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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SONOMA

RAFAEL MANZO CORTES, an individual, on behalf of himself and others similarly situated, PLAINTIFF, v. BOYRIE ENTERPRISES, INC. DBA MKB CONSTRUCTION; and DOES 1 thru 50, inclusive, DEFENDANTS.	CASE NO. SCV-272909 [Case Assigned for All Purposes to Hon. Oscar A. Pardo in Dept. 19] **NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** *[Filed concurrently with Motion for Approval of Attorneys' Fees and Costs; Declarations of Kelsey M. Szamet, and Taylor Mitzner, Proposed Order, and Judgment]* Date: May 13, 2026 Time: 3:00 PM Dept.: 19 Complaint Filed: March 23, 2023 Trial Date: None Set

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on May 13, 2026 at 3:00 PM in Department 19 of the above-entitled court, Plaintiff RAFAEL MANZO CORTES ("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 Kelsey M. Szamet as Exhibit "1";

2. Affirming Kingsley Szamet Employment Lawyers and Abramson Labor Group as Class Counsel;

3. Affirming Plaintiff RAFAEL MANZO CORTES as Class Representative and awarding an enhancement award of $5,000.00;

4. Awarding Phoenix Class Action Administration Solutions claims administration fees of $10,000.00 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 Settlement Class Members and the parties.

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

DATED: April 3, 2026

KINGSLEY SZAMET EMPLOYMENT LAWYERS

By: ______________________________

Kelsey M. Szamet
Jessi Bulaon
Attorneys for Plaintiff and the proposed class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff RAFAEL MANZO CORTES ("Plaintiff") submits this Motion for Final Approval of Class Settlement and requests that the Court:

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

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

3. Award Phoenix Class Action Administration Solutions claims administration fees of $10,000.00 for its services as Administrator;

4. Affirm named Plaintiff RAFAEL MANZO CORTES as Class Representative and award a cumulative Class Representative payment of $5,000.00; and

5. Enter judgment.

II. FACTUAL BACKGROUND

A. Litigation Overview and Procedural History

On March 23, 2023, Plaintiff filed this wage and hour class action lawsuit, alleging seven causes of action, including: (1) failure to provide meal breaks pursuant to Labor Code sections 226.7 and 512; (2) failure to provide rest breaks pursuant to Labor Code section 226.7; (3) failure to reimburse expenses pursuant to Labor Code section 2802; (4) failure to issue accurate itemized wage statements pursuant to Labor Code section 226(a); (5) penalties under Labor Code section 203; and (6) violation of Business & Professions Code section 17200. (Declaration of Kelsey M. Szamet, "Szamet Decl.") ¶5.) Also on March 23, 2023, Plaintiff sent a notice letter, pursuant to Labor Code section 2699 ("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 section 2699, et seq. (Szamet Decl. ¶6.) In addition, Plaintiff alleged, on behalf of himself only, that Defendant violated Labor Code §§ 226 and 1198.5 by failing and refusing to provide Plaintiff with a copy of his personnel file and payroll records. (Id.)

On May 30, 2023, Plaintiff 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. (Hereafter, the "Action".) (Szamet Decl. ¶7.)

Plaintiff brings the Class Action on behalf of a Proposed Class defined as: "All non-exempt employees who are employed or have been employed by BOYRIE ENTERPRISES, INC. DBA MKB CONSTRUCTION, in the State of California who worked one or more pay periods 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") (Szamet Decl. ¶8.)

With the assistance of Hon. Russ J. Wunderli, the parties were able to reach an agreement in principle to settle the matter after a full day's mediation on October 17, 2024. (Szamet Decl. ¶9.) After months of ongoing discussions and negotiations, the Parties signed a final long-form Class Action and PAGA Settlement Agreement ("Settlement" or "Agreement") Settlement of the class suit. (Szamet Decl. ¶10.)

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

The Parties agreed to focus their efforts on resolving this case through early mediation. Defendant has produced Plaintiff's personnel file, as well as time and pay records for the class, as well as Defendant's recent financial statements, for mediation purposes only. (Szamet Decl. ¶11.)

Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in the Action, disputes the damages and penalties claimed by Plaintiff, and further contends that, for any purpose other than settlement, Plaintiff's claims are not appropriate for class or representative action treatment. (Szamet Decl. ¶12.) Defendant contends, among other things, that, at all times, it has complied with the 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. (Szamet Decl. ¶13.) Although Defendant denies any liability, Defendant is agreeing to this Agreement solely to avoid the substantial cost of continued litigation. (Id.) Accordingly, the Parties and their counsel desire to fully, finally, and forever settle, compromise and discharge all disputes and claims arising from or relating to the Action on the terms set forth here. (Id.)

C. Preliminary Approval

On November 19, 2025, the Court issued an Order preliminarily approving the settlement in this case, approving the proposed Class Notice, ordering that the Administrator send notice to the Class, and setting a date for the Final Approval and Fairness Hearing. (Szamet Decl. ¶14.)

III. THE PRELIMINARILY APPROVED SETTLEMENT

A. The Settlement Class

The settlement class is defined as: "all non-exempt employees who are employed or have been employed by BOYRIE ENTERPRISES, INC. DBA MKB CONSTRUCTION, in the State of California who worked one or more pay periods during the Class Period." ("Class" or Settlement Class Members") (Szamet Decl. ¶15; Agreement, Ex. 1 at § 1, ¶1.5.) The "Settlement Class Members" means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non- Participating Class Member who qualifies as an Aggrieved Employee). (Szamet Decl. ¶16; Agreement, Ex. 1 at § 1, ¶1.9.)

The Class Period is March 23, 2019 through December 31, 2024. (Szamet Decl. ¶17; Ex. 1 at § 1, ¶1.12.) As of October 17, 2024 (the date of mediation) and based on documents and other information produced by Defendant, there are approximately 518 Settlement Class Members. (Szamet Decl. ¶18; Ex. 1 at § 4, ¶4.1.)

The final Class contained 517 individuals. (Mitzner Decl. ¶5.)

B. Aggrieved Employees

The Aggrieved Employees are defined as: "all non-exempt employees who are employed or have been employed by BOYRIE ENTERPRISES, INC. DBA MKB CONSTRUCTION, in the State of California who worked one or more pay periods during the PAGA Period." (Szamet Decl. ¶19; Ex. 1 at § 1, ¶1.4.)

The PAGA Period is March 23, 2022 through December 31, 2024. (Szamet Decl. ¶20; Ex. 1 at § 1, ¶1.31.) As of October 17, 2024 (the date of mediation), and based on documents and other information produced by Defendant, there are approximately 108 Aggrieved Employees. (Szamet Decl. ¶21; Ex. 1 at § 4, ¶4.1.)

C. Settlement Payments

As detailed fully in the Agreement, the Settlement provides for Defendant to pay a Gross Settlement Amount of $200,000.00, which includes the sum of the Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator's Expenses. (Szamet Decl. ¶22; Ex. 1 at § 1, ¶1.22.) Plaintiff now requests final approval of the allocation of the Gross Settlement Amount to determine the Net Settlement Amount for distribution to the Class as follows:

Gross Settlement Amount:	$	200,000.00
Less Class Counsel's Fees (1/3):	$	66,666.67
Less Class Counsel's Costs:	$	14,482.26[1]
Less Administrator Costs:	$	10,000.00
Less PAGA Payment:	$	10,000.00 ($7,500.00 *to the LWDA;* $2,500.00 *to remain in the* Net Settlement Amount*)*
Less Class Representative Enhancement:	$	5,000.00
Net Settlement Amount:	**$**	94,351.07

D. Individual Settlement Payments

The amount of each Participating Class Member's Individual Class Payment is an individualized amount that is based on the number of compensable Workweeks worked by the Participating Class Member during the Class Period. (Ex. 1 at § 2, ¶1.23; see also Ex. A to the

[1] The Agreement provided for counsel to receive cost reimbursement up to $18,000.00. However, counsel's final costs come to $14,482.26, which includes the anticipated cost of $400 for filing the instant motions. (Szamet Decl. ¶23, Ex. 5), The extra $3,517.74 will remain in the net settlement fund, causing the net distribution to the Class Members to be slightly higher than the $90,833.33 contemplated in the settlement agreement. (*Id.*, Ex. 1 at ¶3.2.2.)

Agreement at pp. 7 [Class Notice].) This individual amount shall be determined according to the settlement payment formula set forth in the Agreement. (See Ex. 1 at § 3, ¶3.2.4; Id. at Ex. A to the Agreement [Class Notice].) The Agreement provides for a specific and detailed Workweek dispute process. (See Ex. 1 at § 7, ¶7.6.)

Based on these calculations, the average potential recovery is $175.06 per Settlement Class Member. (Mitzner Decl. ¶18.)

The amount of each Aggrieved Employees' Individual PAGA Payment is an individualized amount that is based on the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period. (Ex. 1 at § 2, ¶1.24; see also Ex. A to the Agreement at pp. 7 [Class Notice].)

E. <u>Class Notice</u>

The Court approved the proposed Class Notice, and directed the mailing of the Notice by first-class mail to Settlement Class Members in accordance with the proposed implementation schedule. (Szamet Decl. ¶24) The procedures for giving notice to the Settlement Class Members, as set forth in the Agreement and Plaintiffs' Motion for Preliminary Approval and approved by the Court, have been fully and properly carried out. (Mitzner Decl. ¶7.)

To date, Phoenix Class Action Administration Solutions received one (1) request to be excluded ("opt-outs") from the proposed Agreement and zero (0) objections. (Mitzner Decl. ¶¶11-12.)

F. <u>Check Mailed Settlement – No Reversion</u>

The Parties agreed to, and the Court preliminary approved, a checks-mailed settlement without the possibility of reversion of settlement funds to Defendant. Under the Agreement, every Settlement Class Member will receive a settlement check and Settlement Class Members do not need to submit a claim in order to receive a settlement check. Any funds that remain uncashed after the void date shall be turned over by the Administrator, with information for each Settlement Class Member who failed to timely cash his/her settlement check, to the State of California Controller's Office Unclaimed Property Fund. (Ex. 1 at § 4, ¶4.4.1.)

IV. THE COURT SHOULD ORDER FINAL APPROVAL OF THE SETTLEMENT

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

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

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

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

Second, the Parties engaged in informal discovery that permitted Class Counsel to fairly evaluate the strength of the case and the risks associated with ongoing litigation. Receipt of appropriate discovery allowed Class Counsel to fairly evaluate the exposure and risks associated with each claim alleged in the lawsuit. (Szamet Decl. ¶27.)

Third, Class Counsel have significant experience in cases of this type, including several years prosecuting wage, hour, and working condition violations. (Szamet Decl. ¶28.) Class Counsel is thus qualified to evaluate the class claims and viability of the defenses. Class Counsel believes that the settlement is fair, reasonable, adequate, and in the best interests of the class and that the average recovery for each Settlement Class Member of over $175.06 is substantial, given the risks inherent in litigation and the defenses asserted. (Szamet Decl. ¶29.)

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

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

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. (Szamet Decl. ¶30.) Class Counsel conducted extensive informal discovery before entering into meaningful settlement negotiations in this matter, including time/pay records and Defendant's financial documents. (Id at Szamet Decl. ¶¶11.) This discovery permitted Class Counsel to fairly evaluate the strength of the case, and the risks associated with ongoing litigation. (Szamet Decl. ¶31.) Class Counsel is experienced in handling wage and hour class actions and, after weighing all of the following factors, supports this Agreement. (Szamet Decl. ¶32.)

1. <u>The Strength of Plaintiffs' Case</u>

a) The Risks Associated with the Meal Break Claim

Under California Labor Code section 512 and IWC Wage Order No. 16, 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." (*Id*. At 1037.)

Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts over ten (10) hours. If an employee is entitled to a second meal period, it must be provided after no more than ten (10) hours of work.

Furthermore, in *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, the California Supreme Court decided two issues of law relevant to meal periods. First, the Court held that employers cannot round time punches, i.e., adjust the hours that an employee has actually worked to the nearest preset time increment, in the meal period context. Second, the Court held that time records depicting noncompliant (late, interrupted, or missed) meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage of litigation. (*Id*. at 77.)

Donahue makes clear that it is not enough for California employers to have a policy that "provides" required meal periods or even to record the actual timing and length of such meal periods. Employers must also be prepared to prove that any deviation from the required meal period was by employee choice, without any pressure or influence by the employer (i.e. "bona fide relief from duty and that this is accurately reflected in the employer's time records.") (*Id*. at 77-78.) Thus, for each time an employee's meal period is short of 30 minutes, late, or missed altogether, the employer bears the burden of proving (through "Representative testimony, surveys, and statistical analysis,") that the employer provided the meal period, and that the employee voluntarily chose not to take it— even in some circumstances when an employee signs a timesheet each pay period, confirming that the employer had in fact provided all such breaks.

Plaintiff further alleges that Defendant had a consistent policy of failing to pay Plaintiff and the Proposed Class one (1) hour of pay at the employees' regular rate of compensation for each workday that all required meal periods were not provided, as required by California state wage and hour laws.

Here, Defendant allegedly failed to provide lawful meal breaks to Plaintiff and the Proposed Class on a regular basis. (Szamet Decl. ¶33.) Plaintiff contends that because Defendant required Plaintiff to arrive at the company lot long before the start of their scheduled shift (which began at the job site), Plaintiff and the Proposed Class regularly had late meals that are not accurately reflected in the time records. (Szamet Decl. ¶34.) Plaintiff further alleges that Defendant's main supervisor instructed Plaintiff and other employees to take a single 50-minute break at 12:00 pm (combining rest periods with the meal period) regardless of the time they began work. (Szamet Decl. ¶35.) This uniform policy enforced by the main supervisor resulted in regular meal break violations for Plaintiff and the Proposed Class. (Szamet Decl. ¶36.) However, the sample of time records produced by Defendant show exactly 30-minute lunches taken at the fifth hour of work. (Szamet Decl. ¶37.) The time records are also largely handwritten. (Szamet Decl. ¶38.) Plaintiff would thus argue that under Donahue these types of records are akin to no records at all, and Defendant thus has the burden of proving that lawful meal breaks were in fact provided. (Szamet Decl. ¶39.)

However, at trial, Defendant would argue that the time records are accurate and reflect lawful meal breaks, as well argue that its meal break policies are facially valid. (Szamet Decl. ¶40.) Defendant would further argue that all employees were trained to follow this policy, and that any deviation from this policy that resulted in an unlawful meal break was by the employee's own volition. (Szamet Decl. ¶41.) At mediation, Defendant argued that Plaintiff's theory of liability would be extremely difficult to prove on a class wide basis because the time records will show compliant meal periods so Defendant would be entitled to inquire of each class member, on each day whether or not they were provided with compliant meal periods. (Szamet Decl. ¶42.) Of course, Defendant argued that such an inquiry would defeat class certification altogether. (Szamet Decl. ¶43.) In its defense, Defendant 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 v. Kenneth Cole Productions*, 40 Cal. 4th 1094, 1104 (finding a violation occurs only if the employee is "forced to forgo his or her meal period").

Defendant would have also 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); *Gonzalez v. Officemax N. Am.*, No. CV 07-04839 JVS MLGX, 2012 WL 5473764, at *5 (C.D. Cal. Nov. 5, 2012). 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"); *Salazar v. Avis Budget Grp., Inc*., 251 F.R.D. 529, 533 (S.D. Cal. 2008); *Ordonez v. Radio Shack, Inc*., No. CV 10-7060-CAS JCGX, 2013 WL 210223, at *8 (C.D. Cal. Jan. 17, 2013); *Gonzalez*, 2012WL 5473764, at *5 (holding that "[why] any particular employee missed any particular break requires, ineluctably, individualized fact finding").

Plaintiff was confident that Defendant would attempt to gather testimonial evidence from class members indicating that the records were accurate and either they took compliant meal breaks as reflected in the records or were paid a meal period premium in lieu thereof. (Szamet Decl. ¶44.) Though Plaintiff does not believe this was the case, Plaintiff must acknowledge it poses risks for the Class. (Szamet Decl. ¶45.) There is risk as to both sides as to what declarations and depositions of class members might reveal. (Szamet Decl. ¶46.) Indeed, Plaintiff had to consider that Defendant could secure declarations from Class Members that all compliant breaks were "provided", but that Class Members chose to take late breaks or miss breaks on occasion. (Szamet Decl. ¶47.)

Had the Parties proceeded to trial, Defendant would have retained an expert to analyze extrinsic evidence to rebut any alleged meal break violations by arguing that meal breaks were taken and not recorded, or were voluntarily missed. (Szamet Decl. ¶48.)

Taken together, Plaintiff acknowledged there was significant risk as to establishing liability on the meal period claim. (Szamet Decl. ¶49.) Considering this risk, Plaintiff believes it is fair and reasonable to discount the meal period claim for settlement purposes. (Szamet Decl. ¶50.)

b) The Risks Associated with the Rest Break Claim

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. 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, § 11160, subd. 12(A).)

Plaintiff and the Proposed Class Members' rest period claims arise from a common course of conduct wherein Defendant did not provide employees with the opportunity to take first, second, and/or third 10-minute rest breaks in compliance with California law. 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 denited 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).

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

> An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required—it has violated the

> wage order and is liable. No issue of waiver ever arises for a rest break that was required by law but never authorized; if a break is not authorized, an employee has no opportunity to decline to take it.

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

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, § 11160, subd. 12(B).)

As explained above, Defendant allegedly often forced Plaintiff and its employees to combine their rest periods for an extended lunch of 50 minutes. (Szamet Decl. ¶51.) Under Title 8 of the California Code of Regulations § 11040(a), Defendant "shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period." Cal. Code Regs., tit. 8, § 11040. Forcing Plaintiff and its employees to forgo their rest periods to take an extended lunch is not compliant with the Labor Code. When Plaintiff asked to take his rest breaks separate from his meal break, Mr. Hernandez told him "that would take too much time" and prohibit him from doing so. As such, Plaintiff maintains that Defendant deprived Plaintiff and the Proposed Class with lawful rest periods, and were also allegedly not compensated with one (1) hour of wages for each missed rest period as required by Labor Code § 226.7. (Szamet Decl. ¶52.)

In its defense, Defendant would have argued that Plaintiffs' rest period claim was even less appropriate for certification than their meal period claim because California law does not require employees to record rest periods. Absent a shift-by-shift, break-by-break, employee-by-employee inquiry, Defendant would have argued that there was simply no way to know (1) whether a break was taken; and (2) if not, why not. (Szamet Decl. ¶53.) For each instance where an employee 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. 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, Plaintiff had to acknowledge that it could potentially by easy for Defendant 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. ¶54.) Though Plaintiff does not believe this was the case, Plaintiff must acknowledge it poses risks for the Class. (Szamet Decl. ¶55.) Just as with meal periods, there is risk as to both sides as to what declarations and depositions of class members might reveal.

c) The Risks Associated with the Reimbursement Claim

Labor Code section 2802 provides that an employer must "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 . . . ." (Lab. Code, § 2802, subd. (a).)

Here, Defendant allegedly required that Plaintiff and the Proposed Class be available by cell phone and answer/use their personal cell phones to communicate with Defendant's management consistently to perform their job duties. (Szamet Decl. ¶56.) These cell phones were not provided by Defendant and Defendant failed to reimburse Plaintiff and the Proposed Class for the costs associated with these necessary business expenditures in violation of the Labor Code. (Szamet Decl. ¶57.)

However, Defendant would argue that it did not mandate the use of personal cell phones as part of Plaintiff and the Proposed Class Members' job duties. (Szamet Decl. ¶58.) As such, any actual business use of employees' personal cell phones were either voluntary or de minimis. (Szamet Decl. ¶59.) As such, Plaintiff considered this risk when discounting this claim for settlement purposes. (Szamet Decl. ¶60.)

d) 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, total hours worked by the employee, the name and address of the legal entity that is the employer, and all applicable hourly rates and the corresponding number of hours worked.

Defendant issued wage statements that violate Labor Code §§ 226(a)(2), (8) and (9). Labor

Code § 226(a) specifically requires that the employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing total hours worked by the employee, the name and address of the legal entity that is the employer, and showing all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Here, Plaintiff alleges that Plaintiff and the Proposed Class are issued wage statements that do not include all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee in violation of Labor Code §§ 226(a)(2) and (9). (Szamet Decl. ¶61.) Additionally, the issued wage statements that do not include meal and rest premiums as a result of the claims alleged above. (Szamet Decl. ¶62.) Moreover, Plaintiff and the Proposed Class are issued wage statements that do not include the total hours worked by Plaintiff and the Proposed Class. (Szamet Decl. ¶63.) Defendant's failure to provide accurate itemized wage statements according to Labor Code § 226(a) was done on a regular and consistent basis.

Additionally, Defendant allegedly failed to show the address of the legal entity that is the employer on its wage statements. (Szamet Decl. ¶64.) Specifically, Defendant failed to list the city, state, and zip code on the wage statements issued to Plaintiff and the Proposed Class members. (Szamet Decl. ¶65.)

The main risk to this claim is that Defendant would likely argue that there was no injury to Plaintiffs and the Proposed Class. (Szamet Decl. ¶66.) While Plaintiff disagrees that this argument is legally correct or persuasive, a court could still take this into consideration when assessing the amount of penalties awarded. (Szamet Decl. ¶67.)

e) The Risks Associated with the Waiting Time Penalties Claim

Under Labor Code section 203, if an employer fails to provide wages at the time of an employee's termination or within seventy-two (72) hours of resignation, then the employee's wages shall continue as a penalty for up to thirty (30) days. (Labor Code § 203.) Section 203 reflects a public policy 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.)

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

Here, Plaintiff and numerous Proposed Class Members are no longer employed by Defendant. (Szamet Decl. ¶68.) Defendant allegedly failed to pay all wages owed and due upon their termination and/or resignation. (Szamet Decl. ¶69.) Defendant's actions were willful, as they have intentionally failed or refused to perform an act which was required to be done. (*See Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201.) "The failure to pay is willful if the employer 'knows what [it] is doing [and] intends to do what [it] is doing', and does not also require proof that the employer acted with "a deliberate evil purpose to defraud work[ers] of wages which the employer knows to be due.'" (*Diaz v. Grill Concepts Services, Inc*. (2018) 23 Cal.App.5th 859, 868.) Defendant was fully aware of its payment policies and practices and intended to carry out said policies and practices. Therefore, Defendant is liable for damages.

The bigger risk that Plaintiff analyzed, however, is that to establish liability for waiting time penalties, Plaintiff would have to establish not only that the underlying violations occurred, but also that Defendant's conduct was "willful." (Labor Code § 203; Szamet Decl. ¶70.) If Defendant could establish that any alleged failure to blend was the result of mistake or oversight and not "willful", then it is possible that Plaintiff would not be able to recover penalties for this claim. (Szamet Decl. ¶71.) Because of this risk, Plaintiff determined that accepting a discount for settlement purposes was appropriate. (Szamet Decl. ¶72.)

f) The Risks Associated with the PAGA Claim

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

The Parties discounted the PAGA claim for multiple reasons. (Szamet Decl. ¶73.) First, the aggrieved employees' PAGA claims are derivative of all the foregoing class claims. (Szamet Decl. ¶74.) Second, a court has discretion to award less than the maximum penalty. (Szamet Decl. ¶75.) Labor Code § 2699(e)(2) ("a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory").

See e.g., Carrington v. Starbucks Corporation (2018) 30 Cal.App.5th 504, 241 Cal.Rptr.3d 647, 669 (affirming award of 10% of maximum PAGA penalty). Finally, the settlement Class is compensated for these violations in the proposed Agreement, and thus any PAGA recovery for these same violations would be duplicative. (Szamet Decl. ¶76.) As such, the Agreement's contemplated PAGA payment of $10,000.00 is appropriate. (Szamet Decl. ¶77.) *See Nordstrom Commissions Cases*, 186 Cal.App.4th 576, 589 (2010) (affirming settlement allocating $0 of $6.4 million settlement to PAGA penalties).

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. ¶78.) If the Court did eventually certify a meal or wage statement class, trial of a case involving approximately 518 Settlement Class Members would require the retention of expensive expert witnesses, the accrual of extensive litigation costs, and a significant time overlay by the parties. (Szamet Decl. ¶79.) 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. ¶80.) An appeal would result in further delay for the Settlement 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. ¶81.) While Plaintiff believes there is strong evidence to support certification of several possible subclasses (especially a rest period class), certification is always hard fought and subject to judicial discretion. Moreover, in class actions, decertification is always a possibility. (Id.) In attempting to certify a class, the parties would need to conduct multiple depositions, including of the Class Representative and of several person(s) most knowledgeable regarding Defendant's meal and rest policies. (Id.) There is a risk for both sides as to what these depositions will reveal and whether they will support class certification to the extent expected. (Id.)

There are also significant risks to the PAGA claim. (Szamet Decl. ¶82.) First, the aggrieved employees' PAGA claims are derivative of all the foregoing class claims. (Szamet Decl. ¶83.) If Plaintiff cannot establish liability on the underlying claim (taking into account the risks discussed above), then the derivative PAGA claim will also necessarily fail. (Id.) Second, a court has discretion to award less than the maximum penalty. (Szamet Decl. ¶84.) (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).

Third, the likelihood of the Court reducing the PAGA damages awarded to Plaintiff and the aggrieved employees – assuming liability is proven as to each of Plaintiffs' claims – is also higher in this case where these same individuals will also be receiving money for the same unlawful conduct under the class claims. (Szamet Decl. ¶85.) (*see Avila v. Cold Spring Granite Co.* (E.D. Cal. Jan. 12, 2018) Case No. 1:16-cv-001533-AWI-SKO, 2018 U.S. Dist. LEXIS 6142 *17 ("Because the PAGA penalties sought are at least partially duplicative of penalties granted by the underlying Labor Code violations, see, e.g., Cal. Lab. Code §§ 203, 226, 558(a), 1194.2, and because a Court has discretion in whether and in what amount to award PAGA penalties, see Cal. Lab. Code § 2699(e)(2), Plaintiff recognizes that the potential PAGA penalties are highly uncertain."); and *see Nordstrom Commissions Cases*, 186 Cal.App.4th 576, 589 (2010) (affirming settlement allocating $0 of $6.4 million settlement to PAGA penalties).

4. <u>The Amount Offered in Settlement</u>

It was very difficult for the Parties to reach this Settlement of $200,000.00. (Szamet Decl. ¶86.) This Settlement is the result of adversarial, non-collusive, and arms-length negotiations. (Id.) The Parties arrived at it after extensive investigation and discovery, careful evaluation of the law, risks, and all information substantiating the amount of penalties reasonably likely to be awarded to the class were the trier of fact to find Defendant liable, and the assistance of an experienced mediator, Russ J. Wunderli. (Id.) However, the main contributing factor in reaching this settlement amount was Defendant's inability to pay a larger settlement. (Id.; see Declaration of Matt Boyrie in Support of Plaintiff's Motion for Preliminary Approval.)

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

In preparation for mediation, Defendant produced time and pay data for the class. Plaintiff utilized an expert, Sean Berger from Berger Consulting Group, to run the damage analysis based on the time and pay records produced for mediation. (Szamet Decl. ¶87.)

Plaintiff's expert assessed full value of the Meal Period claim, without any discount, to be approximately $1,260,293.00. (Szamet Decl. ¶88.) However, for the reasons above, Plaintiff determined that accepting a discount of the full amount was appropriate. (Szamet Decl. ¶89.) The main risk taken into account is that the time records largely show on time, 30-minute meal periods and would require individualized inquiry as to whether these meal periods were in fact lawful. (Szamet Decl. ¶90.)

The full value of the Rest Period claim, without any discount, was also approximately $1,260,293.00. (Szamet Decl. ¶91.) Plaintiff acknowledges that because rest periods were not recorded in the time records, this claim would again require individualized inquiries. (Szamet Decl. ¶92.) Again, for the reasons above, Plaintiff determined that accepting a discount of the full amount was appropriate. (Szamet Decl. ¶93.)

With regard to the Reimbursement Claim analysis, Plaintiff believed that it was reasonable to value the potential reimbursement at $10 per month, per employee, for reimbursement of personal cell phone usage. (Szamet Decl. ¶94.) This brought the damages for this claim to $84,355.00. (Szamet Decl. ¶95.)

Plaintiff's expert also valued the Wage Statement Claim, without discount, at $713,600.00.

(Szamet Decl. ¶96.) Plaintiff used $100 for each wage statement issued (pay period). (Szamet Decl. ¶97.) 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. (Szamet Decl. ¶98.) Due to the risk discussed above that 226(a) liability wouldn't attach under *Naranjo* and *Maldonado*, Plaintiff determined that a steep discount of this claim was fair for settlement purposes. (Szamet Decl. ¶99.)

Plaintiff's expert further valued the Waiting Time Claim, tied to the Wage/Overtime claim, at $2,213,136.00. (Szamet Decl. ¶100.) Considering the derivate nature of Labor Code §203 and the dispute over whether class members were owed any wages, Plaintiff determined that accepting a discount on this claim was appropriate. (Szamet Decl. ¶101.)

Finally, Plaintiff calculated the value of the PAGA claim at $651,400.00 for Settlement Class Members (using $100 per pay period x 6,514 pay periods). (Szamet Decl. ¶102.) The main risk considered here is the discretionary nature of the PAGA penalty award. (Szamet Decl. ¶103.) A judge can award the statutory maximum of $100 for the initial violation and $200 thereafter or – in theory – one cent per wage statement. (Szamet Decl. ¶104.) While there is a dearth of available authority, in Plaintiff's view, were he to succeed on any of the underlying Labor Code violations, it is not likely that a Judge would also award a large amount of penalties of top of any damages recovered. (Szamet Decl. ¶105.)

Per Plaintiff's assessment, the maximum potential value of all of Plaintiff's and the Settlement Class Members' claims was approximately $6,183,077.00. (Szamet Decl. ¶106.) However, as a result of the forgoing risks on the merits, and primarily Defendant's inability to pay a larger settlement, Class Counsel believes the Gross Settlement Amount of $200,000.00 is fair and reasonable. (Szamet Decl. ¶107.)

b) Defendant's Financial Status

One of the main factors affecting settlement of this action was Defendant's financial status. (Szamet Decl. ¶108.) Defendant is a construction company whose business has substantially decreased in the recent years has affected its ability to pay a settlement tor judgment against it. (Szamet Decl. ¶109; Declaration of Matt Boyrie in Support of Motion for Preliminary Approval at ¶¶2-3.) Defendant produced its financial documents from 2020 through to 2023. (Szamet Decl. ¶110; Declaration of Matt Boyrie in Support of Motion for Preliminary Approval at ¶5.) Class Counsel reviewed these documents closely to verify the information and representation made by Defendant regarding solvency. (Szamet Decl. ¶111.) 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. ¶112.)

5. The Extent of Discovery Completed and Stage of the proceedings

As outlined above, Class Counsel conducted a thorough investigation into the facts of the claims alleged. (Szamet Decl. ¶113.) The agreement to settle did not occur until Class Counsel exchanged and possessed sufficient information to make an informed judgement regarding the likelihood of success on the merits and the results that could be obtained through further litigation, such as time and pay data for the class and Defendant's financial documents to determine ability to pay. (*Id.*)

6. The Experience and Views of Counsel

Kingsley Szamet Employment Lawyers is very experienced in prosecuting employment litigation, and the firm has focused its practice since 2000 on wage, hour, and working condition violations. (Szamet Decl. ¶¶114-116.) The firm is well versed in class action litigation and has diligently and aggressively pursued this action. (*IbId.*) Kingsley Szamet Employment Lawyers currently serves as Class Counsel for dozens of pending class action lawsuits in Northern, Central, and Southern California. (*Ibid.*) A list of representative cases that Kingsley Szamet Employment Lawyers has handled is included in the accompanying declaration of Kelsey M. Szamet. (Szamet Decl. ¶¶114-115.) After factoring in the risks explained above, Class Counsel believes that the proposed settlement is fair and reasonable. (Szamet Decl. ¶116.)

7. The Presence of a Governmental Participant

There is no governmental participant in this action. (Szamet Decl. ¶117.)

8. The Proposed Plan of Allocation Is Fair and Reasonable

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

Comm'n (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the proposed plan of allocation compensates Settlement Class Members calculate by (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. The lump sum payment to each Settlement Class Member not excluding him/ herself will be determined on an individualized basis based upon the Workweeks worked by the Settlement Class Member. (Ex. 1 at § 3, ¶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. ¶118.)

9. <u>The Reaction of the Class Members to the Proposed Settlement</u>

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

V. ENHANCEMENT TO PLAINTIFF

Plaintiff's Counsel request an enhancement of $5,000.00 to the Class Representative for his work on behalf of the Class. (Szamet Decl. ¶162.) "Courts routinely approve incentive awards to compensate named plaintiffs for the services they provide and the risks they incurred during the course of the class action litigation." *Ingram v. The Coca-Cola Company*, 200 F.R.D. 685, 694 (N.D. Ga 2001) (internal quotations and citations omitted); *see also Van Vranken v. Atlantic Richfiled Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995). In *Coca-Cola*, the Court approved service awards of $300,000 to each named plaintiff in recognition of the services they provided to the class by responding to discovery, participating in the mediation process, and taking the risk of stepping forward on behalf of the class. *Coca-Cola*, 200 F.R.D. at 694; *see also*, *e.g. Van Vranken*, 901 F. Supp. at 299 (approving $50,000 participation award to plaintiffs); *Glass v. UBS Financial Services, Inc.*, Case No. C-06-4068 MMC, 2007 WL 227862, at *17 (N.D. Cal. Jan. 26, 2007) (approving $25,00 enhancement to each named plaintiff).

Mr. Cortes is an adequate class representative because he has diligently, adequately and fairly represented the Class and has not placed his interests above any member of the Class. (*see*

Declaration of Rafael Manzo Cortes ("Cortes Decl.") ¶¶3-10.)

Here, Class Counsel requests an enhancement for Mr. Cortes' valiant effort and time expended in this matter. The time spent by Plaintiff is significant and includes researching and retaining competent counsel; providing information to Class Counsel regarding the nature of the work at Defendant; compiling relevant documents; working closely with Class Counsel to develop the theories of liability and martial relevant evidence; regularly discussing the status of the case with Class Counsel; discussing the case via telephone with many Settlement Class Members; making himself available for a full-day of mediation; and responding promptly to Class Counsel's communications regarding settlement. (Szamet Decl. ¶163; Cortes Decl. ¶¶6.) As set forth in the Agreement, Plaintiff will also be entering into a general release of liability pursuant to Civil Code Section 1542. (Szamet Decl. ¶164; Ex. 1 at § 5, ¶5.1.)

Class Counsel considers this to be a fair and reasonable enhancement. (Szamet Decl. ¶165.) The enhancement takes into consideration the time, effort, and expense incurred by Mr. Cortes in coming forward to litigate this matter on behalf of all Settlement Class Members. (Szamet Decl. ¶166.) Additionally, the Class Representative was at risk for paying for Defendant's legal fees and costs in the event that Defendant prevailed at trial. (Szamet Decl. ¶167.)

VI. SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY

As indicated on the Proof of Service, Plaintiff's Motion for Final Approval of Class Action Settlement ("Motion") will be concurrently uploaded to the Labor and Workforce Development Agency's ("LWDA") website on the date this Motion is filed as required by statute. Proof of submission of Plaintiff's Motion, all related documents, and copy of the email from the LWDA confirming receipt is attached to the Declaration of Kelsey M. Szamet as Exhibit "6." (Szamet Decl. ¶172.)

VII. CONCLUSION

Plaintiff respectfully submits that the proposed Agreement is fair, adequate, reasonable, and in the best interest of the Settlement Class Members. Therefore, Plaintiff respectfully requests that the Court (1) grant Final Approval of the Agreement and all of its terms; (2) award attorneys' fees and costs in the amount detailed in the concurrently filed Motion for Attorneys' Fees and

Costs; (3) award Phoenix Class Action Administration Solutions claims administration fees of $10,000.00; and (4) award the Class Representative an enhancement of $5,000.00; and (5) enter judgment.

DATED: April 3, 2026

KINGSLEY SZAMET EMPLOYMENT LAWYERS

By: ______________________________
Kelsey M. Szamet
Jessi Bulaon
Attorneys for Plaintiff 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 April 3, 2026, 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:

Elizabeth A. Fritzinger, Esq.
EF LAW GROUP, P.C.
101 Morris St., Suite 101
Sebastopol, CA 95472
elizabeth@efritzlaw.com
Attorneys for Defendant

ABRAMSON LABOR GROUP
William Zev Abramson
Wza@abramsonlabor.com
1700 W Burbank Blvd,
Burbank CA 91506
Attorneys for Plaintiff

[XX] BY ELECTRONIC SERVICE: I caused a true and correct copy thereof to be electronically filed using the Labor and Workforce Development Agency Electronic Filing ("EF") System (https://dir.tfaforms.net/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 April 3, 2026, at West Hollywood, California.

Taylor Gregg