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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES**

| | |
|---|---|
| JAMES SARAMI; DOUGLAS STUMVOLL; ANDREY TARASOV, as individuals, on behalf of themselves and others similarly situated,<br><br>PLAINTIFFS,<br><br>v.<br><br>TEND EXCHANGE SUBSIDIARY, LLC; TEND EXCHANGE, INC. & DELAWARE TENDER STAFFING, LLC; and DOES 1 thru 50, inclusive,<br><br>DEFENDANTS. | CASE NO. 23STCV02139<br><br>[Case Assigned for All Purposes to Hon. William F. Highberger in Dept. 10]<br><br>**NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF**<br><br>*[Filed concurrently with Declarations of Kelsey M. Szamet, Douglas Stumvoll, Andrey Tarasov, and Proposed Order]*<br><br>Date: January 16, 2025<br>Time: 11:00 AM<br>Dept.: 10<br><br>Complaint Filed: January 31, 2023<br>Trial Date: None Set |

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

**PLEASE TAKE NOTICE** that on January 16, 2024, at 11:00 AM in Department 10 of the above-entitled court, Plaintiffs JAMES SARAMI, DOUGLAS STUMVOLL, AND ANDREY TARASOV will move the Court for an Order of Preliminary Approval of the Class Action and PAGA Settlement Agreement ("Agreement"), a copy of which is filed concurrently herewith.

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

The Motion will be based on this Notice of Motion, the attached Memorandum of Points and Authorities, the Declaration of Kelsey M. Szamet, the Agreement and Release, all other papers and records on file in this action, and on such oral and documentary evidence as may be presented at the hearing on this Motion.

DATED: November 4, 2024

KINGSLEY SZAMET & LY

By: ______________________________
Kelsey M. Szamet
Attorneys for Plaintiffs and the proposed class

**TABLE OF CONTENTS**

I. INTRODUCTION .... 8

II. FACTUAL BACKGROUND .... 8

A. Litigation Overview and Procedural History .... 8

B. The Discovery Process and Mediation .... 10

III. THE PROPOSED SETTLEMENT CLASS SHOULD BE CERTIFIED FOR SETTLEMENT PURPOSES .... 11

A. The Proposed Class Is Ascertainable and Sufficiently Numerous .... 12

1. Ascertainability .... 12

2. Numerosity .... 12

B. There Is a Well-Defined Community of Interest .... 13

1. There Are Predominant Questions of Law and Fact .... 13

2. The Class Representatives Have Claims Typical of the Proposed Class .... 14

3. Plaintiffs Contends That As The Class Representatives They Have and Will Fairly Represent the Interests of the Class Members .... 15

C. The Class Action Vehicle Is Superior to the Alternatives .... 16

IV. THE PROPOSED SETTLEMENT .... 17

A. The Settlement Class .... 17

B. The Aggrieved Employees .... 18

C. Gross Settlement Amount .... 18

D. Optional Tend Defendant .... 19

E. Individual Settlement Payments .... 19

F. Process for Administering Settlement after Preliminary Approval .... 19

G. Process for Class Members to Respond to Class Notice .... 20

H. The Release .... 20

V. ARGUMENT .... 21

A. Plaintiffs Request Approval of This Class Action Settlement ...................................... 21

1. The Strength of Plaintiff's Case............................................................ 22

a) The Risks Associated with the Minimum Wage/Overtime Claim.18

b) The Risks Associated with the Meal Break Claim………………21

c) The Risks Associated with the Rest Break Claim……………….24

d) The Risks Associated with the Reimbursement Claim…………25

e) The Risks Associated with the Wage Statement Claim...............26

f) The Risks Associated with the Waiting Time Penalty Claim……28

g) The Risks Associated with the PAGA Claim……………………29

2. The Risk, Expense, Complexity, and Likely Duration of Further Litigation ........................................................................................................ 34

3. The Risk of Maintaining Class Action Status through Trial..................... 34

4. The Amount Offered in Settlement......................................................... 35

5. The Experience and Views of Counsel .................................................... 37

6. The Proposed Plan of Allocation Is Fair and Reasonable......................... 38

7. The Proposed Notice Fairly Apprises the Class Members of the Terms of the Settlement and of the Class Members' Rights under the Settlement.. 38

VI. THE SERVICE AWARD TO THE NAMED PLAINTIFFS ........................................... 39

VII. SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY.. 39

VIII. CONCLUSION ......................................................................................................... 40

## TABLE OF AUTHORITIES

**Federal Cases**


*Amey v. Cinemark USA Inc.*,
No. 13-CV-05669-WHO, 2015 WL 2251504 (N.D. Cal. May 13, 2015) ............................... 24

*Brewer v. Gen. Nutrition Corp.*,
No. 11-CV-3587 YGR, 2014 WL 5877695 (N.D. Cal. Nov. 12, 2014) .................................. 24

*Gibbs v. TWC Administration, LLC*,
(S.D. Cal., Jan. 3, 2020, No. 17CV01513DMSAGS) 2020 WL 42768 .................................. 23

*Nguyen v. Baxter Healthcare Corp.*,
No. 8:10-CV-01436-CJC, 2011 WL 6018284 (C.D. Cal. Nov. 28, 2011) .............................. 27

*Officers for Justice v. Civil Service Comm'n*,
(9th Cir. 1982) 688 F.2d 615 .................................................................................... 38

*O'Hara v. Teamsters Union Local No. 856*,
C.A.9 (Cal.)1998, 151 F.3d 1152 .............................................................................. 29

*Pryor v. Aerotek Scientific, LLC*,
278 F.R.D. 516 (C.D. Cal. 2011) .............................................................................. 24

*Purnell v. Sunrise Senior Living Mgmt., Inc.*,
No. SA CV10-00897 JAK, 2012 WL 1951487 (C.D. Cal. Feb. 27, 2012) ............................. 27

*Washington v. Joe's Crab Shack*,
271 F.R.D. 629 (N.D. Cal. 2010) .............................................................................. 27


**State Cases**


*Amaral v. Cintas Corp. No. 2*,
(2008) 163 Cal.App.4th 1157 .................................................................................. 32

*Barnhill v. Robert Saunders & Co.*,
(1981) 125 Cal.App.3d 1 ........................................................................................ 32

*Bell v. Farmers Ins. Exch.*,
(2004) 115 Cal.App.4th 715 .................................................................................... 14

*Blue Chip Stamps v. Superior Court*,
(1976) 18 Cal.3d 381 ............................................................................................ 17

*Bradley v. Networkers International, LLC*,
(2012) 211 Cal.App.4th 1129 .................................................................................. 14

*Brinker Restaurant Corp. v. Superior Court*,
(2012) 53 Cal.4th 1004 ..................................................................................... passim

Carrington v. Starbucks Corporation,
(2018) 30 Cal.App.5th 504, 241 Cal.Rptr.3d 647 .......... 33

Cartt v. Superior Court,
(1975) 50 Cal.App.3d 960 .......... 38

Cellphone Termination Fee Cases,
180 Cal. App. 4th 1110 (2010) .......... 21

Classen v. Weller,
(1983) 145 Cal.App.3d 27 .......... 15

Collins v. Rocha,
(1972) 7 Cal.3d 232 .......... 11, 13

Dailey v. Sears, Roebuck & Co.,
214 Cal. App. 4th 974 (2013) .......... 27

Diaz v. Grill Concepts Services, Inc.,
(2018) 23 Cal.App.5th 859 .......... 32

Dunk v. Foot Locker Retail, Inc.,
(1996) 48 Cal.App.4th 1794 .......... 10

Fireside Bank v. Sup. Court,
(2007) 40 Cal.4th 1069 .......... 11, 12

Frlekin v. Apple Inc.,
(2020) 8 Cal.5th 1038 .......... 22, 23

Hicks v. Kaufman & Broad Home Corp.,
(2001) 89 Cal.App.4th 908 .......... 13

Knapp v. AT & T Wireless Services, Inc.,
(2011) 195 Cal.App.4th 932 .......... 13

*Kullar v. Foot Locker Reta*il, Inc.,
(2008) 168 Cal.App.4th 116 (*"Dunk/Kulla*r") .......... 10, 22

Linder v. Thrifty Oil Co.,
(2000) 23 Cal.4th 429 .......... 11

Lockheed Martin Corp. v. Superior Court,
(2003) 29 Cal.App.4th 1096 .......... 15, 16, 17

Mamika v. Barca,
(1998) 68 Cal.App.4th 487 .......... 32

Miller v. Woods,
(1983) 148 Cal.App.3d 862 .......... 12

*Murphy v. Kenneth Cole Productions, Inc.*, (2007) 40 Cal. 4th .......... 27, 28

*Naranjo v. Spectrum Sec. Servs., Inc.*, (2024) 15 Cal.5th 1056 *("Naranjo V")* .......... 31

*Nordstrom Commissions Cases*, 186 Cal.App.4th 576 (2010) .......... 33

*North County Contractor's Assn., Inc. v. Touchstone Ins. Services*, 27 Cal. App. 4th 1085 (1994) .......... 22

*Richmond v. Dart Industries, Inc.*, (1981) 29 Cal.3d 462 .......... 11, 16

*Rose v. City of Hayward*, (1981) 126 Cal.App.3d 926 .......... 12

*Sav-on Drug Stores, Inc. v. Sup. Court*, (2004) 34 Cal.4th 319 .......... 11, 13, 14

*Seastrom v. Neways, Inc.*, (2007) 149 Cal.App.4th 1496 .......... 15

*Simons v. Horowitz*, (1984) 151 Cal.App.3d 834 .......... 15

*Thurman v. Bayshore Transit Management, Inc.*, (2012) 203 Cal.App.4th .......... 33

*Troester v. Starbucks Corp.*, (2018) 5 Cal.5th 829 .......... 22, 23

*Trotsky v. L.A. Fed. Sav. & Loan Ass'n*, (1975) 48 Cal.App.3d 134 .......... 38

*Vasquez v. Superior Court*, (1971) 4 Cal.3d 800 .......... 16

*Wershba v. Apple Computer, Inc.*, (2001) 91 Cal.App.4th 224 .......... 15, 37

**State Statutes**

Business & Professions Code § 17200 .......... 9, 15

Civil Code Section 1542 .......... 39

Code Civ. Proc. § 382 .......... 11, 12

Labor Code § 203 .......... 9, 32, 33, 36

Labor Code, § 203, subd. (a).......... 32

Labor Code § 226(a) .......... 9, 30, 31

Labor Code § 226(e)(1) .......... 30, 31, 36

Labor Code § 226(e)(2)(B) .......... 31

Labor Code § 226.7.......... 9, 25

Labor Code § 226.7, subdivision (c).......... 28

Labor Code § 226.8.......... 9

Labor Code § 510.......... 9

Labor Code, § 510, subd. (a).......... 23

Labor Code § 512.......... 9, 25

Labor Code § 1174.......... 10, 13, 15

Labor Code § 1182.12.......... 10, 13, 15

Labor Code § 1194.......... 9, 23

Labor Code § 1194.2.......... 23

Labor Code § 1197.......... 10, 13, 15, 23

Labor Code § 1198.......... 10, 13, 15

Labor Code § 1199.......... 9

Labor Code § 2698.......... 33

Labor Code § 2699.......... 9, 14, 15, 33

Labor Code § 2699.3(a)(2)(A).......... 9

Labor Code § 2802.......... 9

Labor Code § 2802(a) .......... 29


**State Rules**


California Rule of Court ("Rule"), Rule 3.769 .......... 21, 22


**State Regulations**


Cal. Code Regs., tit. 8, § 11040, subd. 12(A) .......... 28

Title 8 Cal. Code of Regs., § 11050(2)(K) .......... 22

**Other Authorities**

AB 2288 .......... 34

*Almanzar v. Home Depot U.S.A., Inc.*, (E.D.Cal. 2022) 2022 U.S. Dist. LEXIS 127724, at *36 .......... 32

Conte & Newberg, Newberg on Class Actions, §§ 11.26 (4th ed. 2002) .......... 22

SB 92 .......... 34

## MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION

Plaintiffs JAMES SARAMI, DOUGLAS STUMVOLL, and ANDREY TARASOV ("Plaintiffs") submit this Memorandum of Points and Authorities in support of Plaintiffs' Motion for Preliminary Approval of the Class Action and PAGA Settlement Agreement reached between Plaintiffs and Defendants Tend Exchange Subsidiary, LLC; Tend Exchange, Inc. & Delaware Tender Staffing, LLC ("Defendants") (Plaintiffs and Defendants together, the "Parties").

By this Motion, Plaintiffs request that the Court:

(1) Grant preliminary approval of the fully-executed Class Action and PAGA Settlement Agreement ("Settlement" or "Agreement"). A true and correct copy of the Agreement is attached hereto as Exhibit "1" of the Declaration of Kelsey M. Szamet (hereafter "Szamet Decl.");

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

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

## II. FACTUAL BACKGROUND

### A. Litigation Overview and Procedural History

Defendants Tend Exchange Subsidiary, LLC; Tend Exchange, Inc., & Delaware Tender Staffing, LLC are hospitality staffing agencies that operate throughout the United States. (Szamet Decl. ¶4.) Plaintiffs James Sarami and Andrey Tarasov formerly worked for Defendants in California during all or part of the Class Period. Douglas Stumvoll is a current employee of Defendant. . (Szamet Decl. ¶5.) Plaintiffs allege that they, and other Class Members, were jointly employed by Tend Exchange Subsidiary, LLC; Tend Exchange, Inc., & Delaware Tender Staffing, LLC. (Szamet Decl. ¶6.)

On January 31, 2023, Plaintiff JAMES SARAMI filed a Class Action Complaint entitled

*JAMES SARAMI v. TEND EXCHANGE SUBSIDIARY, LLC; TEND EXCHANGE, INC. AND DELAWARE TENDER STAFFING, LLC*, in Los Angeles County Superior Court, Case No. 23STCV02139, seeking recovery for: (1) failure to pay wages and/or overtime under Labor Code §§ 510, 1194, and 1199; (2) failure to provide meal breaks pursuant to Labor Code §§ 226.7 and 512; (3) failure to reimburse expenses pursuant to Labor Code § 2802; (4) failure to provide accurate itemized wage statements pursuant to Labor Code § 226(a); (5) penalties under Labor Code § 203; and (6) violation of Business & Professions Code § 17200. (Szamet Decl. ¶7.)

Also on January 31, 2023, Plaintiff Sarami sent a notice letter, pursuant to Labor PAGA, 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. (Szamet Decl. ¶8.)

On April 7, 2023, Plaintiff Sarami filed a First Amended Class and Representative Action 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 and an additional claim for penalties under PAGA for Labor Code § 226.8. (Szamet Decl. ¶9.)

On December 11, 2023, the above-entitled Court found that the case *Gregory Flowers v. Tend Exchange, Inc. et al.,* Los Angeles County Superior Court Case No. 23STCV17918 was related to the above-entitled case. (Szamet Decl. ¶10.)

On December 18, 2023, Plaintiff submitted an amended notice letter to the LWDA and mailed a letter by certified mail to each of Defendants' entity addresses, as proscribed by the Code, adding Plaintiff Douglas Stumvoll and describing Defendants' alleged failure to pay minimum wages, provide compliant rest periods, and maintain employee records, in violation of Labor Code §§ 226.7, 1174, 1174.5, 1182.12, 1197, and 1198. (Szamet Decl. ¶11.) On January 16, 2024, Plaintiffs submitted a second amended notice letter to the LWDA and mailed a letter to each of Defendants' entity addresses, adding Plaintiff Andrey Tarasov to the Action. (Szamet Decl. ¶12.)

Pursuant to Labor Code §2699.3(a)(2)(A), no notice was received by Plaintiffs from the LWDA evidencing its intention to investigate within sixty-five (65) calendar days of January 16,

2024. (Szamet Decl. ¶13.) On April 16, 2024, Plaintiffs filed a Second Amended Complaint adding Plaintiffs Douglas Stumvoll and Andrey Tarasov to the Action, as well as adding additional claims for violations of Labor Code §§ 1174, 1182.12, 1197, and 1198. ("SAC"; "Operative Complaint") (Szamet Decl. ¶14.) The Second Amended Complaint is the Operative Complaint in the Action.

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

The Parties have yet to engage in formal discovery, instead focusing their efforts on resolving this case through early mediation. (Szamet Decl. ¶15.) On October 23, 2023, the Parties participated in an all-day mediation presided over by Peter S. Rukin, Esq. which led to this Agreement to settle the Action. (Szamet Decl. ¶16.) In preparation for mediation, Defendants informally produced multiple documents and provided other information necessary to evaluate settlement. (Szamet Decl. ¶17.) This included Plaintiff Sarami's personnel file, a sampling of time and pay records for members of the putative class, employee agreements and rules, and the total number of Class Members. (Szamet Decl. ¶18.) It is Plaintiffs' position that the Parties engaged in sufficient informal discovery to allow the Parties to fully investigate the claims at issue and understand their strengths and weakness and to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*"). (Szamet Decl. ¶19.)

Defendants deny any liability or wrongdoing of any kind associated with the claims alleged in the Action, disputes the damages and penalties claimed by Plaintiffs, and further contends that, for any purpose other than settlement, Plaintiffs' claims are not appropriate for class or representative action treatment. (Szamet Decl. ¶20.) Defendants contend, 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 Defendants 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 Defendants, uncertainties regarding a class and representative action trial on the merits, and numerous potential appellate issues. (Szamet Decl.

¶21.) Although Defendants deny any liability, Defendants are 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.*)

## 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. (Szamet Decl. ¶22.) Accordingly, this Court should certify the putative settlement class.

A. The Proposed Class Is Ascertainable and Sufficiently Numerous

1. Ascertainability

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

Here, Plaintiffs maintains that the proposed Settlement Class is ascertainable for several reasons: First, Defendant has agreed in the Agreement to provide a class list to the Administrator containing the name, last known mailing address, social security number, and number of Class Period Shifts and PAGA Pay Periods for all putative class members after issuance of the preliminary approval order. (Szamet Decl. ¶23; Ex. 1 at ¶1.8.) Second, Class Members consist of Defendant's employees, and Defendant is required to keep records of its employees' names, home addresses, and social security numbers. (*See* Wage Order 4-2001, subsection 7(c); Szamet Decl. ¶24.) Third and finally, Defendant informally produced Plaintiff Sarami's personnel file and pay statements, and time and pay data, for Class Members containing class member contact information, which confirms that all Class Members may be readily identified based on Defendant's records. (Szamet Decl. ¶25.)

2. Numerosity

There is no set number that is required as a matter of law to maintain a class action. (*See, e.g.*, *Rose v. City of Hayward*, *supra*, 126 Cal.App.3d at p. 934.) Here, the proposed Settlement Class contains, based upon information and belief, approximately 12,500 non-exempt employees in the State of California. (Ex. 1 at ¶4.1.) Therefore, Plaintiffs are confident they will be able to establish that the proposed Settlement Class is ascertainable and sufficiently numerous. (Szamet Decl. ¶26.)

B. There Is a Well-Defined Community of Interest

1. There Are Predominant Questions of Law and Fact

In deciding whether questions of common or general interest predominate, a court must determine whether "the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants." (*Collins v. Rocha* (1972) 7 Cal.3d 232, 238; *accord*, *Sav–On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.) As a general matter, if the defendant's liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages." (*Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 916, 107; *accord*, *Knapp v. AT & T Wireless Services, Inc.* (2011) 195 Cal.App.4th 932, 941.)

Here, Plaintiffs argue that there are questions of law and fact common to the proposed Settlement Class that predominate over any questions affecting only individual Class Members. (Szamet Decl. ¶27.) These common questions include:

1) Whether Defendants failed to pay minimum wages for each hour worked or part thereof;

2) Whether Defendants failed to pay all wages for all hours at the appropriate rate of pay;

3) Whether Defendants failed to provide lawfully required meal periods or meal period premiums at the correct rate of pay in lieu thereof;

4) Whether Defendants failed to provide lawfully required rest or rest period premiums at the correct rate of pay in lieu thereof;

5) Whether Defendants failed to reimburse business-related expenses;

6) Whether Defendants failed to provide accurate itemized wage statements;

7) Whether Defendants failed to maintain records as required by Labor Code section 1174;

8) Whether Defendants failed to pay compensation due and owning upon termination

of employment;

9) Whether Defendants engaged in unfair competition; and,

10) Whether Defendants violated § 2699, et seq. of the Labor Code by engaging in the acts previously alleged.

(Szamet Decl. ¶28.)

Plaintiffs' challenge to Defendants' uniform policies and practices involves common factual and legal issues that are amenable to class treatment. (Szamet Decl. ¶29.) As the California Supreme Court has emphasized, "[c]aims alleging that a uniform policy consistently applied to a group of employees is in violation of the wage and hour laws are of the sort routinely, and properly, found suitable for class treatment." (*Brinker*, *supra*, 53 Cal.4th at 1033; *see also Bradley v. Networkers International, LLC* (2012) 211 Cal.App.4th 1129, 1141-1146.) Moreover, a class of similarly situated employees may be certified based on common questions of fact or law, even if each employee has to establish the amount of his or her damages. (*See Bell v. Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 741; *Sav-On Drug Stores*, *supra*, 34 Cal.4th at 340.)

Here, Plaintiffs maintain that the proposed Class Members suffered the same injuries, in the same manner: (1) Class Members were not properly paid minimum wages for each and every hour worked or part thereof, and were not properly paid for all hours at the appropriate rate of pay; (2) Class Members did not receive their meal and rest periods as required, or meal/rest period premiums at the correct rate of pay; (3) Class Members were not provided accurate itemized wage statements; (4) Class Members were not reimbursed for business-related expenses; and; (5) Class Members were not paid all wages owed upon termination/resignation. (Szamet Decl. ¶30.) Plaintiffs allege that Class Members worked in the same capacity for the same employer and were subject to the same employment policies and practices, the questions of fact and claims regarding the status of these employees are the same for each member of the Settlement Class. Accordingly, for purposes of settlement, certification for settlement purposes is appropriate. (Szamet Decl. ¶31.)

2. <u>The Class Representatives Have Claims Typical of the Proposed Class</u>

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

Plaintiffs worked as hourly employees for Defendants during the Class Period. (Szamet Decl. ¶32.) Plaintiffs allege that they: (1) worked without being paid minimum wage for each hour worked or part thereof; (2) worked without being paid for all hours at the appropriate rate of pay; (3) worked without being provided meal periods or meal period premiums at the correct rate of pay in lieu thereof; (4) work without being provided rest periods or rest period premiums at the correct rate of pay in lieu thereof; (5) work without being reimbursed for their out of pocket expenses; (6) work without being provided accurate wage statements; (7) work without Defendants maintaining records in violation of Labor Code section 1174; (8) work without Defendants paying all wages at the time of termination of their employment with Defendants. Plaintiffs also allege that they experienced derivative claims for unfair business competition (B&P Code §17200) and Labor Code §2699, et seq. (Szamet Decl. ¶33.) Plaintiffs also contend that these claims are typical of those of the Settlement Class. (Szamet Decl. ¶34.)

3. <u>Plaintiffs Contends That As The Class Representatives They Have and Will Fairly Represent the Interests of the Class Members</u>

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

Plaintiffs believes that they are capable of fairly representing and adequately protecting the interests of the proposed Class Members. (Szamet Decl. ¶35.) Plaintiffs' interests in this litigation are coextensive with the interests of the proposed Class Members. The members of the proposed Settlement Class all worked for Defendant during the relevant time period and incurred the same type of alleged damages with regard to Defendant's alleged violations of the law. (Szamet Decl. ¶36.) Moreover, Plaintiffs have agreed to serve as Class Representatives and has retained qualified Counsel who is experienced in prosecuting wage and hour class actions. (Szamet Decl. ¶37.) This demonstrates their commitment to bringing about the best possible results for the benefit of the proposed Settlement Class. (Szamet Decl. ¶38.) Plaintiffs have provided their Counsel with all necessary and pertinent information. (Szamet Decl. ¶39.) Plaintiffs have very active participants in the litigation including having frequent contact with Class Members and working closely with Class Counsel to develop the theories of liability. (Szamet Decl. ¶40.) Plaintiffs also made themselves available for a full day of mediation and were informed of and involved in all of the Settlement negotiations. Therefore, Plaintiffs believe that they have and will continue to adequately represent the proposed Class Members. (Szamet Decl. ¶41.)

C. The Class Action Vehicle Is Superior to the Alternatives

"The ultimate question in every case of this type is 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." (*Lockheed Martin*, *supra*, 29 Cal.App.4th at 1104–1105.) The California Supreme Court has directed the courts to utilize the class action device to fashion "an effective and inclusive group remedy." (*Richmond v. Dart Indus., Inc*. (1981) 29 Cal.3d 462, 469.) Normally, in making its class certification decision, the Court must determine that a class action would be superior to alternate means for a fair and efficient adjudication. If the causes of action may be adjudicated in a single proceeding, thereby saving time, reducing waste, and limiting duplication of effort, class certification is superior to individual litigation. (*See, e.g.*, *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 816.) Since the Parties agreed to a settlement in principal and now seek Court approval of that Settlement, Plaintiffs submit that there is not as much need as there would be in an ordinary motion for class certification for the Court to determine that the case can be manageably tried.

Plaintiffs maintain that class treatment would be the superior method of managing this case. A class action is superior to individual litigation "when numerous parties suffer injury of insufficient size to warrant individual action and when denial of class relief would result in unjust advantage to the wrongdoer." (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.) In cases such as this, where individual damages may be small, the class action device is the most feasible method of recovery. (*See, e.g. Lockheed Martin*, *supra*, 29 Cal.4th at 1131.) In this regard, the superiority of class treatment is evident here because individual pursuit of class members' claims may not be economically viable. (Szamet Decl. ¶42.) The only alternative to certification would be to force over 12,500 employees to join this action, file individual, uniform actions, or abandon their legal rights altogether. (Szamet Decl. ¶43.) Plaintiffs maintain that this economic reality would result in a windfall for Defendants if this case were not certified. (Szamet Decl. ¶44.)

## IV. THE PROPOSED SETTLEMENT

### A. The Settlement Class

For purposes of Agreement, the settlement class is defined as: "all current and former non-exempt California employees or 1099 workers of Defendants between March 1, 2022 and December 31, 2023" ("Class Members" or "Class") (Szamet Decl. ¶45; Ex. 1 at ¶1.5.)

The Class Period is March 1, 2022, through December 31, 2023. (Szamet Decl. ¶46; Ex. 1 at ¶1.12.) Based on documents and other information produced by Defendant in connection with the mediation and the negotiation of the Settlement Agreement, there are approximately 12,500 Class Members who collectively worked a total of 140,500 shifts. (Szamet Decl. ¶47; Ex. 1 at ¶4.1.)

Because of the unique nature of this job of accepting periodic shift work through an app, Plaintiffs believe it is more helpful to analyze this proposed Settlement in terms of shifts as opposed to workweeks. (Szamet Decl. ¶48.) Indeed, it was not common to work a full workweek due to the nature of this position (accepting service-related work through the app such as bartending) and also explains why the Class Member headcount is so high. *Id*. Using the Gross

Settlement Amount of $1,200,000.00, the per shift amount of this Settlement is $8.54. ($1200,000 / 140,6500). (Szamet Decl. ¶49.) When analyzed this way, Plaintiffs believe the proposed Settlement is extremely fair and reasonable. (Szamet Decl. ¶50.)

B. The Aggrieved Employees

For purposes of the Agreement, the Aggrieved Employees are defined as: "all current and former non-exempt California employees or 1099 workers of Defendants between March 1, 2022 and December 31, 2023." ("Aggrieved Employees") (Szamet Decl. ¶52; Settlement, Ex. 1 at ¶1.4.)

The PAGA Period is March 1, 2022 through December 31, 2023. (Szamet Decl. ¶44; Ex. 1 at ¶1.31.) Based on documents and other information produced by Defendant in connection with the mediation and the negotiation of the Settlement Agreement, there are approximately 12,500 Aggrieved Employees who collectively worked a total of 80,250 PAGA Pay Periods. (Szamet Decl. ¶53; Ex. 1 at ¶4.1.)

C. Gross Settlement Amount

As detailed fully in the Agreement, the Settlement provides for Defendant to pay a Gross Settlement Amount of $1,200,000.00, which includes the sum of the Individual Class Payments, the Class Representatives Service Payments, the Class Counsel Fees Payment; Class Counsel Litigation Payment, PAGA Penalties, and the Administrator Expenses Payment. (Szamet Decl. ¶54; Ex. 1 at ¶1.22.)

The Net Settlement Amount is the Gross Settlement Amount, less Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. (Szamet Decl. ¶55; Ex. 1 at ¶1.28.)

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

| | | |
|---|---|---|
| Gross Settlement Amount: | $ | 1,200,000.00 |
| Less Class Representatives Enhancement: | $ | 30,000.00 |
| Less Class Counsel's Fees: | $ | 400,000.00 |
| Less Class Counsel's Costs: | $ | 15,000.00 |
| Less PAGA Payment: | $ | 40,000.00<br>*($30,000.00 to the LWDA and $10,000.00 to Aggrieved Employees)* |

| | | |
|---|---|---|
| Less Administrator Costs: | $ | 66,000.00 |
| Anticipated Net Settlement Amount | $ | 649,000.00 |

(Ex. 1 at ¶3.)

D. Optional Tend Defendant

The Settlement Agreement provides for the Optional Tend Defendant to join in the Agreement to extend the release period prior to March 1, 2022. (*See* Ex. 1 at, ¶9.1.) Specifically, if the Optional Tend Defendant elects to join, it will add shifts between July 31, 2020 and February 28, 2022 as a 1:1 increase which results in a potential addition contribution from the Optional Tend Defendant of $215,850.00. (*Id.*)

E. Individual Settlement Payments

The amount of each Class Member's Individual Class Payment is an individualized amount that is based on the number of compensable *shifts* worked by the Class Member during the Class Period. (Ex. 1 at ¶3.2.4; *see also* Ex. A to the Agreement at pp. 3 [Class Notice].) This individual amount shall be determined according to the settlement payment formula set forth in the Agreement. (*See* Ex. 1 at ¶3.2.4; *Id*. at Ex. A to the Agreement [Class Notice].) The Agreement provides for a specific and detailed Work Week dispute process. (*See* Ex. 1 at, ¶8.6.)

The Individual PAGA Payment is an individualized amount based on the number of PAGA Period Pay Periods worked by the aggrieved employee during the PAGA Period. (Ex. 1 at ¶3.2.5.1; *see also* Ex. A to the Agreement at pp. 3 [Class Notice].) It shall be calculated as follows: twenty-five percent (25%) of the PAGA Payment (or $10,000.00) divided by the total number of PAGA Period Pay Periods worked by all aggrieved employees during the PAGA Period and multiplying the result by each aggrieved employee's PAGA Period Pay Periods. (*See* Ex. 1 at ¶3.2.5.1; *Id*. at Ex. A to the Agreement [Class Notice].)

F. Process for Administering Settlement after Preliminary Approval

The detailed Notice Procedure established by the Agreement will efficiently and accurately ensure that Notice is provided to the Class Members. (Ex. 1 at ¶7.4.) The Parties obtained three bids and have agreed to use a reputable third-party claims administrator, Apex Class Action, LLC, to administer the Agreement because their bid was comparable to another administration firm's bid, cost effective for the Class Members, and Counsel have experience with their services. (Ex. 1

at § 7, ¶7.1.)

G. Process for Class Members to Respond to Class Notice

As detailed in the Agreement, Class Members will have an opportunity to request exclusion from the Agreement (i.e. opt out) and to object to the Agreement at the Final Approval Hearing. (*See* Ex. 1 at, ¶¶7.5;7.7; *see also* Ex. A to the Agreement at pp. 2-3, 7-8 [Class Notice].) The Agreement and Class Notice contain details about the process to request exclusion or object. (*Id* at Ex. 1; *see also* Ex. A to the Agreement at pp. 2-3, 7-8 [Class Notice].)

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

H. The Release

The Release goes into effect on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments (Ex. 1 at ¶5). Defendant shall fully fund 14 days after the Effective Date. (Ex. 1 at ¶4.3). The "Effective Date" is the date by when the Court enters the Judgment on its Order Granting Final Approval of the Settlement and the Judgment is Final. (Ex. 1 at ¶1.18.)

The Release by Participating Class Members is defined as:

> all causes of action and/or legal theories that were alleged in any operative Complaint, or that could have been alleged based on the factual allegations in any operative Complaint, including but not limited to all of the following claims for relief: (1) failure to pay wages and/or overtime; (2) failure to provide meal break; (3) failure to reimburse expenses; (4) failure to provide compliant and/or timely wage statement; (5) failure to timely pay all wages owed upon termination of employment; (6) violations of the Unfair Competition Law; (7) civil penalties under the Private Attorneys General Act ("PAGA"); and (8) all damages, penalties, interest and other amounts recoverable under said causes of action under the law, to the extent permissible, including but not limited to the California Labor Code, the applicable Wage Orders, and the California Unfair Competition Law as to the facts alleged in the Action (collectively, the "Released Claims"). The Release shall cover the Class Period. The res judicata effect of the Judgment will be the same as that of the Release. Except as set forth in Section 6.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period. (Ex. 1 at ¶5.2.)

The Release by Aggrieved Employees is defined as:

> all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the three PAGA Notices as ascertained in the course of the Action including, (1) failure to pay wages and/or overtime; (2) failure to provide meal break; (3) failure to reimburse expenses; (4) failure to provide compliant and/or timely wage statement; (5) failure to timely pay all wages owed upon termination of employment; (6) violations of the Unfair Competition Law; (7) civil penalties under the Private Attorneys General Act ("PAGA"); and (8) all damages, penalties, interest and other amounts recoverable under said causes of action under the law, to the extent permissible, including but not limited to the California Labor Code, the applicable Wage Orders, and the California Unfair Competition Law as to the facts alleged in the Action (collectively, the "Released PAGA Claims") (Ex. 1 at ¶5.3.) The Released PAGA Claims shall cover the period from March 1, 2022 to the end of the PAGA Period.

## V. ARGUMENT

### A. Plaintiffs Request Approval of This Class Action Settlement

California Rule of Court ("Rule"), Rule 3.769 requires litigants to obtain court approval of class action settlements. Approval occurs in two steps: (1) an early "preliminary" review by the trial court; and (2) a subsequent "final" review after notice of the settlement has been distributed to class members for their comments and objections. Cal. R. Ct. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2010) (the court first "preliminarily approves the settlement" and later "conducts a final approval hearing to inquire into the fairness of the proposed settlement"). The motion for preliminary approval must be accompanied by (1) the settlement agreement, (2) proposed notice to the class, and (3) the proposed order. *Id.* at 3.769(c). The motion must also identify any agreement concerning the payment of attorneys' fees. *Id.* at 3.769(b).

If the trial court grants preliminary approval of a settlement, Rule 3.769(f) requires the court to (1) schedule a final approval hearing and (2) approve the method by which the parties are to provide notice to the class of the hearing and "an explanation of the proposed settlement." The court must also approve a procedure for class members to file objections to the settlement. *Id.* at 3.769(f). At the final approval hearing, the court must conduct an inquiry into the fairness of the proposed settlement. *Id.* at 3.769(g).

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Although Rule 3.769 does not provide detail as to the scope of review of the proposed settlement, preliminary approval is warranted if the settlement falls within a "reasonable range." *See North County Contractor's Assn., Inc. v. Touchstone Ins. Services*, 27 Cal. App. 4th 1085, 1089-90 (1994); Conte & Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002) ("Newberg").

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

The proposed settlement satisfies each of these factors. Class Counsel conducted meaningful informal discovery before entering into meaningful settlement negotiations in this matter. (*Id* at Szamet Decl. ¶¶15-19.) This discovery permitted Class Counsel to fairly evaluate the strength of the case and the risks associated with ongoing litigation. (Szamet Decl. ¶58.) Class Counsel is experienced in handling wage and hour class actions and, after weighing all of the following factors, supports this Agreement. (Szamet Decl. ¶59.)

1. The Strength of Plaintiff's Case

a) The Risks Associated with Minimum Wage/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.)

Additionally, California workers are statutorily entitled to overtime compensation, unless they are properly classified as falling within one of the narrow exemption categories. Under California law, "[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek…shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee." (Lab. Code, § 510, subd. (a).) Furthermore, "[a]ny work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee." (Lab. Code, § 510, subd. (a).) Also, pursuant to Labor Code §§ 1194, 1194.2, and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the proper minimum wage for all time worked.

Plaintiffs and the Class Members alleged that they were not paid minimum wage for each hour worked (or part thereof) during which they were required to perform acts at the direction and for the benefit of Defendants. (Szamet Decl. ¶60.) Specifically, throughout the relevant period, Plaintiffs maintain that Defendant had an "auto deduct" policy for meal periods meaning Plaintiffs were not able to actually take the meal periods due to the nature of the work, but Defendant automatically deducted 30 minutes from their pay for time they had actually worked. (Szamet Decl. ¶61.) Plaintiffs also contend that Defendants did not properly pay overtime for all hours worked over 8 in a day or 40 in a week but paid at the regular rate instead. (Szamet Decl. ¶62.)

First, Defendants vehemently denied this claim and argued that its policies specifically provide for meal periods and prohibit off-the-clock work and, and as a practical matter, Class Members were not expected to or required to work off the clock. (Szamet Decl. ¶63.) Second, Defendant argued that Plaintiff's theory of liability would be extremely difficult to prove on a classwide basis because the time records will show that compliant meal periods occurred. (Szamet Decl. ¶64.) Defendant argued that this case would devolve into a series of mini-trials wherein each Class Member would have to testify as to whether he or she was required to perform work off the clock during periods off time they were off the clock for meal periods. (Szamet Decl. ¶65.) Of course, Defendant argued that such an inquiry would defeat class certification altogether whether or not any witnesses may have ultimately testified that they did perform some work off the clock. (Szamet Decl. ¶66.) *See Brinker*, 53 Cal. 4th at 1051-52 (holding that in the absence of a uniform, companywide policy, proof of liability is individual); *Amey v. Cinemark USA Inc.*, No. 13-CV-05669-WHO, 2015 WL 2251504, at *12 (N.D. Cal. May 13, 2015) (denying certification of off-the-clock claim because plaintiffs' work requirements depended on the manager); *Brewer v. Gen. Nutrition Corp.*, No. 11-CV-3587 YGR, 2014 WL 5877695, at *12 (N.D. Cal. Nov. 12, 2014) (denying certification based on policy requiring employees to finish closing duties within 30 minutes, because the court would still be left with numerous individual issues); *Pryor v. Aerotek Scientific, LLC*, 278 F.R.D. 516, 532-33 (C.D. Cal. 2011) (denying certification of off-the-clock claim).

Plaintiffs acknowledge that this can be a highly difficult type of claim to prove because the time records show compliant meal periods so there are no time records to substantiate or evaluate an allegedly consistent policy or practice of failing to provide compliant meal periods but still automatically deducting time worked on the assumption that they were lawfully provided. (Szamet Decl. ¶ 67.) Instead, Defendant would argue that if there was any such issue of meal periods being "auto deducted" it would necessitate speaking to each and every Settlement Class Member about their experiences day to day to determine whether they were provided a compliant meal period or not and whether any off the clock time was ever worked during meal periods and if so, why it was worked. (Szamet Decl. ¶68.) This type of inquiry, Defendants would argue, makes its very difficult to establish liability based on common proof. (Szamet Decl. ¶69.) Because the theory of liability has this acute risk, Plaintiff believed it was appropriate to discount this unpaid wages claim dramatically for settlement purposes. (Szamet Decl. ¶ 70.)

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 9-2001, §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*.

Employers covered by Industrial Welfare Commission ("IWC") Wage Order 9-2001 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 9-2001, §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 9-2001, §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.

As discussed in above, Plaintiffs contend that Defendants violated California's meal break laws by not allowing Plaintiff and other Class Members to take actual daily meal breaks and instead "auto deducted" 30 minutes of time worked as a meal period. (Szamet Decl. ¶71.) Indeed, Plaintiffs allege that due to the hectic nature of the job, they were rarely if ever able to take all required, uninterrupted meal periods per shift. (*Id.*) Plaintiff and Class Members were largely placed for work assignments at events and performed work as bartenders and servers, etc. (Szamet Decl. ¶72.) They contend they were required to provide customer service and other work-related service duties throughout their shifts and generally had no ability to take lawful, uninterrupted meal periods because they were required to actively work their entire shift or were frequently interrupted. (Szamet Decl. ¶73.) Plaintiffs contend that if they did not provide satisfactory customer service during a shift, they would be subject to potential discipline up to and including termination. (*Id.*) Thus, Plaintiff and Class Members argue that they were routinely discouraged and prevented from taking uninterrupted meal periods in order to complete their assignments and avoid the imposition of potential disciplinary measures, but Defendant automatically deducted that time nonetheless. (Szamet Decl. ¶74.) Plaintiff asserts that Defendant further violated California's meal period laws by not paying Plaintiff and Class Members an extra hour of wages for each missed or improper meal period. (Szamet Decl. ¶75.)

As discussed above, at mediation, Defendant vehemently denied this claim and argued that its written policies prohibit off-the-clock work, all meal periods were provided and Class Members were not working off the clock during meal periods. (Szamet Decl. ¶ 76.) Second, Defendant argued that Plaintiff's theory of liability would be extremely difficult to prove on a classwide basis because the time records will show compliant meal periods so in the instance of an allegedly late, missed, or short meal period, Defendant argued that it would be entitled to inquire of each class member, as to any given meal period, whether or not the individual was provided with the opportunity to take a compliant meal period that shift. (Szamet Decl. ¶77.) Of course, Defendant argued that such an inquiry would defeat class certification altogether. (Szamet Decl. ¶ 78.) Defendant also would have argued that it has no obligation to "guarantee" or "ensure" that meal periods are taken by all employees at all times. *Brinker Rest. Corp. v. Superior Ct*., 53 Cal. 4th 1004, 1040 (2012) (employers are "not obligated to police meal breaks and ensure no work thereafter is performed"). Rather, an employer satisfies (as Defendant would argue) its obligation to provide meal periods if "it relieves its employees of all duty, relinquishes control over their activities and permits them a reasonable opportunity to take an uninterrupted 30-minute break, and does not impede or discourage them from doing so." *Id*. Defendant argued that there is no "basis in the wage order or statute" for the notion "that an employer must ensure that no work is done – i.e., prohibit work" during a meal period. *Id*. at 1038; *see also Murphy*, 40 Cal. 4th at 1104 (finding a violation occurs only if the employee is "forced to forgo his or her meal period").

Defendant would have argued at trial that "to assert a meal break claim, the employee must show that he was forced to forego his meal breaks as opposed to merely showing that he did not take them." *Nguyen v. Baxter Healthcare Corp*., No. 8:10-CV-01436-CJC, 2011 WL 6018284, at *5 (C.D. Cal. Nov. 28, 2011) (emphasis in original); *see also Brinker*, 53 Cal. 4th at 1034; *Dailey v. Sears, Roebuck & Co*., 214 Cal. App. 4th 974, 1000-02 (2013). Thus, Defendant would have argued that courts reject certifying meal break claims where no common policy denies breaks on a class-wide basis. *See, e.g., Purnell v. Sunrise Senior Living Mgmt., Inc*., No. SA CV10-00897 JAK, 2012 WL 1951487, at *8 (C.D. Cal. Feb. 27, 2012); *Washington v. Joe's Crab Shack*, 271 F.R.D. 629, 641 (N.D. Cal. 2010) (denying certification because "an individualized inquiry will be required to determine whether any employee failed to take a meal break because he/she was too busy").

Plaintiff was confident that Defendant would attempt to gather testimonial evidence from class members indicating that the records were accurate, and they generally were able to take compliant meal breaks as reflected in the records or were paid a meal period premium in lieu thereof. (Szamet Decl. ¶ 79.) Though Plaintiff does not believe this was the case, Plaintiff must acknowledge it poses risks for the Class. (Szamet Decl. (Szamet Decl. ¶ 80.) There is risk as to both sides as to what declarations and depositions of class members might reveal. (Szamet Decl. ¶ 81.)

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Because the records largely show compliant meal periods, Plaintiff acknowledged there was significant risk as to establishing liability on the meal period claim. (Szamet Decl. ¶ 82.) Considering this risk, Plaintiff believes it is fair and reasonable to discount the meal period claim for settlement purposes. (Szamet Decl. ¶83.)

c) The Risks Associated with the Rest Break Claim

Employees are entitled to a paid ten (10) minute rest break for every four (4) hours worked, or major fraction thereof. (Cal. Code Regs., tit. 8, § 11040, subd. 12(A).) Labor Code section 226.7, subdivision (c), requires an employer to pay an additional hour of compensation for each workday the employer fails to provide a rest period according to law.

Plaintiffs and the Class Members' rest period claims arise from an alleged common course of conduct wherein Defendant did not provide employees with the opportunity to take a 10-minute rest break during their shifts in compliance with California law. (Szamet Decl. ¶84.) The California Supreme Court has held: "Employees are entitled to 10 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on." (*Brinker Rest. Corp. v. Superior Court*, supra, 53 Cal.4th at 1029.) In an eight-hour workday, being denied the two paid rest breaks in a day is "essentially perform[ing] 20 minutes of 'free' work." (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1104.)

Employers must authorize and permit a net ten-minute paid rest period for every four hours, or major fraction thereof, of work for its employees. If an employer does not, then the employer must pay the employee one hour of pay at the employee's regular rate of pay for each workday that the rest period is not provided. (Cal. Code Regs., tit. 8, § 11040, subd. 12(B).)

Here, similar to the meal break violations, Plaintiffs alleged that Defendants maintained a consistent policy of failing to provide Plaintiffs and the Class members with rest breaks of not less than ten (10) minutes per four (4) hour work period or major fraction thereof. (Szamet Decl. ¶85.) Plaintiffs maintain that they and the Class members were unable to take compliant rest breaks due to the nature of the work (customer-facing events and customer service). (Szamet Decl. ¶ 86.)

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In its defense, Defendants argued that Plaintiffs' rest period claim was even less appropriate for certification than their meal period claim because it maintained lawful written policies to provide all required rest breaks and California law does not require employees to record rest periods. (Szamet Decl. ¶ 87.) Absent a shift-by-shift, break-by-break, employee-by-employee inquiry, Defendants argued that there was simply no way to know (1) whether a break was taken; and (2) if not, why not? (Szamet Decl. ¶ 88.) For each instance where an employee allegedly did not take a 10-minute rest period by the end of the fourth hour of work, the trier of fact would still have to determine why that particular employee had less than their full allotment of rest time. (Szamet Decl. ¶ 89.) Defendant accordingly would have argued that rest break claims are inherently individualized in nature because employers only need to "authorize and permit" breaks; they need not ensure that rest breaks are taken. *Brinker*, 53 Cal. 4th at 1004. To succeed, "[a]n employee must show that the employer prevented the employee from taking breaks; mere proof of knowledge that the employee was forgoing breaks is insufficient." As such, Plaintiffs had to acknowledge that it could potentially by easy for Defendants to defeat certification of this claim if it was able to gather testimonial evidence from class members indicating that they were able to take all required rest breaks each day. (Szamet Decl. ¶ 90.) Though Plaintiffs do not believe this was the case, Plaintiff must acknowledge it poses risks for the Class as to this claim. (Szamet Decl. ¶ 91.) Just as with meal periods, there is risk as to both sides as to what declarations and depositions of class members might reveal. (Szamet Decl. ¶ 92.)

d) The Risks Associated with the Reimbursement Claim

Under California Labor Code§ 2802(a) an employer "shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer." An employee acts in "discharge of his duties," for purposes of this Section when the employee acts within the "course and scope of employment." See *O'Hara v. Teamsters Union Local No. 856,* C.A.9 (Cal.)1998, 151 F.3d 1152.

Plaintiffs allege that Defendants have failed to reimburse for the cost of using their personal cell phones and tools that were not provided by Defendants but were necessary for the performance of Plaintiffs and the Class Members' job duties. (Szamet Decl. ¶93.) Specifically, Plaintiffs contend that Defendants required that Plaintiffs and the Class Members be available by cell phone and use/answer their personal cell phone while working, as well as downloading an app to their cell phones to clock in and out for Defendants. (Szamet Decl. ¶94.) Additionally, Plaintiffs allege that Defendants required Plaintiffs and the Class Members to purchase tools and equipment such as knifes, peelers, spatulas, and thermometers, among other items, and these tools were necessary to perform their job duties. (Szamet Decl. ¶95.) Plaintiffs argue that these cell phones and tools/equipment were not provided by Defendants, and Defendants failed to reimburse Plaintiffs and the Class Members for the costs associated with using these personal cell phones and tools/equipment. (Szamet Decl. ¶96.)

Defendant argued that it provided all necessary tools and cellphones were not required to perform job duties. (Szamet Decl. ¶97.) First, Defendant argued that it provided paper timesheets tor track shift length worked and that if any Class Members downloaded an app, it was out personal choice and convenience only. (Szamet Decl. ¶98.) Second, Defendant would further argue that any time Class Members spent using a cellphone application to clock in or out was *de minimis* such that it would not give rise to a failure to reimburse claim, and that even if the business use of Plaintiff's personal cell phone was more substantial, that such an inquiry is individualized and uncommon to the class. (Szamet Decl. ¶99.) As for other tools such as knives and peelers, Defendants argued that any such necessary tools were provided or Class Members were free to seek reimbursement. (Szamet Decl. ¶100.) As such, Plaintiff acknowledges there are also risks to the reimbursement claim. *Id*.

e) The Risks Associated with the Inaccurate Wage Statement Claim

California Labor Code §226(a) requires Defendant to provide its employees with an accurate, itemized written wage statement that shows, in relevant part, gross wages earned, the start and end date of the pay period and all applicable hourly rates and the corresponding number of hours worked. An employee "suffering injury," like Plaintiffs and Class Members, can recover penalties for an employer's "knowing and intentional failure" to comply with Labor Code §226(a). *See* Labor Code § 226(e)(1). Under the statute, an employee is deemed to "suffer injury" if the employer does not provide accurate and complete information required by Labor Code § 226(a) and the employee cannot "promptly and easily determine" from the wage statement alone the amount of gross wages or net wages paid to the employee or other information specified by Labor Code § 226(a). *See* Labor Code § 226(e)(2)(B).

Plaintiffs alleged a derivative claim that Defendants issued wage statements that allegedly violate Labor Code §§ 226(a)(1)(2)(5)(8) and (9). (Szamet Decl. ¶ 101.) Plaintiffs allege that they and Class Members are issued wage statements that do not accurately show all required information such gross wages earned, all applicable hourly rates, and the number of hours worked at the corresponding rate based on Defendant's alleged failure to blend discussed above. (Szamet Decl. ¶ 102.) However, Plaintiffs have to recognize that this is a derivative claim. (Szamet Decl. ¶ 103.) Plaintiffs do not argue that Defendant failed to show required information on the paystubs it issued to Class Members, only that the paystubs do not accurately show the information as a result of the other claim alleged. (Szamet Decl. ¶ 104.) While Plaintiffs believe this claim is easily certifiable, Plaintiffs have to acknowledge that this is a more difficult argument to prevail on when it comes to assessing liability and a resulting discount for settlement purposes is appropriate. (Szamet Decl. ¶ 105.)

Indeed, the California Supreme Court recently affirmed in just May 2024, "[u]nder long established law, an employer cannot incur civil or criminal penalties for the willful nonpayment of wages when the employer reasonably and in good faith disputes that wages are due." (*Naranjo v. Spectrum Sec. Servs., Inc.* (2024) 15 Cal.5th 1056, 1065 ("*Naranjo V*"). Notably, the Court revived the "knowing and intentional" violation standard as applied to claims for wage statement violations, definitively concluding: "an employer's objectively reasonable, good faith belief that it has provided employees with adequate wage statements precludes an award of penalties under section 226, subdivision (e)(1). An employer that believes reasonably and in good faith, albeit mistakenly, that it has complied with wage statement requirements does not fail to comply with those requirements knowingly and intentionally." (*Naranjo V*, 15 Cal.5th at 1087.) In cases such as here, where the wage statement claim is a derivative claim premised on disputed claims without a "standalone" violation pled, Plaintiffs acknowledge that recovery of statutory penalties is likely very difficult. (Szamet Decl. ¶ 106.) Based on this risk, Plaintiffs believed it was appropriate to discount this claim dramatically for settlement purposes. (Szamet Decl. ¶ 107.)

f) The Risks Associated with the Waiting Time Penalty Claim

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. (Szamet Decl. ¶108.) 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. (Szamet Decl. ¶109.) Therefore, under California Law, Plaintiffs contends that "waiting time" penalties would be triggered for each former employee in the class. (Szamet Decl. ¶110.) 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.)

Plaintiff contends that Defendants' 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.)

In response, Defendants would surely argue that even if, assuming *arguendo*, Plaintiff were owed any additional wages, they could not establish that Defendants "willfully" withheld final wages from him (or any other former employee), because waiting time penalties may only be recovered if the employer "willfully fails to pay" all final wages due upon separation of employment. (Cal. Lab. Code § 203(a) (emphasis added); *see also e.g., Almanzar v. Home Depot U.S.A., Inc*. (E.D.Cal. 2022) 2022 U.S. Dist. LEXIS 127724, at *36 ("[Labor Code] § 203 ... require[s] a showing of bad faith by the employer.").)

The risk analysis for the section 203 claim flows from the risk analysis for the underlying wage claims discussed above. (Szamet Decl. ¶ 111.)

g) 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.

Plaintiffs discounted the PAGA claim for settlement purposes for multiple reasons. (Szamet Decl. ¶112.) First, the aggrieved employees' PAGA claims are derivative of all the foregoing class claims. (*Id*.) Second, a court has discretion to award less than the maximum penalty. (*Id*.) 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); *see Nordstrom Commissions Cases*, 186 Cal.App.4th 576, 589 (2010) (affirming settlement allocating $0 of $6.4 million settlement to PAGA penalties)[1]. Finally, the Class Members are arguably compensated for these violations in the proposed Agreement, and thus any PAGA recovery for these same violations would be duplicative. (*Id*.) As such, the Agreement's contemplated PAGA payment of $40,000.00 is appropriate. (Szamet Decl. ¶113.)

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[1] *See e.g., Thurman*, 203 Cal.App.4th at 1135-36 (affirming a 30% reduction of a PAGA award where employer took its obligations seriously to correct its violation after receiving notice). On May 11, 2016, following a bench trial, Los Angeles Superior Court Judge John Wiley reduced PAGA penalties from $409,950 to $53,294 after finding the maximum statutory penalty amount to be unjust, arbitrary, oppressive, and/or confiscatory. (*Kaanaana et al. v. Barrett Business Serv.s Inc., et al.,* L.A. Super. Ct., Case No. BC 496090.)

An additional and important issue to consider when evaluating the risks associated with a representative PAGA claim are the recent amendments to the statute. (Szamet Decl. ¶114.) On July 1, 2024, Governor Newsom signed AB 2288 and SB 92 which reformed PAGA's penalty structure as well as its standing requirements.[2] (Szamet Decl. ¶115.) Specifically, the new legislation caps penalties imposed on employers who quickly cure the Labor Code violations after receiving a PAGA notice, and also requires that the representative plaintiff personally experience the alleged Labor Code violations brought in the action. (Szamet Decl. ¶116.) While this new legislation is not retroactive, courts may still take these reforms into consideration when adjudicating a PAGA action at trial. (Szamet Decl. ¶117.) As such, there is substantial risk in litigating Plaintiffs' representative PAGA claim.

2. <u>The Risk, Expense, Complexity, and Likely Duration of Further Litigation</u>

There is significant expense associated with the class certification process, which the Parties can avoid by entering into the contemplated Agreement now. (Szamet Decl. ¶118.) If the Court did eventually certify a meal or wage class, trial of a case involving approximately 12,500 Class Members would require the retention of expensive expert witnesses, the accrual of extensive litigation costs, and a significant time overlay by the parties. (Szamet Decl. ¶119.) Moreover, given the complexity and unsettled nature of the issues in this case it is likely that any outcome at trial would have resulted in a lengthy and costly appeal. (Szamet Decl. ¶120.) An appeal would result in further delay for the Class Members who are waiting for a resolution in this matter. (*Id.*)

3. <u>The Risk of Maintaining Class Action Status through Trial</u>

This case has not been certified to be tried as a class action. (Szamet Decl. ¶121.) While Plaintiffs believe there is strong evidence to support certification of several possible subclasses, certification is always hard fought and subject to judicial discretion. Moreover, decertification is always a possibility. (*Id.*) In attempting to certify a class, the parties would need to conduct multiple depositions, including of the Class Representatives and of person(s) most knowledgeable regarding Defendant's 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.*)

[2] https://www.gov.ca.gov/2024/07/01/governor-newsom-signs-paga-reform/

4. The Amount Offered in Settlement

It was very difficult for the Parties to reach this Settlement of $1,200,000.00. (Szamet Decl. ¶122.) This Settlement is the result of adversarial, non-collusive, and arms-length negotiations. (Szamet Decl. ¶123.) 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 Defendants liable, and the assistance of an experienced mediator, Peter S. Rukin, Esq. (*Id.*)

a) Plaintiffs' Assessment of Defendants' Maximum Exposure

Plaintiffs assessed the full value of the wage/overtime claim, without any discount, at approximately $1,399,380. (Szamet Decl. ¶124.) This calculation uses the average hourly rate for Class Members of $19.92. (Szamet Decl. ¶125.) There are 140,500 shifts at issue. (Szamet Decl. ¶126.) Plaintiff's unpaid wages theory of liability relies upon an alleged "auto deduct" for a 30-minute meal period from time actually worked. (Szamet Decl. ¶127.) Thus, assuming Plaintiffs could establish that each and every shift actually had 30 minutes of time worked, the damages would be $1,399,380 ($9.96 for 30 minutes of time x 140,500 shifts = $1,399,380.) (Szamet Decl. ¶128.)

Plaintiffs assessed the full value of the meal period claim, without any discount, at approximately $2,798,760. (Szamet Decl. ¶129.) This amount assumes Plaintiffs were able to prove that Class Members were owed a meal period premium of one hour of wages at the average hourly rate for each and every shift worked during the Class Period ($19.92 x 140,500 shifts = $2,798,760. (Szamet Decl. ¶130.)

Just as with meals, Plaintiffs assessed the full value of the rest period claim, without any discount, at approximately $2,798,760. (Szamet Decl. ¶131.) This amount assumes Plaintiffs were able to prove that Class Members were owed a rest period premium of one hour of wages at the average hourly rate for each and every shift worked during the Class Period ($19.92 x 140,500 shifts = $2,798,760. (Szamet Decl. ¶132.)

With regard to the reimbursement claim analysis, Plaintiffs believed that it was reasonable to value the potential reimbursement at $2 per shift, per employee, for reimbursement of personal cell phone usage and any necessary tools. This brought the damages for this claim to $281,000 ($2/shift x 140,500 shifts = $281,000). (Szamet Decl. ¶133.)

Plaintiffs valued the wage statement claim, without discount, at $8,025,000 ($100 per pay period x 80,250 pay periods during the statutory one period = $8,025,000. (Szamet Decl. ¶134.) Plaintiffs used $100 for each wage statement issued (pay period) which 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. (Szamet Decl. ¶135.) Due to the risk discussed above that 226(a) liability wouldn't attach under *Naranjo*, Plaintiffs determined that a steep discount of this claim was fair for settlement purposes. (Szamet Decl. ¶136.)

Plaintiffs valued the waiting time claim, tied to the wage/overtime claim, at approximately $27,489,600. (Szamet Decl. ¶137.) This calculation is based upon an assumption of 11,500 formers and the penalty amount of $6,912,000 per hour worked so if the average shift length is 4 hours the calculation is 11,500 former employees x $19.92 average hourly rate x 30 days x 4 hours average shift length = $27,489,600. (*Id.*) Considering the derivate nature of Labor Code §203, the dispute over whether class members were owed any wages, and the required showing of "willfulness", Plaintiffs determined that accepting a discount on this claim was appropriate. (Szamet Decl. ¶138.)

Finally, Plaintiffs calculated the value of the PAGA, without discount, at $8,025,000 ($100 per pay period x 80,250 pay periods during the statutory one period = $8,025,000. (Szamet Decl. ¶139.)

Per Plaintiffs' assessment, the maximum potential value of all of Plaintiffs' and the Class Members' claims core damages claims totals approximately $7,277,900 for the wage claim, meal and rest claims, and the business expense claim. (Szamet Decl. ¶140.) If the penalty exposure is added in, the total balloons to over $50,000,000. (Szamet Decl. ¶141.)

b) Defendant's Financial Status

One of the main factors affecting settlement of this action was Defendant's financial status. (Szamet Decl. ¶142.) Defendant is an app based company that allows individuals to login and accept jobs. (Szamet Decl. ¶143.) As discussed, the vast majority of workers do not work a traditional 5-day workweek but accept 1 or 2 jobs per week at most. (Szamet Decl. ¶144.) Defendant is a start-up company that has faced cash flow and profitability issues during its lifetime and lacks the financial resources of other well-known and far bigger delivery and driver companies to pay a settlement or judgement against it. (Szamet Decl. ¶145.). This issue has been discussed by the Parties in good faith and Defendants shared profit and loss statements under the mediation privilege to help Plaintiffs and the mediator consider potential solvency issues when working through a proposal to settle the case. (Szamet Decl. ¶146.) Class Counsel worked closely with the mediator to verify the information and representation made by Defendant regarding solvency. (Szamet Decl. ¶147.) Class Counsel determined that obtaining a settlement on behalf of the Settlement Class now, as opposed to protracted litigation with the uncertainty of Defendant's ability to pay made the most practical sense. (Szamet Decl. ¶148.)

Based on this risk coupled with the risks on the merits, Plaintiffs and their Counsel focused on attempting to come to a realistic and meaningful resolution for the Class. Class Counsel believes the Gross Settlement Amount of $1,200,000.00 is fair and reasonable. (Szamet Decl. ¶149.)

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 SZAMET & LY 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. (Szamet Decl. ¶¶150-152.) The firm is well versed in class action litigation and has diligently and aggressively pursued this action. (*Id.*) KINGSLEY SZAMET & LY 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 SZAMET & LY has handled is included in the accompanying declaration of Kelsey M. Szamet. (*Id.*) After factoring in the risks explained above, Class Counsel believes that the proposed settlement is fair and reasonable. (Szamet Decl. ¶153.)

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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 Comm'n* (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the proposed plan of allocation compensates Class Members pro rata based on the number of compensable shifts worked by the Class Member during the Class Period. (Ex. 1 at ¶3.2.4.) This allocation distributes Agreement funds proportionally to each class member's potential damages and should therefore be approved as fair, adequate, and reasonable. (Szamet Decl. ¶154.)

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

Plaintiffs request that the Court approve the proposed plan and form of Class Notice. The standard for determining the adequacy of notice is whether the notice has "a reasonable chance of reaching a substantial percentage of the class members." (*Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974.) Pursuant to the Agreement, the Notice will be sent to the last known address of all Class Members, or to an updated address if one is located in the National Change of Address Database. (Ex. 1 at ¶7.4.2). If any Notices are returned as undeliverable, the Administrator will undertake another reasonable address verification measure to locate a valid mailing address and will promptly send the Notice to the new address. (*Id.*) As such, the Notice is likely to reach most, if not all, Class Members.

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

Here, the Notice clearly explains the proposed Agreement and the options to opt out of the Settlement or object to it at the Final Approval Hearing. (Ex. 1 at ¶7.5; ¶7.7; *see also* Ex. A to the Agreement at pp. 1-2, 4 [Class Notice].) In short, the Court should approve the proposed Class

Notice because it describes the proposed settlement with enough specificity to allow Class Members to make an informed choice regarding whether to participate.

## VI. THE SERVICE AWARD TO THE NAMED PLAINTIFFS

The Class Representatives is entitled to an enhancement for their valiant effort and time expended in this matter. (Szamet Decl. ¶155.) The time spent by Plaintiffs is significant and includes researching and retaining competent counsel; providing information to Class Counsel regarding the nature of the work at Defendants; compiling relevant documents; working closely with Class Counsel to develop the theories of liability and martial relevant evidence; regularly discussing the status of the case with Class Counsel; discussing the case via telephone with many Class Members; making themselves available for a full-day of mediation; and responding promptly to Class Counsel's communications regarding settlement. (*Id.*) Thus, in addition to the sums paid to Class Members, Plaintiffs request a proposed litigation enhancement in the amount of $30,000.00, with $10,000.00 for each Plaintiff, to be paid from the Gross Settlement Amount. (Ex. 1 at ¶3.2.1.) As set forth in the Agreement, Plaintiffs will also be entering into a general release of liability pursuant to Civil Code Section 1542. (Szamet Decl. ¶156; Ex. 1 at ¶5.1.1.)

Class Counsel considers this to be a fair and reasonable enhancement. (Szamet Decl. ¶157.) The enhancement takes into consideration the time, effort, and expense incurred by Plaintiffs in coming forward to litigate this matter on behalf of all Class Members. (*Id.*) Plaintiffs concurrently provide detailed declarations detailing their participation and further justification for the enhancement. (*Id.*)

## VII. SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY

As indicated on the Proof of Service, Plaintiffs' Motion for 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 Kelsey M. Szamet as Exhibit "2." (Szamet Decl. ¶158.)

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## VIII. CONCLUSION

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

DATED: November 4, 2024 KINGSLEY SZAMET & LY

By: ______________________________
Kelsey M. Szamet
Attorneys for Plaintiffs 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 November 4, 2024 I served all interested parties in this action the following documents described as: **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

**OGLETREE DEAKINS**
Isabella B. Urrea
Isbella.urrea@ogletree.com
Alexander M. Chemers
Zander.chemers@ogletreedeakins.com
Sally I. Navarrete
Sally.navarrete@ogletreedeakins.com
Jenny Carmona
Jenny.carmona@ogletreedeakins.com
400 South Hope Street, Suite 1200
Los Angeles, CA 90071

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

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

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

Executed on November 4, 2024 at Woodland Hills, California.

______________________________
Michelle Tanzer