (Declaration of Liane
23 Katzenstein Ly (“Ly Decl.”) ¶5.) Also on November 1, 2022, Plaintiff sent a notice letter, pursuant
24 to Labor PAGA, to the Labor Workforce Development Agency (“LWDA”) regarding her intent to
25 seek civil penalties for the same Labor Code violations above, under Labor Code section 2699, et
26 seq. (Ly Decl. ¶6.)

27 On March 7, 2023, Plaintiff filed a First Amended Class and Representative Action
28 Complaint adding an additional cause of action for penalties pursuant to Labor Code § 2699, et

seq., the Private Attorneys General Act (“PAGA”) based on the underlying Labor Code violations already pled. (Hereafter, the “Action”.) (Ly Decl. ¶7.)

Plaintiff brings the Class Action on behalf of a Proposed Class defined as:
All persons who are employed or have been employed as a non-exempt employee by Allergy & Asthma Medical Group of the Bay Area, Inc., in the State of California since four (4) years prior to the filing of this action to the present plus any additional time during which the statutes of limitation for the causes of action herein were tolled pursuant to Emergency Rule 9 of the California Rules of Court, the ‘Emergency Rules Related to COVID-19’. (“Proposed Class”)

(Ly Decl. ¶8.)

B. The Discovery Process

The Parties have yet to engage in formal discovery, instead focusing their efforts on resolving this case through early mediation. Defendant informally produced a sampling of time and pay data for mediation purposes only. (Ly Decl. ¶9.)

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. ¶10.) 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 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. ¶11.) Although Defendant denies any liability, Defendant is agreeing to this Agreement solely to avoid the cost of litigation. (*Id.*) Accordingly, the Parties and their counsel desire to fully, finally, and forever settle, compromise, and discharge all disputes and claims arising from or relating to the Action on the terms set forth here. (*Id.*)

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1 C. Preliminary Approval

2 On April 9, 2024, the Court issued an Amended Order preliminarily approving the
3 settlement in this case, approving the proposed Class Notice, ordering that the Administrator send
4 notice to the Class, and setting a date for the Final Approval and Fairness Hearing. (Ly Decl. ¶12.)

5 **III. THE PRELIMINARILY APPROVED SETTLEMENT**

6 A. The Settlement Class

7 For purposes of Agreement, the settlement class is defined as: “all current or former non-
8 exempt employees who worked for Defendant in the State of California at any time from May 7,
9 2018 through September 28, 2023” (“Class”). The “Settlement Class Member” means a member
10 of the Class, as either a Participating Class Member or Non-Participating Class Member (including
11 a Non-Participating Class Member who qualifies as an Aggrieved Employee). (Ly Decl. ¶13;
12 Agreement, Ex. 1 at § 1, ¶1.9.)

13 The Class Period is May 7, 2018 through September 28, 2023. (Ly Decl. ¶14; Ex. 1 at §1,
14 ¶1.12.) As of August 29, 2023 (the date of mediation), and based on documents and other
15 information produced by Defendant, there are approximately 262 Settlement Class Members. (Ly
16 Decl. ¶15; Ex. 1 at §4, ¶4.1.)

17 The final Class contained 262 individuals. (Nava Decl. ¶5.)

18 B. Aggrieved Employees

19 For purposes of the Agreement, the Aggrieved Employees are defined as: “all current or
20 former non-exempt employees who worked for Defendant in the State of California at any time
21 from March 7, 2022 (one year prior from the March 7, 2023 filing of Plaintiff’s First Amended
22 Complaint) through September 28, 2023.” (“Aggrieved Employee” or “PAGA Member”). (Ly
23 Decl. ¶16; Agreement, Ex. 1 at § 1, ¶1.4.)

24 The PAGA Period is from March 7, 2022 through September 28, 2023. (Ly Decl. ¶17; Ex.
25 1 at §1, ¶1.31.) As of August 29, 2023 (the date of mediation), and based on documents and other
26 information produced by Defendant, there are approximately 4,853 PAGA pay periods. (Ly Decl.
27 ¶18.)

28 ///

1 C. Settlement Payments

2 As detailed fully in the Agreement, the Settlement provides for Defendant to pay a Gross
3 Settlement Amount of \$480,000.00, which includes the sum of the Individual Class Payments, the
4 Class Representative service award, the Class Counsel Award, PAGA Payment, and the Settlement
5 Administration Costs. (Ly Decl. ¶19; Ex. 1 at § 1, ¶1.22.)

6 The Net Settlement Amount is the Gross Settlement Amount, less Class Counsel Award,
7 Class Representative Enhancement, PAGA Payment, and Settlement Administration Costs. (Ly
8 Decl. ¶20; Ex. 1 at § 1, ¶1.28.)

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

11	Gross Settlement Amount:	\$	480,000.00
12	Attorneys' Fees (1/3):	\$	160,000.00
13	Requested Case Costs:	\$	17,000.00
14	Claims Administration:	\$	7,500.00
15	PAGA Penalties:	\$	5,000.00
16			<i>(\$3,750.00 to the LWDA; \$1,250.00</i>
17			<i>to remain in the Net Settlement</i>
18			<i>Amount to be distributed to</i>
19			<i>Aggrieved Employees only)</i>
20	Named Plaintiff Enhancement:	\$	<u>10,000.00</u>
21	Anticipated Net Settlement Amount:	\$	281,750.0

22 D. Individual Settlement Payments

23 The Individual Class Payment amount of each Participating Class Member is an
24 individualized amount that is based on Participating Class Member's pro rata share of the Net
25 Settlement Amount calculated according to the number of Workweeks worked during the Class
26 Period. (Ex. 1 at §1, ¶1.23; see also Ex. A to the Agreement [Class Notice].) Specifically,
27 Individual Class Payments will be paid from the Net Settlement Amount and shall be paid pursuant
28 to the settlement formula as follows: (a) dividing the Net Settlement Amount by the total number
of Workweeks worked by all Participating Class Members during the Class Period and (b)
multiplying the result by each Participating Class Member's Workweeks. (*Id.*)

Based on these calculations, the average potential recovery is \$1,074.75 per Class Member.

1 (Nava Decl. ¶15.)

2 E. Class Notice

3 The Court approved the proposed Class Notice, and directed the mailing of the Notice by
4 first-class mail to Class Members in accordance with the proposed implementation schedule. (Ly
5 Decl. ¶21.) The procedures for giving notice to the Class Members, as set forth in the Agreement
6 and Plaintiffs’ Motion for Preliminary Approval and approved by the Court, have been fully and
7 properly carried out. (Nava Decl. ¶3.)

8 To date, Apex received one (1) request to be excluded (“opt-outs”) from the proposed
9 Agreement and zero (0) objections. (Nava Decl. ¶¶11-12.)

10 F. Check Mailed Settlement – No Reversion

11 The Parties agreed to, and the Court preliminary approved, a checks-mailed settlement
12 without the possibility of reversion of settlement funds to Defendant. Under the Agreement, every
13 Class Member will receive a settlement check and Class Members do not need to submit a claim
14 in order to receive a settlement check. Any funds that remain uncashed after 180 days shall be
15 turned over by the Administrator, with information for each Class Member who failed to timely
16 cash his/her settlement check, to the State of California Controller’s Office Unclaimed Property
17 Fund. (Ex. 1 at § 4, ¶4.4.3.)

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

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

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

26 “A presumption of fairness exists where: (1) the settlement is reached through arm’s length
27 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
28 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is

1 small.” (*Dunk, supra*, 48 Cal.App.4th at p. 1802.) The proposed Settlement in the present case
2 meets all of the *Dunk* factors and is therefore entitled to a presumption of fairness.

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

9 Second, the Parties engaged in informal discovery that permitted Class Counsel to fairly
10 evaluate the strength of the case and the risks associated with ongoing litigation. (Ly Decl. ¶24.)
11 Receipt of appropriate discovery allowed Class Counsel to fairly evaluate the exposure and risks
12 associated with each claim alleged in the lawsuit. (Ly Decl. ¶25.)

13 Third, Class Counsel have significant experience in cases of this type, including several
14 years prosecuting wage, hour, and working condition violations. (Ly Decl. ¶26.) Class Counsel is
15 thus qualified to evaluate the class claims and viability of the defenses. Class Counsel believes that
16 the settlement is fair, reasonable, adequate, and in the best interests of the class and that the average
17 recovery for each Class Member of over \$1,000.00 is substantial, given the risks inherent in
18 litigation and the defenses asserted. (Ly Decl. ¶27.)

19 Finally, the fourth *Dunk* factor considers the percentage of objectors. Here, there was one
20 (1) request to be excluded and no objectors. (Nava Decl. ¶¶11-12.) As all of the *Dunk* factors are
21 satisfied, this settlement is entitled to a presumption of fairness.

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

24 In *Kullar v. Foot Locker Retail, Inc* (2008) 168 Cal.App.4th 116, 128, the court set forth
25 several factors that should be analyzed in determining whether to approve a class action settlement.
26 These factors include: (1) the strength of plaintiff’s case; (2) the risk, expense, complexity and
27 likely duration of further litigation; (3) the risk of maintaining class action status through trial; (4)
28 the amount offered in settlement; (5) the extent of discovery completed and stage of the

proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement.

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

The proposed settlement satisfies each of these factors. (Ly Decl. ¶28.) Class Counsel conducted extensive informal discovery before entering into meaningful settlement negotiations in this matter that included time and pay data for a randomly selected sample of 20% of the Class. (Id. at Ly Decl. ¶¶9-12.) This discovery permitted Class Counsel to fairly evaluate the strength of the case and the risks associated with ongoing litigation. (Ly Decl. ¶29.) Class Counsel is experienced in handling wage and hour class actions and, after weighing all of the following factors, supports this Agreement. (Ly Decl. ¶30.)

1. The Strength of Plaintiffs’ Case

a) Defendant Failed to Provide Lawful Meal Breaks

Under California Labor Code section 512 and IWC Wage Order No. 5, no employer shall employ any person for a work period of more than five hours without providing a meal period of not less than thirty minutes. The first meal period must be permitted to commence no later than after five hours of work, or the start of the sixth hour of work (5.0 hours on the clock). (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1049.) The second meal period must be permitted to commence no later than after ten hours of work, or the start of the eleventh hour of work (10.0 hours on the clock). (Ibid.) The California Supreme Court succinctly described Section 512’s mandate: “Employers must afford employees uninterrupted half-hour periods in which they are relieved of any duty or employer control and are free to come and go as they please.” (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1037.)

Here, Defendant instituted a common practice of understaffing its offices. Plaintiff alleges

1 that this understaffing resulted in missed and/or late meal periods. (Ly Decl. ¶31.) Plaintiff and
2 the Proposed Class consistently worked shifts over five (5) hours. (Ly Decl. ¶32.) Defendant
3 failed to provide Plaintiff and the Proposed Class with proper meal periods of not less than thirty
4 (30) minutes as required by the Labor Code during the relevant time period. (Ly Decl. ¶33.)
5 Defendant has had a consistent policy of requiring Plaintiff and the Proposed Class to remain at
6 their post, without relief, while taking meal breaks during each scheduled shift. (Ly Decl. ¶34.)
7 Plaintiff was only able to take meal breaks when another employee was there to relieve her.
8 Plaintiff also never received meal premiums for these violations. (Ly Decl. ¶35.) Defendant has
9 had a consistent policy of paying meal period premiums if any, at the base rate and not the blended
10 rate in violation of Labor Code §§ 226.7 and 512. (Ly Decl. ¶36.)

11 Defendant denies these allegations and argues that Plaintiff and the class received all
12 complaint rest periods. (Ly Decl. ¶37.) Additionally, Defendant argues that given the accurate
13 policy, class certification will be difficult.

14 b) Defendant Had No Practice of Providing Class Members with
15 Lawful Rest Breaks

16 Labor Code section 226.7, subdivision (c), requires an employer to pay an additional hour
17 of compensation for each workday the employer fails to provide a rest period according to law.
18 Employees are entitled to a paid ten (10) minute rest break for every four (4) hours worked, or
19 major fraction thereof. (Cal. Code Regs., tit. 8, § 11070, subd. 12(A).)

20 Plaintiff and the Proposed Class Members' rest period claims arise from a common course
21 of conduct wherein Defendant did not provide employees with the opportunity to take first, second,
22 and/or third 10-minute rest breaks in compliance with California law. (Ly Decl. ¶38.) The
23 California Supreme Court has held: "Employees are entitled to 10 minutes' rest for shifts from
24 three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10
25 hours, 30 minutes for shifts of more than 10 hours up to 14 hours and so on." (*Brinker Rest. Corp*
26 *v. Superior Court*, supra, 53 Cal.4th at 1029.) In an eight-hour work day, being denied the two
27 paid rest breaks in a day is "essentially perform[ing] 20 minutes of 'free' work." (*Murphy v.*
28 *Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1104).

1 The Court has also clarified what steps an employer must take to make rest breaks available
2 to its employees:

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

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

11 Employers must authorize and permit a net ten-minute paid rest period for every four hours,
12 or major fraction thereof, of work for its employees. If an employer does not, then the employer
13 must pay the employee one hour of pay at the employee’s regular rate of pay for each workday
14 that the rest period is not provided. (Cal. Code Regs., tit. 8, § 11050, subd. 12(B).)

15 Here, Defendant had a common practice of understaffing its offices, resulting in missed
16 rest periods. Plaintiff and the Proposed Class consistently worked shifts without being provided
17 compliant rest periods. (Ly Decl. ¶39.) Plaintiff maintains that Defendant failed to provide
18 Plaintiff and the Class with rest breaks of not less than ten (10) minutes as required by the Labor
19 Code during the relevant time period. (Ly Decl. ¶40.) Plaintiff and the Proposed Class were
20 required by Defendant to remain at their post, without relief, during rest periods in violation of
21 Labor Code. (Ly Decl. ¶41.) Defendant had a consistent policy of paying rest premiums, if any,
22 at the base rate and not the blended rate in violation of Labor Code §§ 226.7.

23 Defendant denies these allegations and argues that Plaintiff and the class received all
24 complaint rest periods. (Ly Decl. ¶42.) Additionally, Defendant argues that given the accurate
25 policy, class certification will be difficult.

26 c) Defendant Failed to Reimburse Necessary Business Expenses

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

Here, Defendant has failed to reimburse Plaintiff and the Proposed Class for the cost of
using their personal cellphones for business related purposes. (Ly Decl. ¶43.) Plaintiff alleges
that Defendant required Plaintiff and the Proposed Class to be available by cellphone and

1 answer/use their cellphones to communicate with patients while working, and this was necessary
2 to perform their job duties. (Ly Decl. ¶44.) Plaintiff also alleges that she had to communicate with
3 pharmaceutical representatives to schedule meetings for Defendant. (Ly Decl. ¶45.) The
4 pharmaceutical representatives would message or call her on her personal cellphone to schedule
5 these meetings. (*Id.*) These cellphones were not provided by Defendant, and Defendant failed to
6 reimburse Plaintiff and the Proposed Class for the costs associated with using these personal
7 cellphones. (Ly Decl. ¶46.) Defendant denies Plaintiff's allegations about requiring employees'
8 availability by personal cellphone, employees having to use their personal cellphones to
9 communicate with patients, and employees having to communicate with pharmaceutical
10 representatives via personal cellphones. (Ly Decl. ¶47.)

11 d) Defendant Failed to Issue Lawful Wage Statements

12 California Labor Code §226(a) requires Defendant to provide its employees with accurate,
13 itemized written wage statements that show, in relevant part, total hours worked by the employee,
14 the name and address of the legal entity that is the employer, and all applicable hourly rates and
15 the corresponding number of hours worked.

16 Defendant has failed to include the appropriate rates of pay and the accurate hours worked
17 on itemized wage statements for Plaintiff and the Proposed Class. Plaintiff alleges that Defendant
18 issued to Plaintiff and the Proposed Class itemized wage statements that did not include all
19 applicable hourly rates in effect during the pay period and the corresponding number of hours
20 worked at each hourly rate by the employee. (Ly Decl. ¶48.) Plaintiff and the Proposed Class are
21 issued wage statements that do not accurately show meal and rest premiums as a result of the
22 claims alleged above and when they are provided, they are not provided at the proper rate. Thus,
23 Plaintiff brings a derivative wage statement claim. (Ly Decl. ¶49.)

24 Defendant denies Plaintiff's allegations about unlawful wage statements. (Ly Decl. ¶50.)

25 e) Defendant Failed to Provide All Wages Due at the Time of
26 Termination

27 Under Labor Code section 203, if an employer fails to provide wages at the time of an
28 employee's termination or within seventy-two (72) hours of resignation, then the employee's

1 wages shall continue as a penalty for up to thirty (30) days. (Labor Code § 203.) Section 203
2 reflects a public policy that favors the full and prompt payment of earned wages. (See, e.g.,
3 *Barnhill v. Robert Saunders & Co.* (1981) 125 Cal.App.3d 1, 7; *Mamika v. Barca* (1998) 68
4 Cal.App.4th 487, 492.)

5 Here, Plaintiff and numerous Proposed Class Members are no longer employed by
6 Defendant. (Ly Decl. ¶51.) Defendant failed to pay all wages owed and due upon their termination
7 and/or resignation. (Ly Decl. ¶52.) Defendant's actions were willful, as they have intentionally
8 failed or refused to perform an act which was required to be done. (See *Amaral v. Cintas Corp.*
9 *No. 2* (2008) 163 Cal.App.4th 1157, 1201.) "The failure to pay is willful if the employer 'knows
10 what [it] is doing [and] intends to do what [it] is doing', and does not also require proof that the
11 employer acted with "a deliberate evil purpose to defraud work[ers] of wages which the employer
12 knows to be due.'" (*Diaz v. Grill Concepts Services, Inc.* (2018) 23 Cal.App.5th 859, 868.)

13 Defendant was fully aware of its payment policies and practices and intended to carry out
14 said policies and practices. Therefore, Defendant is liable for damages. (Ly Decl. ¶53.)

15 f) The Risks Associated with the PAGA Claim

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

21 The Parties discounted the PAGA claim for multiple reasons. (Ly Decl. ¶54.) First, the
22 aggrieved employees' PAGA claims are derivative of all the foregoing class claims. (Ly Decl.
23 ¶55.) Second, a court has discretion to award less than the maximum penalty. (Ly Decl. ¶56.)
24 Labor Code § 2699(e)(2) ("a court may award a lesser amount than the maximum civil penalty
25 amount specified by this part if, based on the facts and circumstances of the particular case, to do
26 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory"). See
27 e.g., *Carrington v. Starbucks Corporation* (2018) 30 Cal.App.5th 504, 241 Cal.Rptr.3d 647, 669
28 (affirming award of 10% of maximum PAGA penalty). Finally, the settlement Class is

1 compensated for these violations in the proposed Agreement, and thus any PAGA recovery for
2 these same violations would be duplicative. (Ly Decl. ¶57.) As such, the Agreement's
3 contemplated PAGA payment of \$5,000.00 is appropriate. (Ly Decl. ¶58.) *See Nordstrom*
4 *Commissions Cases*, 186 Cal.App.4th 576, 589 (2010) (affirming settlement allocating \$0 of \$6.4
5 million settlement to PAGA penalties).

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

7 There is significant expense associated with the class certification process, which the
8 Parties can avoid by entering into the contemplated Agreement now. (Ly Decl. ¶59.) If the Court
9 did eventually certify a class, trial of a case involving approximately 262 Settlement Class
10 Members would require the retention of expensive expert witnesses, the accrual of extensive
11 litigation costs, and a significant time overlay by the parties. (Ly Decl. ¶60.) Moreover, given the
12 complexity and unsettled nature of the issues in this case it is likely that any outcome at trial would
13 have resulted in a lengthy and costly appeal. (Ly Decl. ¶61.) An appeal would result in further
14 delay for the Settlement Class Members who are waiting for a resolution in this matter. (*Id.*)

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

16 This case has not been certified to be tried as a class action. (Ly Decl. ¶62.) While Plaintiff
17 believes there is strong evidence to support certification of several possible subclasses (especially
18 a rest period class), certification is always hard fought and subject to judicial discretion. Moreover,
19 in class actions, decertification is always a possibility. (*Id.*) In attempting to certify a class, the
20 parties would need to conduct multiple depositions, including of the Class Representative and of
21 several person(s) most knowledgeable regarding Defendant's meal and rest policies. (*Id.*) There is
22 a risk for both sides as to what these depositions will reveal and whether they will support class
23 certification to the extent expected. (*Id.*)

24 4. The Amount Offered in Settlement

25 It was very difficult for the Parties to reach this Settlement of \$480,000.00. (Ly Decl. ¶63.)
26 This Settlement is the result of adversarial, non-collusive, and arms-length negotiations. (Ly Decl.
27 ¶64.) The Parties arrived at the settlement after extensive investigation and discovery, careful
28 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

The full value of the Meal Period claim, without any discount, was approximately \$567,224.00, according to Plaintiff's calculations. (Ly Decl. ¶66.) This amount is comprised of late meal violations, missed meal violations, and short meal violations with an offset for meal premiums paid. (Ly Decl. ¶67.) For the reasons above, especially the risks associated with class certification, Plaintiff determined that accepting a discount of the full amount was appropriate. (Ly Decl. ¶68.)

The full value of the Rest Period claim, without any discount, was approximately \$3,187,918.00, according to Plaintiff's calculations. (Ly Decl. ¶69.) This amount assumes a 100% violation rate for all class members. (Ly Decl. ¶70.) Given, that the policy maintained by Defendant was accurate, and given that there are no records to look to for violations, Plaintiff determined that accepting a steep discount of the full amount was appropriate. (Ly Decl. ¶71.)

With regard to the Reimbursement Claim analysis, Plaintiff believed that it was reasonable to value the potential reimbursement at \$30.00 per month, per employee, for reimbursement of personal cellphone usage. This brought the damages for this claim to \$217,410.00. (Ly Decl. ¶72.)

Plaintiff valued the Wage Statement Claim, without discount, at \$476,900. (Ly Decl. ¶73.) Plaintiff used \$100 for each wage statement issued (pay period) during the one year period which results in this estimated exposure of for class members. (Ly Decl. ¶74.) This figure is overstated because Labor Code §226(e)(1) uses \$50 for the initial pay period (not \$100) and puts a \$4,000 cap on wage statement penalties per employee. (Ly Decl. ¶75.) Due to the risk discussed above that 226(a) liability would not attach under Naranjo and Maldonado, Plaintiff determined that a steep discount of this claim was fair for settlement purposes. (Ly Decl. ¶76.)

Plaintiff valued the Waiting Time Claim, tied to the Wage/Overtime claim, at \$799,807. (Ly Decl. ¶77.) Considering the derivative 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

1 was appropriate. (Ly Decl. ¶78.)

2 Finally, Plaintiff calculated the value of the PAGA claim at \$947,200.00 for Settlement
3 Class Members (using \$100 per pay period). (Ly Decl. ¶79.) The main risk taken into account
4 with PAGA is the discretionary nature of the penalty award. (Ly Decl. ¶80.) A judge can award
5 the statutory maximum of \$100 for the initial violation and \$200 thereafter or – in theory – one
6 cent per wage statement. (Ly Decl. ¶81.) While there is a dearth of available authority, in
7 Plaintiff's view, were she to succeed on any of the underlying Labor Code violations, it is not
8 likely that a Judge would also award a large amount of penalties of top of any damages recovered.
9 (Ly Decl. ¶82.)

10 Per Plaintiff's assessment, the maximum potential value of all of Plaintiff's and the
11 Settlement Class Members' claims was approximately \$6,196,459.00. (Ly Decl. ¶83.) However,
12 as a result of the forgoing risks on the merits and class certification, Class Counsel believes the
13 Gross Settlement Amount of \$480,000.00 is fair and reasonable. (Ly Decl. ¶84.)

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

15 As outlined above, Class Counsel conducted a thorough investigation into the facts of the
16 claims alleged. (Ly Decl. ¶85.) The agreement to settle did not occur until Class Counsel
17 exchanged and possessed sufficient information to make an informed judgement regarding the
18 likelihood of success on the merits and the results that could be obtained through further litigation.
19 (*Id.*)

20 6. The Experience and Views of Counsel

21 Kingsley Szamet & Ly is very experienced in prosecuting employment litigation, and the
22 firm has focused its practice since 2000 on wage, hour, and working condition violations. (Ly
23 Decl. ¶¶86-87.) The firm is well versed in class action litigation and has diligently and aggressively
24 pursued this action. (*Ibid.*) Kingsley Szamet & Ly currently serves as Class Counsel for dozens
25 of pending class action lawsuits in Northern, Central, and Southern California. (*Ibid.*) A list of
26 representative cases that Kingsley Szamet & Ly has handled is included in the accompanying
27 declaration of Liane Katzenstein Ly. (*Ibid.*) After factoring in the risks explained above, Class
28 Counsel believes that the proposed settlement is fair and reasonable. (Ly Decl. ¶88.)

1 7. The Presence of a Governmental Participant

2 There is no governmental participant in this action. (Ly Decl. ¶89.)

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

4 Plans of allocation are subject to the same standard of review as class action settlements;
5 they must be “fair, adequate and reasonable.” (See, e.g., *Officers for Justice v. Civil Service*
6 *Comm’n* (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the proposed plan of allocation
7 compensates Settlement Class Members based on pro rata share of the Net Settlement Amount
8 calculated according to the number of Workweeks worked during the Class Period. The lump sum
9 payment to each member of the Settlement Class not excluding him/ herself will be determined by
10 dividing the Net Settlement Amount by the total number of eligible Workweeks worked by all
11 Participating Class Members during the Class Period and multiplying the result by each
12 Participating Class Member’s Workweeks. This allocation distributes Settlement funds
13 proportionally to each class member’s damages and should therefore be approved as fair, adequate,
14 and reasonable. (Ly Decl. ¶90; Ex. 1 at § 3, ¶3.2.4.).

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

16 To date, there is one (1) request to be excluded from the proposed Agreement and zero (0)
17 objections. (Nava Decl. ¶¶11-12.) Such indicates that the reaction of Class Members on the whole
18 is positive and weighs in favor of approval.

19 **V. ENHANCEMENT TO PLAINTIFF**

20 Plaintiff’s Counsel request an enhancement of \$10,000.00 to the Class Representative
21 Nicole Paris for her work on behalf of the Class. (Ly Decl. ¶133.) “Courts routinely approve
22 incentive awards to compensate named plaintiffs for the services they provide and the risks they
23 incurred during the course of the class action litigation.” *Ingram v. The Coca-Cola Company*, 200
24 F.R.D. 685, 694 (N.D. Ga 2001) (internal quotations and citations omitted); *see also Van Vranken*
25 *v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995). In *Coca-Cola*, the Court
26 approved service awards of \$300,000 to each named plaintiff in recognition of the services they
27 provided to the class by responding to discovery, participating in the mediation process, and taking
28 the risk of stepping forward on behalf of the class. *Coca-Cola*, 200 F.R.D. at 694; *see also, e.g.*

1 *Van Vranken*, 901 F. Supp. at 299 (approving \$50,000 participation award to plaintiffs); *Glass v.*
2 *UBS Financial Services, Inc.*, Case No. C-06-4068 MMC, 2007 WL 227862, at *17 (N.D. Cal.
3 Jan. 26, 2007) (approving \$25,00 enhancement to each named plaintiff).

4 Ms. Paris is an adequate class representative because she has diligently, adequately and
5 fairly represented the Class and has not placed her interests above any member of the Class. (*see*
6 Declaration of Nicole Paris (“Paris Decl.”) ¶¶5-10.)

7 Here, Class Counsel requests an enhancement for Ms. Paris’s valiant effort and time
8 expended in this matter. The time spent by Nicole Paris is significant and includes researching and
9 retaining competent counsel; providing information to Class Counsel regarding the nature of the
10 work at Defendant; compiling relevant documents; working closely with Class Counsel to develop
11 the theories of liability and martial relevant evidence; regularly discussing the status of the case
12 with Class Counsel; providing informal discovery responses; and responding promptly to Class
13 Counsel’s communications regarding settlement. (Ly Decl. ¶134; Paris Decl. ¶¶5-10.) As set forth
14 in the Agreement, Plaintiff will also be entering into a general release of liability pursuant to Civil
15 Code Section 1542. (Ly Decl. ¶135; Ex. 1 at § 6, ¶6.1-6.1.1.)

16 Class Counsel considers this to be a fair and reasonable enhancement. (Ly Decl. ¶136.)
17 The enhancement takes into consideration the time, effort, and expense incurred by Ms. Paris in
18 coming forward to litigate this matter on behalf of all Class Members. (Ly Decl. ¶137.)
19 Additionally, the Class Representative was at risk for paying for Defendant’s legal fees and costs
20 in the event that Defendant prevailed at trial. (Ly Decl. ¶138.)

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

22 As indicated on the Proof of Service, Plaintiff’s Motion for Final 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 “6.” (Ly Decl.
27 ¶144.)

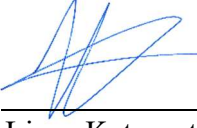
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1 **VII. CONCLUSION**

2 Plaintiff respectfully submits that the proposed Agreement is fair, adequate, reasonable,
3 and in the best interest of the Class Members. Therefore, Plaintiff respectfully requests that the
4 Court (1) grant Final Approval of the Agreement and all of its terms; (2) award attorneys' fees and
5 costs in the amount detailed in the concurrently filed Motion for Attorneys' Fees and Costs; (3)
6 award Apex claims administration fees of \$7,500.00; and (4) award the Class Representative an
7 enhancement of \$10,000.00; and (5) enter judgment.

8
9 DATED: August 19, 2024

KINGSLEY SZAMET & LY

10
11 By: 

12 Liane Katzenstein Ly
13 Attorneys for Plaintiff NICOLE PARIS and the
14 proposed class
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(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 19, 2024, I served all interested parties in this action the following documents described as: **NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Matthew Wayne, Esq.
Amber A. Eklof, Esq.
Melanie Frakes, Esq.
GORDON REES SCULLY MANSUKHANI
275 Battery Street, Suite 2000
San Francisco, CA 94111
mwayne@grsm.com
aeklof@grsm.com
mfrakes@grsm.com

[] (BY MAIL) I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage fully prepaid at Encino, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

[XX] BY ELECTRONIC MAIL 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 19, 2024, at Encino, California.



Michelle Tanzer