

FRANK H. KIM, State Bar No. 264609
fkim@kim-legal.com

KIM LEGAL, APC
3435 Wilshire Blvd, Suite 2700
Los Angeles, CA 90010
Telephone: (323) 482-3300
Facsimile: (866) 652-7819

Attorneys for Plaintiff ANGEL RIVERA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

ANGEL RIVERA, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

MEKANISM, INC., a domestic corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: 23STCV05698

The Hon. Laura A. Seigle, Dept 17

**NOTICE OF MOTION AND MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION AND PAGA
SETTLEMENT**

Date: November 13, 2024

Time: 9:00 AM

Dept.: SS-17

Complaint Filed: March 15, 2023

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 YOU ARE HEREBY NOTIFIED THAT on November 13, 2024 at 9:00 AM. in
3 Department SS-17 of the above-entitled court, Plaintiff Angel Rivera will move for an Order for
4 Preliminary Approval of the Stipulation of Class Action and Private Attorney General Settlement
5 (the "Settlement Agreement"), a copy of which is filed concurrently herewith.

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

8 The Motion will be based on this Notice of Motion, the attached Memorandum of Points
9 and Authorities, the Declarations of Plaintiff Angel Rivera, Frank H. Kim, Stephen Rossi, Keri
10 Catanzano and the Settlement Administrator, the Settlement Agreement, and all other papers and
11 records on file in this action, and on such oral and documentary evidence that may be presented at
12 the hearing on this Motion.

13 DATED: September 11, 2024

KIM LEGAL, APC

14 By: /s/ Frank H. Kim

15 Frank H. Kim

16 Attorneys for Plaintiff Angel Rivera and the
17 Proposed Class
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	FACTUAL BACKGROUND.....	1
A.	Class Action and PAGA Complaint	1
B.	Mediation and Settlement	2
III.	THE PROPOSED SETTLEMENT CLASS SHOULD BE CERTIFIED FOR SETTLEMENT PURPOSES	3
A.	The Proposed Classes Are Ascertainable and Sufficiently Numerous.....	4
1.	Ascertainability	4
2.	Numerosity.....	4
B.	There Is a Well-Defined Community of Interest	4
1.	There Are Predominant Questions of Law and Fact.....	4
2.	The Named Plaintiff Has Claims Typical of the Proposed Class	6
3.	Plaintiff Contends That As The Named Plaintiff He Has and Will Fairly Represent the Interests of the Settlement Class Members.....	7
C.	The Class Action Vehicle Is Superior to the Alternatives	8
IV.	THE PROPOSED SETTLEMENT.....	9
A.	The Settlement Class.....	9
B.	Gross Settlement Fund	10
C.	Individual Settlement Payments	10
D.	Tax Allocation of Payments	11
E.	Process for Administering Settlement after Preliminary Approval.....	11
F.	Process for Settlement Class Members to Respond to Class Notice	12
G.	The Release	12
V.	ARGUMENT	14

1	A. Plaintiff Requests Approval of This Class Action Settlement	14
2	1. The Strength of Plaintiff’s Case.....	14
3	2. The Risk, Expense, Complexity, and Likely Duration of Further Litigation	18
4	3. The Risk Associated With a Potential <i>Pick-Up Stix</i> Campaign	18
5	4. The Risk of Maintaining Class Action Status through Trial	18
6	5. The Amount Offered in Settlement.....	19
7	6. The Experience and Views of Counsel	20
8	7. The PAGA Allocation is Reasonable.....	21
9	8. The Class Payment Allocation Is Fair and Reasonable.....	21
10	9. The Proposed Notice Fairly Apprises the Settlement Class Members of the Terms	
11	of the Settlement and of the Class Members’ Rights under the Settlement	22
12	VI. THE SERVICE AWARD TO THE NAMED PLAINTIFF	23
13	VII. SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY.	23
14	VIII. CONCLUSION.....	23

TABLE OF AUTHORITIES

Cases

<i>Acree v. General Motors Acceptance Corp.</i> , (2001) 92 Cal. App. 4th 385, 387.	5
<i>Barnhill v. Robert Saunders & Co.</i> , (1981) 125 Cal.App.3d 1	17
<i>Bell v. Farmers Ins. Exch.</i> , (2004) 115 Cal.App.4th 715	6
<i>Blue Chip Stamps v. Superior Court</i> , (1976) 18 Cal.3d 381	8
<i>Bradley v. Networkers International, LLC</i> , (2012) 211 Cal.App.4th 1129	6
<i>Brinker Restaurant Corp. v. Superior Court</i> , (2012) 53 Cal.4th 1004	3, 4, 6
Cal. Lab. Code § 515(d)(2)	15
<i>Carrington v. Starbucks Corporation</i> , (2018) 30 Cal.App.5th 504	17
<i>Cartt v. Superior Court</i> , (1975) 50 Cal.App.3d 960	22
<i>Chindarah v. Pick Up Stix, Inc.</i> , (2009), 171 Cal.App.4th 796	18
<i>Classen v. Weller</i> , (1983) 145 Cal.App.3d 27	7
<i>Collins v. Rocha</i> , (1972) 7 Cal.3d 232	3, 5
<i>Diaz v. Grill Concepts Services, Inc.</i> , (2018) 23 Cal.App.5th 859.) (Stiller Decl. ¶ 61.)	17
<i>Duran v. U.S. Bank National Assn.</i> , 59 Cal.4th 1, 31 (2014)	16
<i>Fireside Bank v. Sup. Court</i> , (2007) 40 Cal.4th 1069	3, 4
<i>Helix Energy Solutions Group, Inc. v. Hewitt</i> ,	

1	(2023) 598 U.S. 39	15
2	<u>Hicks v. Kaufman & Broad Home Corp.</u> ,	
3	(2001) 89 Cal.App.4th 908	5
4	<u>Knapp v. AT & T Wireless Services, Inc.</u> ,	
5	(2011) 195 Cal.App.4th 932	5
6	<u>Kullar v. Foot Locker Retail, Inc.</u> (,	
7	2008) 168 Cal.App.4th 116.....	14
8	<u>Linder v. Thrifty Oil Co.</u> ,	
9	(2000) 23 Cal.4th 429	3
10	<u>Lockheed Martin Corp. v. Superior Court</u> ,	
11	(2003) 29 Cal.App.4th 1096	7, 8
12	<u>Lockheed Martin</u> ,	
13	supra, 29 Cal.4th	9
14	<u>Mamika v. Barca</u> ,	
15	(1998) 68 Cal.App.4th 487	17
16	<u>Miller v. Woods</u> ,	
17	(1983) 148 Cal.App.3d 862	4
18	<u>Moniz v. Adecco USA, Inc.</u> ,	
19	(2021) 72 Cal.App.5th 56, 76.	21
20	<u>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</u> ,	
21	(2010) 186 Cal. App. 4th 399	14
22	<u>O'Connor v. Uber Technologies, Inc.</u> ,	
23	(N.D. Cal. 2016) 201 F.Supp.3d 1110, 1135	21
24	<u>Officers for Justice v. Civil Service Comm'n</u> ,	
25	(9th Cir. 1982) 688 F.2d 615	21
26	<u>Richmond v. Dart Industries, Inc.</u> ,	
27	(1981) 29 Cal.3d 462	3, 8
28	<u>Rose v. City of Hayward</u> ,	
	(1981) 126 Cal.App.3d 926	4
	<u>Sav-on Drug Stores, Inc. v. Sup. Court</u> ,	
	(2004) 34 Cal.4th 319	3, 5, 6
	<u>Seastrom v. Neways, Inc.</u> ,	
	(2007) 149 Cal.App.4th 1496	6, 7

1	<u>Simons v. Horowitz,</u>	
2	(1984) 151 Cal.App.3d 834	7
3	<u>Trotsky v. L.A. Fed. Sav. & Loan Ass'n,</u>	
4	(1975) 48 Cal.App.3d 134	22
5	<u>Vasquez v. Superior Court,</u>	
6	(1971) 4 Cal.3d 800	8
7	<u>Wershba v. Apple Computer, Inc.,</u>	
8	(2001) 91 Cal.App.4th 224	7, 20
9	<u>Washington v. Joe's Crab Shack,</u>	
10	(N.D. Cal. 2010) 271 F.R.D. 629, 641	16

Statutes

11	8 Cal. Code Regs. § 11120.....	15
12	Business & Professions Code § 17200	7
13	Civil Code §1542	23
14	Code Civ. Proc. § 382	3, 4
15	Labor Code §§ 201-202	13
16	Labor Code § 203.....	13, 17, 20
17	Labor Code § 204.....	13,17
18	Labor Code § 210.....	13,17
19	Labor Code § 226.7(b).....	15
20	Labor Code § 226(a)(2)	16
21	Labor Code § 226(a)(9)	16
22	Labor Code § 510.....	13
23	Labor Code § 512.....	15
24	Labor Code § 515.....	13
25	Labor Code § 558.....	13
26	Labor Code § 1174.....	13
27	Labor Code § 1194.....	13

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Angel Rivera (“Plaintiff”) submits this Memorandum of Points and Authorities in
4 support of Plaintiff’s Motion for Preliminary Approval of the Stipulation of Class Action and
5 Private Attorney General Settlement (“Settlement” or “Settlement Agreement”) reached between
6 Plaintiff and Defendant Mekanism, Inc. (“Defendant”) (Plaintiff and Defendant will hereinafter be
7 referred to as the “Parties”).

8 By this Motion, Plaintiff requests that the Court:

9 (1) Grant preliminary approval of the fully executed Settlement Agreement. A true and
10 correct copy of the Settlement Agreement is attached to the concurrently filed Declaration of Frank
11 H. Kim as Exhibit “1”;

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

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

18 **II. FACTUAL BACKGROUND**

19 **A. Class Action and PAGA Complaint**

20 On or about April 14, 2022, Plaintiff worked as a background model for an advertising
21 campaign for Proximo Spirits, Inc./Jose Cuervo entitled “Cinco Tip It Forward” in exchange for
22 \$50 for the fitting day, \$150 for a COVID test, and \$375 for 12 hours of work on the shooting day.
23 (Declaration of Frank H. Kim [“Kim Decl.”] ¶ 4.) Plaintiff alleges that Defendant failed to pay his
24 overtime wages at the appropriate rate of pay, and failed to pay premium wages for missed meal
25 and rest periods at the appropriate rate of pay, among other claims. (Kim Decl. ¶ 5.)

26 On March 15, 2023, Plaintiff filed a Class Action Complaint alleging causes of action
27 against Defendant for (1) Failure to pay all overtime wages, (2) Failure to pay premium wages, (3)

1 Failure to provide accurate wage statements, (4) Failure to pay all wages due and owing on
2 separation) and (5) Unfair Business Practices. (F. Kim Decl. ¶ 6.)

3 On May 19, 2023, Plaintiff amended his Complaint against Defendant to add a claim under
4 PAGA. (F. Kim Decl. ¶ 7.)

5 **B. Mediation and Settlement**

6 Shortly after the case was at issue, the Parties agreed to early mediation with Jonathan D.
7 Andrews for March 21, 2024. (F. Kim Decl. ¶ 8.)

8 In advance of mediation, Defendant provided Plaintiff's counsel with pertinent data for the
9 Class Members so that the Parties could fully investigate the claims at issue and understand their
10 strengths and weaknesses. (Kim Decl. ¶ 9.) Defendant provided the number of class members and
11 PAGA members and documents pertinent to Plaintiff's allegations that the on-stage performers
12 were misclassified as independent contractors. (Kim Decl. ¶ 10.) Plaintiff's counsel also served
13 formal discovery and noticed the deposition of Defendant's corporate representative but agreed to
14 stay that discovery pending settlement negotiations. (Kim Decl. ¶ 11.) Plaintiff's counsel had
15 mediation data analyzed by an expert to prepare a damage model for mediation. (Kim Decl. ¶ 12.)

16 On March 21, 2024, the Parties attended an all-day mediation before Mr. Andrews, which
17 resulted in a fully executed Memorandum of Understanding settling the Action. (Kim Decl. ¶ 13.)

18 Defendant denies any liability or wrongdoing of any kind associated with the claims
19 alleged in the Action, dispute the damages and penalties claimed by Plaintiff, and further contend
20 that, for any purpose other than settlement, Plaintiff's claims are not appropriate for class or
21 representative action treatment. (Kim Decl. ¶ 14.) Defendant contends, among other things, that,
22 at all times, they have complied with the California Labor Code, and the Industrial Wage
23 Commission Orders. (*Id.*)

24 Based on their own independent investigation and evaluation, Class Counsel is of the
25 opinion that the Settlement Agreement with Defendant is fair, reasonable and adequate, and in the
26 best interest of the settlement classes in light of all known facts and circumstances, including the
27 risk of significant delay, defenses asserted by Defendant, uncertainties regarding a class and
28

representative action trial on the merits, and numerous potential appellate issues. (Kim Decl. ¶ 15.) Although Defendant denies any liability, Defendant is agreeing to this Settlement Agreement solely to avoid the cost of litigation. (*Id.*) Accordingly, the Parties and their counsel desire to settle, compromise and discharge all disputes and claims arising from or relating to the Action on the terms set forth here fully, finally, and forever. (Kim Decl. ¶ 16)

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.)

1 The “community of interest” requirement includes three additional requirements: (1) common
2 questions of law or fact predominant over individual questions; (2) the class representatives have
3 claims or defenses typical of the class; and (3) the class representatives can adequately represent
4 the class. (*Ibid*, citing *Fireside Bank*, *supra*, 40 Cal.4th at 1089.)

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

8 **A. The Proposed Classes Are Ascertainable and Sufficiently Numerous**

9 **1. Ascertainability**

10 Putative class members are deemed “ascertainable” when they may be “readily identified
11 without unreasonable expense or time by reference to official records.” (*Rose v. City of Hayward*
12 (1981) 126 Cal.App.3d 926, 932.) In determining whether a class is ascertainable, a court
13 scrutinizes the class definition, the size of the class and the means of identifying class members.
14 (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.)

15 Here, the proposed Settlement Class is ascertainable because Defendant has agreed in the
16 Settlement Agreement to provide a class list to the Settlement Administrator containing Settlement
17 Class Member’s full name; last known address; last known home telephone number, or data that
18 will allow the Settlement Administrator to reasonably determine the putative class members after
19 issuance of the preliminary approval order. (Kim Decl. ¶ 17; Ex. 1 at ¶ 4.)

20 **2. Numerosity**

21 There is no set number that is required as a matter of law to maintain a class action. (*See*,
22 *e.g.*, *Rose v. City of Hayward*, *supra*, 126 Cal.App.3d at p. 934.) Here, the proposed Settlement
23 Class contains approximately 337 hourly non-exempt employees in the State of California. (Ex. 1
24 at ¶ 8.) Therefore, Plaintiff is confident he will be able to establish that the proposed Settlement
25 Class is ascertainable and sufficiently numerous. (Kim Decl. ¶ 18.)

26 **B. There Is a Well-Defined Community of Interest**

27 **1. There Are Predominant Questions of Law and Fact**

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

10 Here, the Settlement Class were subject to common policies and practices regarding the
11 calculation of the “regular rate” for overtime and break violation calculation purposes that formed
12 the foundation of every claim. The main individualized differences between the Settlement Class
13 Members relate to the amount of damages if Plaintiff prevailed at trial. Kim Decl. ¶ 48. However,
14 differences as to the amount of damages among Settlement Class Members are not sufficient to
15 prevent certification. *Acree v. General Motors Acceptance Corp.* (2001) 92 Cal. App. 4th 385,
16 387. Here, Plaintiff argues that there are questions of law and fact common to the proposed
17 Settlement Class that predominate over any questions affecting only individual Class Members.
18 (Kim Decl. ¶ 19.) These common questions include:

- 19 1) Whether Defendant failed to pay all wages at the correct regular rate;
- 20 2) Whether Defendant failed to pay all wages and/or overtime compensation;
- 21 3) Whether Defendant failed to provide lawfully required meal periods and/or failed
22 to compensate the performers one (1) hour’s wages in lieu thereof;
- 23 4) Whether Defendant failed to provide lawfully required rest periods and/or failed to
24 compensate the performers one (1) hour’s wages in lieu thereof;
- 25 5) Whether Defendant failed to provide accurate itemized wage statements;
- 26 6) Whether Defendant failed to pay compensation time and whether it failed to pay all
27 wages owed upon termination of employment; and

1 7) Whether Defendant engaged in unfair or illegal competition.

2 (*Id.*)

3 Plaintiff's challenge to Defendant's uniform policies and practices involves common
4 factual and legal issues that are amenable to class treatment. (Kim Decl. ¶ 20.) As the California
5 Supreme Court has emphasized, "[c]laims alleging that a uniform policy consistently applied to a
6 group of employees is in violation of the wage and hour laws are of the sort routinely, and properly,
7 found suitable for class treatment." (*Brinker, supra*, 53 Cal.4th at 1033; *see also Bradley v.*
8 *Networkers International, LLC* (2012) 211 Cal.App.4th 1129, 1141-1146.) Moreover, a class of
9 similarly situated employees may be certified based on common questions of fact or law, even if
10 each employee has to establish the amount of his or her damages. (*See Bell v. Farmers Ins. Exch.*
11 (2004) 115 Cal.App.4th 715, 741; *Sav-On Drug Stores, Inc. v. Superior Court, supra*, 34 Cal.4th
12 at 340.)

13 Here, as detailed above, Plaintiff maintains that the proposed Settlement Class Members
14 suffered the same injuries, in the same manner. (Kim Decl. ¶ 21.) Plaintiff alleges that Settlement
15 Class Members worked in the same capacity for the same employer and were subject to the same
16 employment policies and practices, the questions of fact and claims regarding the status of these
17 employees are the same for each member of the Settlement Class. (Kim Decl. ¶ 22.) Accordingly,
18 for purposes of settlement, the evidence reviewed by Class Counsel demonstrates that common
19 meal policies and wage policies applied to the proposed Settlement Class Members and
20 certification for settlement purposes is appropriate. (Kim Decl. ¶ 23.)

21 **2. The Named Plaintiff Has Claims Typical of the Proposed Class**

22 A putative class representative's claim must be "typical," but not necessarily identical to
23 the claims of other class members. The test of typicality "is whether other members have the same
24 or similar injury, whether the action is based on conduct which is not unique to the Class
25 Representatives, and whether other class members have been injured by the same course of
26 conduct." (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502.) Thus, it is sufficient
27 that the representative is similarly situated so that he or she will have the motive to litigate on
28

1 behalf of all class members. (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502.) Thus,
2 it is sufficient that the representative is similarly situated so that he or she will have the motive to
3 litigate on behalf of all class members. (*See, e.g., Classen v. Weller* (1983) 145 Cal.App.3d 27,
4 45.) It is not necessary that the class representative have personally incurred all of the damages
5 suffered by each of the other class members. (*Wershba v. Apple Computer, Inc.* (2001) 91
6 Cal.App.4th 224, 238.)

7 Plaintiff worked as a background performer in exchange for a daily wage in the amount of
8 \$375. (Kim Decl. ¶ 24.) Plaintiff alleges that he: (1) worked without being paid all wages and/or
9 overtime; (2) worked without being provided meal periods as required by law; (3) worked without
10 being provided rest periods as required by law; (4) worked without being provided accurate
11 itemized wage statements; and (5) worked without being paid all wages due on a timely basis and
12 upon separation. He also alleges derivative claims for unfair business competition (B&P Code
13 §17200) (Kim Decl. ¶ 25.) Plaintiff also contends that his claims are typical of those of the
14 Settlement Class (Kim Decl. ¶ 26.)

15 **3. Plaintiff Contends That As The Named Plaintiff He Has and Will Fairly**
16 **Represent the Interests of the Settlement Class Members**

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

21 Plaintiff believes that he is capable of fairly representing and adequately protecting the
22 interests of the proposed Settlement Class Members. (Kim Decl. ¶ 27.) Plaintiff’s interests in this
23 litigation are coextensive with the interests of the proposed Class Members. The members of the
24 proposed Settlement Class all worked for Defendant during the relevant time period and incurred
25 the same type of alleged damages with regard to Defendant’s’ alleged violations of the law. (Kim
26 Decl. ¶ 28.) Moreover, Plaintiff has agreed to serve as Named Plaintiff and has retained qualified
27 Counsel who is experienced in prosecuting wage and hour class actions. (Kim Decl. ¶ 29.) This
28

1 demonstrates his commitment to bringing about the best possible results for the benefit of the
2 proposed Settlement Class. (*Id.*) Plaintiff has provided his Counsel with all necessary and
3 pertinent information. He has been a very active participant in the litigation including having
4 frequent contact with Settlement Class Members and working closely with Class Counsel to
5 develop the theories of liability. (Kim Decl. ¶ 30.) He also participated in the mediation in this
6 matter and was informed of and involved in all of the settlement negotiations. (Kim Decl. ¶ 31.)
7 Therefore, Plaintiff believes that he has and will continue to adequately represent the proposed
8 Settlement Class Members. (*Id.*)

9 **C. The Class Action Vehicle Is Superior to the Alternatives**

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

24 Plaintiff maintains that class treatment would be the superior method of managing this case.
25 A class action is superior to individual litigation “when numerous parties suffer injury of
26 insufficient size to warrant individual action and when denial of class relief would result in unjust
27 advantage to the wrongdoer.” (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.) In
28

1 cases such as this, where individual damages may be small, the class action device is the most
2 feasible method of recovery. (*See, e.g. Lockheed Martin, supra*, 29 Cal.4th at 1131.) In this regard,
3 the superiority of class treatment is evident here because individual pursuit of class members’
4 claims may not be economically viable. (Kim Decl. ¶ 32.) The only alternative to certification
5 would be to force over 327 employees to join this action, file individual, uniform actions, or
6 abandon their legal rights altogether. (Kim Decl. ¶ 33.) Plaintiff maintains that this economic
7 reality would result in a windfall for Defendant if this case were not certified. (Kim Decl. ¶ 34.)

8 **IV. THE PROPOSED SETTLEMENT**

9 **A. The Settlement Class**

10 For purposes of Settlement Agreement, the Settlement Class consists of approximately 337
11 individuals and three non-overlapping classes: (1) the 203 Regular Rate Class, (2) the 203 Waiting
12 Time Class, and (3) the Wage Only Class. (Kim Decl. ¶ 35.)

13 The 203 Regular Rate Class consists of about 196 individuals and includes all non-exempt
14 background actors and models who worked for Defendant from September 16, 2019 through the
15 date of Preliminary Approval, were paid a flat daily rate, and worked more than six hours without
16 a recorded meal period and/or worked more than 8 hours in one day. (Kim Decl. ¶ 36.)

17 The 203 Waiting Time Class consists of at least 77 individuals and includes all performers
18 who worked for Defendant from September 16, 2019 through the date of Preliminary Approval,
19 who are not members of the 203 Regular Rate Class, and their first wage payment for a day worked
20 in the 203 Regular Rate Class Period was issued after the scheduled pay day. (Kim Decl. ¶ 37.)

21 The Wage Only Class consists of approximately 64 individuals and includes all non-
22 exempt background actors and models who worked for Defendant from September 16, 2018
23 through the date of Preliminary Approval, were paid a flat daily rate, worked more than six hours
24 without a recorded meal period and/or worked more than 8 hours in one day, and are not part of
25 the 203 Regular Rate or 203 Waiting Time Class. (Kim Decl. ¶ 38.)

26 For purposes of Settlement Agreement, the definition of the PAGA settlement group is
27 defined as: “non-exempt background actors and models who worked for Defendant, were paid a
28

flat daily rate, and worked more than six hours without a recorded meal period and/or worked more than 8 hours in one day in the PAGA Period [the PAGA Period is from March 14, 2022 through the date of Preliminary Approval], and all performers who worked for Defendant and their first wage payment for a day worked in the PAGA Period was issued after the scheduled pay day.” (“Aggrieved Employees”) (Kim Decl. ¶ 39; Settlement Agreement, Ex. 1 at ¶1.8.) Based on documents and other information produced by Defendant, there are approximately 12 Aggrieved Employees. (Kim Decl. ¶ 39.)

B. Gross Settlement Fund

As detailed fully in the Settlement Agreement, the Settlement provides for the Defendant to pay a Gross Settlement Amount of \$385,000.00, which includes the sum of the Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Litigation Expenses Payment, Class Representative Service Payment and the Administrator’s Expenses. (Kim Decl. ¶ 40; Ex. 1 at ¶ 1.25.)

The Net Settlement Amount is the Gross Settlement Amount, less the 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. (Kim Decl. ¶ 41; Ex. 1 ¶ 1.31.)

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

Gross Settlement Fund:	\$	385,000.00
Named Plaintiff Service Payment:	\$	10,000.00
Fees Award	\$	128,320.50
Costs Award:	\$	20,000.00
PAGA Penalties:	\$	6,000.00
		<i>(\$4,500 to the LWDA and \$1,500 to remain in the Net Settlement Amount to the Aggrieved Employees)</i>
<u>Settlement Administration Costs:</u>	<u>\$</u>	<u>7,450.00</u>
Net Settlement Fund	\$	213,229.50

(Ex. 1 at ¶¶ 3.1-3.2.)

C. Individual Settlement Payments

Each Participating Class Member will be allocated an equal pro rata share of the Net Settlement Amount allocated to their Class. Each Class will be allocated a portion of the Net Settlement Allocation, which are listed below.

- a. The 203 Regular Rate Class is allocated \$280,000 of the Gross Settlement Amount, or 72.74%.
- b. The 203 Waiting Time Class is allocated \$96,120 of the Gross Settlement Amount, or 24.97%.
- c. Wage Only Class Allocation is allocated \$8,800 of the Gross Settlement Amount, or 2.29%.

(Ex. 1 ¶ 3.2.4.1; see also Ex. A to the Settlement Agreement [Class Notice].)

The Individual PAGA Payment will be paid on a pro-rata basis. All Class Members who are Aggrieved Employees will receive an equal pro rata share of 25% of the PAGA Penalties. (See Ex. 1 at ¶ 3.2.4.2.)

D. Tax Allocation of Payments

A portion of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portion allocation are: 203 Regular Rate Class (1%), 203 Waiting Time Claims (1%), Wage Only Class (25%). The Wage Portions are subject to tax withholding calculated and made by the Settlement Administrator. (Ex. 1 at ¶3.2.5.) The remainder of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest, reimbursements, and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings. (*Id.*) All Individual Settlement Payments to PAGA Settlement Group Members shall be allocated as 100% non-wage payment for civil penalties. (Ex. 1 at ¶ 3.2.5.)

E. Process for Administering Settlement after Preliminary Approval

The detailed Notice Procedure established by the Settlement Agreement will efficiently and accurately ensure that the Class Notice is provided to the Settlement Class Members. (Ex. 1 at ¶ 7.) The Parties have agreed to use a reputable third-party claims administrator, ILYM Group,

Inc., to administer the Settlement Agreement. (Ex. 1 ¶ 7.2.) Other than a professional relationship arising out of prior experiences administering settlements, neither counsel for Plaintiff nor Defendant has an interest or relationship, financial or otherwise, with ILYM Group, Inc. (Kim Decl. ¶ 87, Declaration of Stephen Rossi (“Rossi Decl.”) ¶ 3.)

F. Process for Settlement Class Members to Respond to Class Notice

The Class Notice will be in English only because the Class consists of a single production that was conducted entirely in English and all the casting correspondence (offer, acceptance, and logistics) was in English. (Declaration of Keri Catanzano ¶ 4.) Therefore, the Class Members are presumed to read English. (*Id.*)

Class Members will have an opportunity to request exclusion from the Settlement (i.e. opt out) and to object to the Settlement at the Final Approval Hearing. (Ex. 1 at ¶ 7.6.1.)

Class Members who do not opt out of the Settlement may object to the Settlement Agreement in person at the final approval hearing or by mailing written objections to the Settlement Administrator no later than forty-five (45) calendar days after the mailing of the Notice Packet. (Ex. 1 at ¶ 7.7.2.) The Settlement Administrator will provide any written objections to Class Counsel and Defendant’s Counsel, who will file them with the Court in advance of the final approval motion. (Ex. 1 at ¶ 7.8.3.)

Class Members may also opt out of the settlement by submitting a Request for Exclusion no later than forty-five (45) calendar days after the mailing of the Class Notice expressing that the Settlement Class Member elects to be excluded from the Settlement. (Ex. 1 at ¶ 7.6.1.)

G. The Release

The Released Class Claims, for the Class Period, are defined as: “any and all claims, debts, liabilities, demands, obligations, penalties, premium pay, guarantees, costs, expenses, attorney’s fees, damages, actions or causes of action of whatever kind or nature, contingent or accrued, that have been asserted or that reasonably could have been asserted in the Operative Complaint based on the facts, claims and/or allegations therein, including under any legal theory that was alleged or that reasonably could have been alleged based on the facts, claims and/or allegations therein for

1 failure to pay all wages due (including overtime wages, and meal and rest break premium wages),
2 failure to pay for all hours worked, failure to timely pay wages and final wages, derivative claims
3 for failure to furnish accurate wage statements, and failure to provide expense
4 reimbursements. This Release shall include claims and theories arising under the California Labor
5 Code Sections 201, 201.5, 202, 203, 204, 210, 226, 226.7, 510, 512, 515, 558, 558.1, 1174, 1174.5,
6 1194, 2802, as well as claims under Business and Professions Code section 17200 *et seq.*, the
7 equivalent provisions of the Fair Labor Standards Act, and/or Labor Code Section 2698 *et seq.*
8 based on alleged violations of the above Labor Code provisions, as alleged in the Operative
9 Complaint. Except as set forth in Section 5.3 of this Agreement, Participating Class Members do
10 not release any other claims, including claims for vested benefits, wrongful termination, violation
11 of the Fair Employment and Housing Act, unemployment insurance, disability, social security, or
12 workers' compensation. The release shall run through the date of Preliminary Approval. Moreover,
13 only those who cash their Individual Class Payment checks will be deemed to have released claims
14 under the Fair Labor Standards Act. The following language will be printed on the reverse of each
15 Individual Class Payment check, or words to this effect: "By endorsing or otherwise negotiating
16 this check, I acknowledge that I read, understood, and agree to the terms set forth in the Notice of
17 Class Action Settlement and I consent to join in the Fair Labor Standards Act ("FLSA") portion
18 of the Action, elect to participate in the settlement of the FLSA claims, and agree to release all of
19 my FLSA claims that are covered by the Settlement." (Ex. 1 at ¶ 5.2.)

20 The Released PAGA Claims, for the PAGA Period, are defined as: "all claims for PAGA
21 penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period
22 facts stated in the Operative Complaint or PAGA Notices including under any legal theory that
23 was alleged or that could have been alleged for any failure to pay all wages due (including overtime
24 wages, and meal and rest break premium wages), failure to pay for all hours worked, failure to
25 timely pay wages and final wages, failure to furnish accurate wage statements including claims
26 derivative and/or related to these claims, and failure to provide expense reimbursements. This
27 Release shall include all claims and theories arising under the California Labor Code, California

wage orders, and applicable regulations, including Labor Code Sections 201, 201.5, 202, 203, 204, 210, 226, 226.7, 510, 512, 515, 558, 558.1, 1174, 1174.5, and 2802. The release shall run through the end of the PAGA Period.” (Ex. 1 at ¶ 5.3.)

V. ARGUMENT

A. Plaintiff Requests Approval of This Class Action Settlement

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

The proposed settlement satisfies each of these factors. Class Counsel conducted extensive informal discovery before entering into meaningful settlement negotiations in this matter. (Kim Decl. ¶¶ 8-12; 42.) This discovery permitted Class Counsel to fairly evaluate the strength of the case and the risks associated with ongoing litigation. (Kim Decl. ¶ 43.) Class Counsel is experienced in handling wage and hour class actions and, after weighing all of the following factors, supports this Settlement Agreement. (Kim Decl. ¶ 44.)

1. The Strength of Plaintiff’s Case

a) The Risks Associated with Unpaid Wages/Overtime Claim

Plaintiff’s recovery for unpaid overtime faces significant risks. In order to prevail, Plaintiff must establish that his payment of \$375 for a “12 hour shoot day” was a “fixed salary” under Labor

Code § 515(d)(2), and therefore that the \$375 payment is only for his non-overtime hours and that he is entitled to a separate payment for his overtime hours. (Cal. Lab. Code § 515(d)(2).) In opposition, Defendant would argue that Section 515(d)(2) applies only to a “weekly salary,” not a daily salary, that the term “salary” is not defined in the Labor Code or the Wage Orders, and that Plaintiff was not paid a salary under the recent Supreme Court case of *Helix Energy Solutions Group, Inc. v. Hewitt* (2023) 598 U.S. 39 (holding that a “daily rate” worker did not meet the “salary basis test” under the FSLA). If Defendant prevails one of these arguments, Plaintiff’s entire claim for unpaid wages would fail. Accounting for such risks required a significant reduction in Plaintiff’s initial demand. (Kim Decl. ¶ 45.)

b) The Risks Associated with the Meal and Rest Break Claims

Employers must pay one hour at the employee’s “regular rate of compensation” as a penalty when they fail to provide a thirty-minute uninterrupted meal period as required by Labor Code section 512. (*See* Labor Code § 226.7(b).) They must also authorize and permit non-exempt employees covered by the wage orders to take a 10-minute rest break every four hours of work or major fraction thereof. (*Id.*; *see also* 8 Cal. Code Regs. § 11120.)

Plaintiff claims that Defendant improperly failed to pay him and the Settlement Class premium wages as a result of misclassifying them as independent contractors. Accordingly, success on these claims is contingent on the Court finding that Defendant misclassified Plaintiff and the Settlement Class and failed to authorize and permit meal and rest breaks (Kim Decl. ¶ 46.).

Moreover, will Defendant contend that, to establish a violation for missed meal periods, a plaintiff must do more than show that a meal break was not taken. (*Brinker*, 53 Cal.4th at 1004.) So long as an employer provides employees with a “reasonable opportunity” to take a duty-free meal period, it has no further duty to “police meal breaks and ensure no work thereafter is performed.” (*Id.* at 1040-41.) Instead, a plaintiff must show the employer impeded, discouraged, or prohibited the employee from taking a proper break, or otherwise failed to release the employee of all control. *Id.* “Thus, the crucial issue with regard to the meal break claim is the reason that a particular employee may have failed to take a meal break.” (*Washington v. Joe’s Crab Shack* (N.D.

1 Cal. 2010) 271 F.R.D. 629, 641.)

2 There are also risks to Plaintiff's rest period claim. Employers are not required to record
3 rest periods and such rest periods are paid. Thus, unlike meal periods, where there are often records
4 showing whether an employee clocked out or not, there is no such evidence to prove a missed rest
5 period or that the employer refused to authorize and permit one. Managing such claims at trial may
6 be exceedingly difficult. Plaintiff will depend on sample witness testimony and surveys to prove
7 the claims. While a victory with such evidence is certainly possible, relevant caselaw makes such
8 claims risky from a trial management and due process perspective. (*See Duran v. U.S. Bank*
9 *National Assn.*, 59 Cal.4th 1, 31 (2014) (explaining "[I]f sufficient common questions exist to
10 support class certification, it may be possible to manage individual issues through the use of
11 surveys and statistical sampling").)

12 Risks to both the meal and rest period claims arise from the fact that Defendant retained
13 the Class Members to rehearse and perform in the advertising campaign. Unlike a workforce in a
14 factory that are under the direct and constant supervision of their managers, the Class Members
15 spent a significant amount of time on their own while they waited for instruction from Defendant.
16 Defendant will argue that this freedom of movement and lack of oversight will inhibit any claim
17 that they prevented the Class Members from taking duty-free rest and meal periods – to the extent
18 that they were entitled to any such meal or rest periods (Kim Decl. ¶ 49.).

19 **c) The Risks Associated with the Wage Statement Claim**

20 Labor Code § 226(a)(2) requires that every employer shall furnish each of his or her
21 employees an accurate itemized statement in writing showing total hours worked by the employee.
22 Labor Code § 226(a)(9) requires the wage statement to display all applicable hourly rates in effect
23 during the pay period and the corresponding number of hours worked at each hourly rate by the
24 employee. While Plaintiff believed his wage statement claim was relatively strong given that there
25 is no itemization of the hours or hourly rate associated with his payment, there was still risk that a
26 Court would find no liability since Plaintiff was a non-exempt employee. (Kim Decl. ¶ 50.)

27 **d) The Risks Associated with the Waiting Time Penalty Claim**

Under Labor Code § 203, if an employer fails to provide wages at the time of an employee's termination or within 72 hours of resignation, then the employee's wages shall continue as a penalty for up to 30 days. Section 203 reflects a public policy that favors the full and prompt payment of earned wages. (*See Barnhill v. Robert Saunders & Co.* (1981) 125 Cal.App.3d 1, 7; *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.) Similarly, under Labor Code §§ 204 and 210, an employee may seek a penalty for not being paid timely after the close of a payroll period.

Here, Plaintiff performed as a background model for one day on April 14, 2022 and argues that he is owed waiting time penalties due to Defendant's failure to pay appropriate overtime wages and meal period premiums. (*See Diaz v. Grill Concepts Services, Inc.* (2018) 23 Cal.App.5th 859.) (Kim Decl. ¶ 51.)

In evaluating settlement, Plaintiff considered Defendant's argument that it had a good faith belief that (1) Plaintiff's overtime wages were included in his daily salary (2) Plaintiff was provided his meal and rest breaks. (*See, e.g., Hill v. Walmart Inc.*, 32 F.4th 811 (9th Cir. 2022) (finding that a good faith belief precluded waiting time penalties as a matter of law.) Since the waiting time penalties amount to a majority of class damages, Plaintiff believed that a significant discount on this claim was reasonable given the attendant risks. (Kim Decl. ¶ 52.)

e) The Risks Associated with the PAGA Claim

Plaintiff is cognizant of risks associated with their PAGA claim and have therefore agreed to discount this claim for multiple reasons. First, the aggrieved employees' PAGA claims arise from the same violations as the foregoing class claims and bear the same risks on the merits. Second, the Court has discretion to award less than the maximum penalty, which Defendant argued would be appropriate considering the low amount of direct wage damages, even if Plaintiff prevails. (*See* 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"]; *Carrington v. Starbucks Corporation* (2018) 30 Cal.App.5th 504, 529 [affirming award of 10% of maximum PAGA penalty].) Finally, the Settlement Class is compensated for

these violations in the proposed Settlement Agreement, and thus any PAGA recovery for these same violations would be duplicative. Thus, PAGA did not make up a significant percentage of the overall potential liability compared to other claims. (Kim Decl. ¶ 53.) As such, the Settlement Agreement's contemplated PAGA payment of \$10,000 is appropriate. (*Id.*)

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

There is significant expense associated with the class certification process, which the Parties can avoid by entering into the contemplated Settlement Agreement now. (Kim Decl. ¶ 55.) If the Court did eventually certify a class, trial of a case involving approximately 327 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. (Kim Decl. ¶ 56.) 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. (Kim Decl. ¶ 57.) An appeal would result in further delay for the Settlement Class Members who are waiting for a resolution in this matter. (Kim Decl. ¶ 58.)

3. The Risk Associated With a Potential *Pick-Up Stix* Campaign

There is also a risk that Defendant could engage in an individual settlement campaign pursuant to *Chindarah v. Pick Up Stix, Inc.* (2009), 171 Cal.App.4th 796. Given the financial strain that Defendant's workers are no doubt experiencing due to the COVID-19 pandemic, there is a significant risk that, if Defendant was to engage in such a campaign, many if not all of the background actors would choose to accept Defendant's individual settlement offers. If this were to occur, Plaintiff could be left without a sufficiently numerous class to represent a class action.

4. The Risk of Maintaining Class Action Status through Trial

This case has not yet been certified to be tried as a class action. (Kim Decl. ¶ 59.) While Plaintiff believes there is strong evidence to support certification of several possible subclasses, certification is always hard fought and subject to judicial discretion. Moreover, in class actions, decertification is always a possibility. (*Id.*) In attempting to certify a class, the Parties would need

1 to conduct multiple depositions, including of the Named Plaintiff and of several person(s) most
2 knowledgeable regarding Defendant's policies. (*Id.*) There is a risk for both sides as to what these
3 depositions will reveal and whether they will support class certification to the extent expected.
4 (*Id.*)

5 **5. The Amount Offered in Settlement**

6 It was very difficult for the Parties to reach this Settlement of \$385,000.00. (Kim Decl. ¶
7 60.) This Settlement is the result of adversarial, non-collusive, and arms-length negotiations. (*Id.*)
8 The Parties arrived at it after extensive investigation and discovery, careful evaluation of the law,
9 risks, and all information substantiating the amount of penalties reasonably likely to be awarded
10 to the class were the trier of fact to find Defendant liable, and the assistance of an experienced
11 mediator, Jonathan Andrews, Esq. (*Id.*)

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

13 Plaintiff assessed full value of the Unpaid Overtime Wages claim, without any discount, at
14 approximately \$36,465. (Kim Decl. ¶ 61.) Plaintiff used an hourly average rate of \$46.75 and
15 assumed that the 260 individuals in the Regular Rate Class and the Wage Only Class worked a 10-
16 hour shift with no premium pay. (Kim Decl. ¶ 62.)

17 The full value of the Meal Period claim and Rest Period claim, without any discount, was
18 each approximately \$12,155. (Kim Decl. ¶ 63.)

19 With regard to the Reimbursement Claim analysis, Plaintiff believed that it was reasonable
20 to value the potential reimbursement at \$5 per Class Member, for reimbursement of the cost of
21 using one's personal device for communicating with Defendant on April 14, 2022. This brought
22 the damages for this claim to \$1,300. (Kim Decl. ¶ 64.)

23 Plaintiff valued the Wage Statement Claim, without discount, at approximately \$600. (Kim
24 Decl. ¶ 65.) This is based on 12 workweeks within the applicable limitations period for the Regular
25 Rate Class and the Wage Only Class. (*Id.*)

26 Plaintiff valued the Waiting Time Claim, tied to the claims for unpaid wages, at
27 \$3,3,593,310. (Kim Decl. ¶ 66.) This was based on the full amount of waiting time penalties due
28

1 to Defendant's failure to pay overtime and premium wages for the 203 Regular Rate Class
2 (\$3,304.560) and Defendant's failure to pay timely wages for 10 days for the 203 Waiting Time
3 Class (\$288,750). (Kim Decl. ¶ 67.) Considering the derivate nature of Labor Code section 203
4 for the 203 Regular Rate Class and the disputes over willfulness, Plaintiff determined that
5 accepting a steep discount on this claim was appropriate. (*Id.*)

6 Finally, Plaintiff calculated the value of the PAGA claim at \$6,000 for the PAGA Period,
7 which consists of at least 12 individuals who worked one Workweek. (Kim Decl. ¶ 68.) The main
8 risk taken into account with PAGA is the discretionary nature of the penalty award. (Kim Decl. ¶
9 69.) The court could award the statutory maximum of one hundred (\$100) dollars for the initial
10 violation and two hundred (\$200) dollars thereafter or – in theory – one cent per wage statement.
11 (Kim Decl. ¶ 70.) While there is a dearth of available authority, in Plaintiff's view, were they to
12 succeed on any of the underlying Labor Code violations (especially waiting time penalties), it is
13 not likely that the Court would also award a large amount of PAGA penalties on top of damages.
14 (Kim Decl. ¶ 71.)

15 Per Plaintiff's assessment, the maximum potential value of all of Plaintiff's and the
16 Settlement Class Members' claims was approximately \$3,649,830 (of which \$3,539,310 or about
17 98% consist of Waiting Time Penalties). (Kim Decl. ¶ 72.) However, as a result of the forgoing
18 risks on the merits, Class Counsel believes the Gross Settlement Fund of \$385,000 is fair and
19 reasonable. (Kim Decl. ¶ 73.)

20 **6. The Experience and Views of Counsel**

21 Finally, counsel's experience and success in similar class actions also weigh in favor of
22 preliminary approval. (*See Wershba, supra*, 91 Cal.App.4th at 245). Class Counsel is very
23 experienced in prosecuting complex employment litigation in complex wage, hour, and working
24 condition violations. (Kim Decl. ¶¶ 81-86.) Class Counsel is well versed in class action litigation
25 and has diligently and aggressively pursued this action. (*Id.*) Class Counsel currently serves as
26 Class Counsel for dozens of pending class action lawsuits throughout California. (*Id.*) After
27 factoring in the risks explained above, Class Counsel believes that the proposed settlement is fair
28

1 and reasonable. (Kim Decl. ¶ 82.)

2 **7. The PAGA Allocation is Reasonable**

3 The “trial court should evaluate a PAGA settlement to determine whether it is fair,
4 reasonable, and adequate in view of PAGA’s purposes to remediate present labor law violations,
5 deter future ones, and to maximize enforcement of state labor laws.” (*Moniz v. Adecco USA, Inc.*
6 (2021) 72 Cal.App.5th 56, 76.) A PAGA allocation, even if a small portion of the gross settlement,
7 could be reasonable if the settlement of the underlying wage and hour claims is robust and serves
8 the deterrent purpose of the PAGA statute. (*O’Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016)
9 201 F.Supp.3d 1110, 1135.)

10 Here, \$6,000 is allocated to PAGA Penalties. (Kim Decl. ¶ 74.) Given that Defendant will
11 pay a total of \$385,000 as a result of the alleged violations, the class and PAGA settlement is a
12 large disincentive for Defendant to engage in similar Labor Code violations in the future. (Kim
13 Decl ¶ 75.) And, because all Class Members will receive a Class Notice with contact information
14 for Class Counsel, those employees will know to contact Class Counsel in the future if Defendant
15 attempts to engage in similar practices. (Kim Decl ¶ 76.) These factors – the payment of a large
16 sum and employee notice of violations and potential violations – serve to maximize enforcement
17 of state labor laws. (Kim Decl ¶ 77.) Also, unlike in *Moniz*, here there is no unsubstantiated and
18 disproportionate allocation of civil penalties between different groups of employees. (Kim Decl ¶
19 78.) Each Aggrieved Employee will receive the same amount of civil penalty because each worked
20 one Workweek during the PAGA Period. (Kim Decl ¶ 79.) Based on the foregoing, the PAGA
21 allocation and the individual PAGA payment satisfies policies underlying California’s wage and
22 hour laws (*Id.*).

23 **8. The Class Payment Allocation Is Fair and Reasonable**

24 Plans of allocation are subject to the same standard of review as class action settlements;
25 they must be “fair, adequate and reasonable.” (*See, e.g., Officers for Justice v. Civil Service*
26 *Comm’n* (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the proposed plan of allocation
27 compensates Settlement Class Members pro rata based on the Net Settlement Amount. Each
28

Participating Class Member will be allocated an equal share of their Class's Allocation of the Net Settlement. The Class Allocations are: 203 Regular Rate Class Allocation (72.74%), 203 Waiting Time Class Allocation (24.97%), Wage Only Class Allocation (2.29%). This allocation distributes Settlement funds proportionally to each class member's damages, and should therefore be approved as fair, adequate, and reasonable. (Ex. 1 at ¶ 3.2.4.1)

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

Plaintiff requests 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 Settlement 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 ¶¶ 7.5.2-7.5.3.) If any Notices are returned as undeliverable, the Settlement 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. (*Id.*)

Here, the Notice clearly explains the proposed Settlement Agreement and the options to opt out of the Settlement or object to it at the Final Approval Hearing. (Ex. 1 at ¶ 7.6.1; *see also* Ex. A to the Settlement Agreement at pp. 3, 4 [Class Notice].) In short, the Court should approve the proposed Class Notice because it describes the proposed settlement with enough specificity to

1 allow Settlement Class Members to make an informed choice regarding whether to participate.

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

3 The Named Plaintiff is entitled to an enhancement for his valiant effort and time expended
4 in this matter. (Kim Decl. ¶ 88.) The time spent by Plaintiff is significant and includes researching
5 and retaining competent counsel; providing information to Class Counsel regarding the nature of
6 the work; compiling relevant documents; working closely with Class Counsel to develop the
7 theories of liability and martial relevant evidence; regularly discussing the status of the case with
8 Class Counsel; participating during mediation; and responding promptly to Class Counsel's
9 communications regarding settlement. (Kim Decl. ¶ 89; Rivera Decl. ¶¶ 5-15.) Thus, in addition
10 to the sums paid to Class Members, Plaintiff requests a proposed litigation enhancement in the
11 amount of \$10,000.00, to be paid from the Gross Settlement Fund. (Ex. 1 at ¶ 3.2.1.) As set forth
12 in the Settlement Agreement, Plaintiff will also be entering into a general release of liability
13 pursuant to Civil Code Section 1542. (Kim Decl. ¶ 90; Ex. 1 ¶ 5.1.)

14 Class Counsel considers this to be a fair and reasonable enhancement. (Kim Decl. ¶ 92.)
15 The enhancement takes into consideration the time, effort, and expense incurred by Plaintiff in
16 coming forward to litigate this matter on behalf of all Class Members. (*Id.*) Plaintiff will provide
17 a detailed declaration with the Final Approval Motion detailing his participation and further
18 justification for the enhancement. (*Id.*)

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

20 As indicated on the Proof of Service, Plaintiff's Motion for Approval of Class Action
21 Settlement will be concurrently uploaded to the Labor and Workforce Development Agency's
22 ("LWDA") website on the date this Motion is filed as required by statute. Proof of submission of
23 Plaintiff's Motion, all related documents, and copy of the email from the LWDA confirming
24 receipt is attached to the Declaration Frank H. Kim as Exhibit 2. (Kim Decl. ¶ 95.)

25 **VIII. CONCLUSION**

26 Plaintiff respectfully submits that the proposed Settlement Agreement is fair, adequate,
27 reasonable, and in the best interest of the Settlement Class Members. Therefore, the Parties

1 respectfully request that the Court (1) grant preliminary approval of the Joint Stipulation of Class
2 Action Settlement and Release of Claims, and all of its terms; (2) approve the proposed form of
3 notice, and direct that the Notice be sent to Settlement Class Members in the manner set forth in
4 the Joint Stipulation of Class Action Settlement and Release of Claims; and (3) schedule a hearing
5 on final approval of the Settlement Agreement and Class Counsel's application for an award of
6 attorney's fees and litigation costs.

7 DATED: September 13, 2024

KIM LEGAL, APC

8 By: /s/ Frank H. Kim

9 Frank H. Kim

10 Attorneys for Plaintiff Angel Rivera and the
11 Proposed Class
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28