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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SUTTER**

IRMA MARTINEZ-MONTANO, an
individual, on behalf of herself and others
similarly situated,

PLAINTIFF,

v.

NORTH VALLEY BEHAVIORAL
HEALTH, LLC; and DOES 1 thru 50,
inclusive,

DEFENDANTS.

CASE NO. CVCS23-0000676

[Case Assigned for All Purposes to Hon. Perry
Parker in Courtroom 1]

**NOTICE OF MOTION AND MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

*[Filed concurrently with Motion for Approval
of Attorneys' Fees and Costs; Declarations of
Eric B. Kingsley, Irma Martinez-Montano and
Jarrod Salinas, Proposed Order, and
Judgment]*

Date: January 26, 2026

Time: 9:00 AM

Courtroom: 1

Complaint Filed: April 12, 2023

Trial Date: None Set

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

2 PLEASE TAKE NOTICE that on January 26, 2026 at 9:00 AM in Courtroom 1 of the
3 above-entitled court, Plaintiff Irma Martinez-Montano ("Plaintiff") will, and hereby does, move
4 the Court for an Order of Final Approval of the Class Settlement in this case. Plaintiff moves the
5 Court for an order:

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

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

11 3. Affirming Irma Martinez-Montano as Class Representative and awarding an
12 enhancement award of \$7,500.00;

13 4. Awarding Phoenix Class Action Administration Solutions claims administration
14 fees of \$10,500.00 for its services as Administrator; and,

15 5. Entering judgment.

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

19 The Motion will be based on this Notice of Motion, the attached Memorandum of Points
20 and Authorities, the Declarations of Eric B. Kingsley, Irma Martinez-Montano, Jarrod Salinas, all
21 other papers and records on file in this action, and on such oral and documentary evidence as may
22 be presented at the hearing on this Motion.

23 DATED: December 29, 2025

KINGSLEY SZAMET EMPLOYMENT
LAWYERS

24
25 By:



26 Eric B. Kingsley
27 Attorneys for Plaintiff IRMA MARTINEZ-
28 MONTANO and the proposed class

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Irma Martinez-Montano (“Plaintiff”) submits this Motion for Final Approval of
4 Class Settlement and requests that the Court:

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

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

10 3. Affirm named Plaintiff Irma Martinez-Montano as Class Representative and award
11 a cumulative Class Representative payment of \$7,500.00;

12 4. Award Phoenix Class Action Administration Solutions claims administration fees
13 of \$10,500.00 for its services as Administrator; and

14 5. Enter judgment.

15 **II. FACTUAL BACKGROUND**

16 A.

Litigation Overview and Procedural History

17 North Valley Behavioral Health, LLC is a psychiatric health facility. Defendant is a
18 California corporation operating within the State of California.

19 On April 14, 2023, Plaintiff filed a Class Action Complaint alleging causes of action for:
20 (1) failure to pay wages and/or overtime; (2) failure to provide lawful meal breaks; (3) failure to
21 provide lawful rest breaks; (4) failure to provide accurate itemized wage statements; (5) waiting
22 time penalties; and (6) unfair business practices. (“Kingsley Decl.”) ¶5.)

23 Also on April 14, 2023, Plaintiff sent a notice letter, pursuant to Labor Code § 2699 (to the
24 Labor Workforce Development Agency (“LWDA”) regarding her intent to seek civil penalties for
25 the same Labor Code violations above, under Labor Code § 2699, et seq. (Kingsley Decl. ¶6.)

26 On June 20, 2023, Plaintiff filed the First Amended Class and Representative Action
27 Complaint (“FAC”) adding an additional cause of action for penalties pursuant to Labor Code §
28 2699, et seq., the Private Attorneys General Act (“PAGA”) based on the underlying Labor Code

violations already pled. (Kingsley Decl. ¶7.)

The Discovery Process and Mediation

The Parties did not engage in formal discovery, instead agreeing early on to focus their efforts on resolving this case through early mediation. (Kingsley Decl. ¶8.) On May 8, 2024, the Parties participated in an all-day mediation presided over by Monique Ngo-Bonnici, which led to the Agreement to settle the Action. (Kingsley Decl. ¶9.) While the Action did not settle on the day of mediation, the Parties continued in arms-length negotiations with the help of the mediator to ultimately reach this settlement. (*Id.*)

Prior to mediation, Plaintiff obtained, through informal discovery, time and pay records, employment records, employee handbooks, and Defendant's financial information. (Kingsley Decl. ¶10.) Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").

Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in the Action, disputes the damages and penalties claimed by Plaintiff, and further contends that, for any purpose other than settlement, Plaintiff's claims are not appropriate for class or representative action treatment. (Kingsley Decl. ¶11.) 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. (Kingsley Decl. ¶12.) Although Defendant denies any liability, Defendant is agreeing to this Agreement solely to avoid the cost of litigation. (*Id.*) Accordingly, the Parties and their counsel desire to fully, finally, and forever settle, compromise and discharge all disputes and claims arising from or relating to the Action on the terms set forth here. (*Id.*)

1 Preliminary Approval

2 On August 19, 2025, the Court issued an Order preliminarily approving the settlement in
3 this case, approving the proposed Class Notice, ordering that the Administrator send notice to the
4 Class, and setting a date for the Final Approval and Fairness Hearing. (Kingsley Decl. ¶13.)

5 **III. THE PRELIMINARILY APPROVED SETTLEMENT**

6 The Settlement Class

7 For purposes of Agreement, the settlement class is defined as: “All persons who are
8 employed or have been employed as an hourly employee by NORTH VALLEY BEHAVIORAL
9 HEALTH, LLC, in the State of California from April 14, 2019 to the earlier of preliminary
10 approval or March 7, 2025.” (“Class”) (Kingsley Decl. ¶14; Ex. 1 at ¶1.5.)

11 The Class Period means the period from April 14, 2019 to March 7, 2025 or the date of
12 preliminary approval, whichever is earlier. (Kingsley Decl. ¶15; Ex. 1 at ¶1.12.) As of April 29,
13 2025, (the date all Parties signed the Agreement), and based on documents and other information
14 produced by Defendant, there are approximately 675 Settlement Class Members who collectively
15 worked a total of 35,326 Workweeks. (Kingsley Decl. ¶16; Ex. 1 at ¶4.1.)

16 The Parties have also agreed on an escalator provision. (Kingsley Decl. ¶17; Ex. 1 at ¶8.1.)
17 If the actual number of Compensable workweeks worked by the Proposed Class during the Class
18 Release Period increases beyond 10%, Defendant shall have the option of (a) increasing the Gross
19 Settlement Amount by the percentage increase in the number of workweeks worked by the class
20 members above 10% (e.g. if the number of workweeks increases by 11%, the Gross Settlement
21 Amount will increase by 1%) or (b) rolling back the Class Release Period and PAGA Release
22 Period to the date in which 38,859 workweeks are met. (*Id.*) If Defendant elects not to increase the
23 Gross Settlement Amount proportionately, Defendant shall notify Class Counsel of its decision in
24 writing within ten (10) days of receiving the number of Class Members from the Administrator.
25 (*Id.*) Within ten (10) days of receipt of such written notice from Defendant, Plaintiff shall have the
26 option to terminate this Settlement Agreement via written notice to Defense Counsel and the
27 Parties will be restored to their positions prior to the Settlement and the Settlement shall be null
28 and void. (*Id.*)

The final Class contained 611 individuals. (Salinas Decl. ¶3.)

The Aggrieved Employees

For purposes of the Agreement, the Aggrieved Employees are defined as: “All persons who are employed or have been employed as an hourly employee by NORTH VALLEY BEHAVIORAL HEALTH, LLC, in the State of California from April 14, 2022 to the earlier of preliminary approval or March 7, 2025.” (“Aggrieved Employees”) (Kingsley Decl. ¶18; Ex. 1 at ¶1.4.)

The PAGA Period means the period from April 14, 2022 to March 7, 2025 or the date of preliminary approval, whichever is earlier. (Kingsley Decl. ¶19; Ex. 1 at ¶1.31.) Based on documents and other information produced by Defendant in connection with the mediation and the negotiation of the Settlement Agreement, there are approximately 486 Aggrieved Employees who collectively worked a total of 15,245 PAGA Pay Periods. (Kingsley Decl. ¶20; Ex. 1 at ¶4.1.)

C. Settlement Payments

As detailed fully in the Agreement, the Settlement provides for Defendant to pay a Gross Settlement Amount of \$700,000.00, which includes the sum of the Individual Class Payments, the Class Representative service award, the Class Counsel Award, PAGA Payment, and the Settlement Administration Costs. (Kingsley Decl. ¶21; Ex. 1 at ¶3.1.) 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:	\$	700,000.00
Less Class Counsel’s Fees:	\$	245,000.00
Less Class Counsel’s Case Costs:	\$	19,422.35 ¹
Less Administrator Costs:	\$	10,500.00
Less PAGA Payment:	\$	66,666.67
		(\$50,000.00 to the LWDA; \$16,666.67 to remain in the Net Settlement Amount)

¹ The Agreement provided for counsel to receive cost reimbursement up to \$25,000.00. However, counsel’s final costs come to \$19,422.35, which includes the anticipated cost of \$600 for filing the instant motions. (Kingsley Decl. ¶22, Ex. 5), The extra \$5,577.65 will remain in the net settlement fund, causing the net distribution to the Class Members to be slightly higher than the \$345,333.33 contemplated in the settlement agreement. (*Id.*, Ex. 1 at ¶3.2.2.)

1 Less Class Representative Enhancement: \$ 7,500.00
2 **Net Settlement Amount:** \$ 350,910.98

3 Individual Settlement Payments

4 The amount of each Class Member's Individual Class Payment is an individualized amount
5 that is based on the number of compensable workweeks worked by the Class Member during the
6 Class Period. (Ex. 1 at ¶3.2.4; see also Ex. A to the Agreement at pp. 3 [Class Notice].) This
7 individual amount shall be determined according to the settlement payment formula set forth in
8 the Agreement. (See Ex. 1 at ¶3.2.4; Id. at Ex. A to the Agreement [Class Notice].) The Agreement
9 provides for a specific and detailed Work Week dispute process. (See Ex. 1 at ¶7.6.)

10 The Individual PAGA Payment is an individualized amount based on the number of PAGA
11 Period Pay Periods worked by the aggrieved employee during the PAGA Period. (Ex. 1 at ¶3.2.5.1;
12 see also Ex. A to the Agreement at pp. 3 [Class Notice].) It shall be calculated as follows: twenty-
13 five percent (25%) of the PAGA Payment (or \$16,666.67) divided by the total number of PAGA
14 Period Pay Periods worked by all aggrieved employees during the PAGA Period and multiplying
15 the result by each aggrieved employee's PAGA Period Pay Periods. (See Ex. 1 at ¶3.2.5.1; Id. at
16 Ex. A to the Agreement [Class Notice].)

17 Based on these calculations, the average potential recovery is \$566.12 per Settlement Class
18 Member. (Salinas Decl. ¶12.)

19 Class Notice

20 The Court approved the proposed Class Notice and directed the mailing of the Notice by
21 first-class mail to Settlement Class Members in accordance with the proposed implementation
22 schedule. (Kingsley Decl. ¶23) The procedures for giving notice to the Settlement Class Members,
23 as set forth in the Agreement and Plaintiffs' Motion for Preliminary Approval and approved by
24 the Court, have been fully and properly carried out. (Salinas Decl. ¶5.)

25 To date, Phoenix Class Action Administration Solutions received one (1) request to be
26 excluded ("opt-outs") from the proposed Agreement and zero (0) objections. (Salinas Decl. ¶¶7-
27 8.)

28 ///

1 Checks Mailed Settlement – No Reversion

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

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

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

16 A.

The Settlement is Entitled to a Presumption of Fairness

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

22 As to the first *Dunk* factor, this settlement is the result of adversarial, non-collusive, and
23 arm’s-length negotiations overseen by an experienced mediator. All settlement discussions were
24 made by experienced and informed counsel, who believe that this settlement represents a favorable
25 resolution for the Settlement Class Members. (Kingsley Decl. ¶24.) The settlement negotiations
26 have been, at all times, adversarial and non-collusive, with the aid of a mediator, and no self-
27 dealing or other type of misconduct by either side has taken place. (Kingsley Decl. ¶25.)

28 Second, the Parties engaged in informal discovery that permitted Class Counsel to fairly

1 evaluate the strength of the case and the risks associated with ongoing litigation. Receipt of
2 appropriate discovery allowed Class Counsel to fairly evaluate the exposure and risks associated
3 with each claim alleged in the lawsuit. (Kingsley Decl. ¶26.)

4 Third, Class Counsel have significant experience in cases of this type, including several
5 years prosecuting wage, hour, and working condition violations. (Kingsley Decl. ¶27.) Class
6 Counsel is thus qualified to evaluate the class claims and viability of the defenses. Class Counsel
7 believes that the settlement is fair, reasonable, adequate, and in the best interests of the class and
8 that the average recovery for each Settlement Class Member of over \$566.12 is substantial, given
9 the risks inherent in litigation and the defenses asserted. (Kingsley Decl. ¶28.)

10 Finally, the fourth *Dunk* factor considers the percentage of objectors. Here, there were one
11 (1) request to be excluded and no objectors. (Salinas Decl. ¶¶7-8.) As all of the *Dunk* factors are
12 satisfied, this settlement is entitled to a presumption of fairness.

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

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

22 The proposed settlement satisfies each of these factors. (Kingsley Decl. ¶29.) Class
23 Counsel conducted extensive informal discovery before entering into meaningful settlement
24 negotiations in this matter. (*Id* at Kingsley Decl. ¶¶8-10.) This discovery permitted Class Counsel
25 to fairly evaluate the strength of the case and the risks associated with ongoing litigation. (Kingsley
26 Decl. ¶30.) Class Counsel is experienced in handling wage and hour class actions and, after
27 weighing all of the following factors, supports this Agreement. (Kingsley Decl. ¶31.)

28 ///

1 1. The Strength of Plaintiffs' Case

2 a) The Risks Associated with Unpaid Wages Claim

3 *Failure to Blend.* “Under state and federal law, overtime compensation is based on an
4 employee's ‘regular rate’” of pay. (*Huntington Memorial Hosp. v. Superior Court* (2005) 131
5 Cal.App.4th 893, 902.) “California Labor Code section 510, subdivision (a) provides, as relevant
6 here, [that] an employee is entitled to overtime pay at one and one-half times the ‘regular rate’ for
7 work in excess of eight hours in one day and twice the ‘regular rate’ for work in excess of 12 hours
8 in one day.” (*Ibid.*) For hourly employees, the regular rate is generally the employee’s straighttime
9 hourly rate. (*Huntington, supra*, 131 Cal.App.4th at p. 905.) However, in any pay period where an
10 hourly employee earns other includable compensation in addition to hourly wages—such as a non-
11 discretionary bonus, commission, or shift differential—her or his regular rate is computed by
12 dividing the employee’s total compensation in the period in which the other compensation is
13 earned by the total hours worked in that period. (*Marin v. Costco Wholesale Corp.* (2008) 169
14 Cal.App.4th 804, 807.)

15 Here, Plaintiff claimed that she and the Proposed Class earned non-discretionary bonuses,
16 such as birthday bonuses. (Kingsley Decl. ¶32.) Plaintiff contends that the birthday bonus was
17 non-discretionary as the bonus was equal to one day’s worth of wages. (Kingsley Decl. ¶33.)
18 Defendant allegedly failed to include the birthday bonus in the regular rate calculation when paying
19 meal premiums and sick pay. (Kingsley Decl. ¶34.)

20 However, at trial, Defendant would likely argue that these nondiscretionary bonuses were
21 so infrequently paid (i.e. the birthday bonus is paid out once per year per employee), that any actual
22 damages because of its failure to blend is de minimis. (Kingsley Decl. ¶35.) As such, Plaintiff
23 acknowledged this risk for purposes of settlement. (Kingsley Decl. ¶36.)

24 *Unlawful Rounding Policy.* California law allows employers to round employee time
25 punches to the nearest tenth or quarter of an hour, as long as the rounding policy is consistent, fair
26 and neutral and, on average, favors neither overpayment nor underpayment over a period of time.
27 (*See’s Candy Shop, Inc. v. Superior Court*, 210 Cal.App.4th 889 (2012).) Under this standard,
28 rounding employee time punches is only legal if the rounding is neutral “both facially and as

1 applied.” (*Id.* at p. 903.) Neutrality “as applied” goes beyond the policy itself to look at its “results.”
2 Even a facially neutral policy cannot “result in a failure to pay employees for time worked” over
3 the long term. (*Id.* at p. 901.)

4 Here, Defendant allegedly implemented a rounding policy that, on average, favors the
5 employer and results in underpayment to Plaintiff and the Proposed Class. (Kingsley Decl. ¶37.)
6 Plaintiff’s wage statements and the time records produced by Defendant showed rounding to the
7 quarter-hour. (Kingsley Decl. ¶38.) Plaintiff’s expert reviewed Defendant’s timekeeping data and
8 contended that 42.3% of shifts were underpaid due to rounding and that 68% of employees were
9 underpaid for at least one shift. (Kingsley Decl. ¶39.) However, Plaintiff’s expert also estimated
10 that 34.8% of shifts were overpaid due to rounding, and 22.9% of shifts analyzed were neither
11 underpaid nor overpaid due to rounding. (Kingsley Decl. ¶40.) Thus, while Plaintiff maintains that
12 more than 50% of employees have been underpaid at least once according to Defendant’s rounding
13 policy, Plaintiff also acknowledges that more than 50% of shifts resulted in either overpayment or
14 had no affect at all. (Kingsley Decl. ¶41.) Based on this risk, Plaintiff believed it was appropriate
15 to discount this claim for settlement purposes. (Kingsley Decl. ¶42.)

16 b) The Risks Associated with the Meal Break Claim

17 Under California Labor Code section 512 and IWC Wage Order No. 5, no employer shall
18 employ any person for a work period of more than five hours without providing a meal period of
19 not less than thirty minutes. The first meal period must be permitted to commence no later than
20 after five hours of work, or the start of the sixth hour of work (5.0 hours on the clock). (*Brinker*
21 *Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1049.) In order for a meal period to qualify
22 as a lawful break under California law, an employer must (1) relieve its employees of all duty; (2)
23 relinquish control over their activities; (3) permit them a reasonable opportunity to take an
24 uninterrupted 30-minute break; and (4) not impede or discourage them from doing so. (*Id.* at p.
25 1040.) Labor Code section 226.7 further requires employers to pay employees one hour of pay at
26 the employee’s regular rate for each workday that a noncompliant meal period was not provided.

27 Moreover, employers have an obligation to both to provide meal breaks and to record
28 having done so. (IWC Wage Order 5-2001(7)(a)(3) [requiring employer to keep time records

1 showing when the employee begins and ends each work period and meal period.].) If the employer
2 fails to properly record a valid meal period, it is presumed that no meal period was provided. (*See*
3 *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, 76 [There is a rebuttable presumption of
4 liability when the records “show noncompliant meal periods.”].) The applicable wage order
5 requires employers not only to provide meal periods in the manner described above, but also “to
6 record having done so.” (*Brinker, supra*, 53 Cal.4th at pp. 1052-53 (J. Werdegar, concurring)
7 [citations omitted].) A long-standing application of burden-shifting occurs when an employer’s
8 records are so incomplete or inaccurate that an employee cannot prove his or her damages.
9 (*Anderson v. Mt. Clemens Pottery Co.* (1946) 328 U.S. 680, 687-88; *Amaral v. Cintas Corp. No.*
10 *2* (2008) 163 Cal.App.4th 1157, 1188-1190; *Safeway, Inc. v. Superior Court of Los Angeles Cnty.*
11 (2015) 238 Cal.App.4th 1138.)

12 Here, Plaintiff and Proposed Class consistently worked shifts over five (5) hours and over
13 eight (8) hours. (Kingsley Decl. ¶43.) Due to the workload, the time Plaintiff took her lunch varied.
14 (Kingsley Decl. ¶44.) However, Plaintiff maintains that many of her meal periods occurred beyond
15 the fifth hour of work, but she was unable to report her actual meal punches to Defendant due to
16 its auto-deduct policy. (Kingsley Decl. ¶45.) Plaintiff also contends that she missed meal periods
17 but would still have time deducted as if she was able to take them. (Kingsley Decl. ¶46.) Defendant
18 told her that it would automatically deduct time to account for lunch, and Plaintiff was not
19 permitted to accurately record her hours to reflect the time she actually took lunch and the length
20 of time she was on a meal period. (Kingsley Decl. ¶47.)

21 Plaintiff acknowledges that this can be a difficult type of claim to prove because there are
22 no time records to substantiate or evaluate the allegations, except for the deducted meals in the
23 time records. (Kingsley Decl. ¶48.) Defendant would likely argue that if there was any such issue
24 of late meal periods, it would necessitate speaking to each and every employee about their
25 experiences day to day and whether meal breaks were in fact ever provided late, and if so, why.
26 (Kingsley Decl. ¶49.) Moreover, Defendant would also rely on security clock-in reports that show
27 when an employee’s badge was used to open entrances and exits to Defendant’s facilities.
28 (Kingsley Decl. ¶50.) At trial, Defendant would argue that any swipes of an entry/exit door before

1 the fifth hour of work would be an employee leaving for lunch. (Kingsley Decl. ¶51.) While
2 Plaintiff disagrees with this contention, Plaintiff acknowledges the risks nonetheless and believed
3 it was appropriate to discount this claim for settlement purposes. (Kingsley Decl. ¶52.)

4 c) The Risks Associated with the Rest Period Claim

5 Labor Code section 226.7, subdivision (c), requires an employer to pay an additional hour
6 of compensation for each workday the employer fails to provide a rest period according to law.
7 Employees are entitled to a paid ten (10) minute rest break for every four (4) hours worked, or
8 major fraction thereof. (Cal. Code Regs., tit. 8, § 11050, subd. 12(A).)

9 The California Supreme Court has held: “Employees are entitled to 10 minutes’ rest for
10 shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours
11 up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours and so on.” (*Brinker*
12 *Rest. Corp v. Superior Court*, supra, 53 Cal.4th at 1029.) The Court has also clarified what steps
13 an employer must take to make rest breaks available to its employees:

14 An employer is required to authorize and permit the amount of rest break
15 time called for under the wage order for its industry. If it does not—if, for
16 example, it adopts a uniform policy authorizing and permitting only one rest
17 break for employees working a seven-hour shift when two are required—it
18 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.

19 (*Brinker*, supra, 53 Cal.4th at 1033 [emphasis added].)

20 Employers must authorize and permit a net ten-minute paid rest period for every four
21 hours, or major fraction thereof, of work for its employees. If an employer does not, then the
22 employer must pay the employee one hour of pay at the employee’s regular rate of pay for each
23 workday that the rest period is not provided. (Cal. Code Regs., tit. 8, § 11160, subd. 12(B).)

24 Here, Plaintiff contends that she and the Proposed Class Members were regularly denied
25 rest periods. (Kingsley Decl. ¶53.) Plaintiff does not ever recall being informed or told that she
26 was entitled to rest periods. (Kingsley Decl. ¶54.) In fact, since Plaintiff would be reprimanded for
27 trying to take meal breaks, Plaintiff was not aware that she was even entitled to rest breaks.
28 (Kingsley Decl. ¶55.) Plaintiff also contends that the workload was so heavy that taking rest

1 periods was not possible.

2 In its defense, Defendant would have argued that Plaintiffs' rest period claim was not
3 appropriate for certification because California law does not require employees to record rest
4 periods. Absent a shift-by-shift, break-by-break, employee-by-employee inquiry, Defendant
5 would have argued that there was simply no way to know (1) whether a break was taken; and (2)
6 if not, why not. (Kingsley Decl. ¶56.) For each instance where an employee did not take a 10-
7 minute rest period by the end of the fourth hour of work, the trier of fact would still have to
8 determine why that particular employee had less than their full allotment of rest time. (Kingsley
9 Decl. ¶57.) Defendant accordingly would have argued that rest break claims are inherently
10 individualized in nature because employers only need to "authorize and permit" breaks; they need
11 not ensure that rest breaks are taken. (*Brinker*, 53 Cal. 4th at 1004.) To succeed, "[a]n employee
12 must show that the employer prevented the employee from taking breaks; mere proof of knowledge
13 that the employee was forgoing breaks is insufficient." As such, Plaintiff had to acknowledge that
14 it could potentially be easy for Defendant to defeat certification of this claim if it was able to gather
15 testimonial evidence from class members indicating that they were able to take all required rest
16 breaks each day. (Kingsley Decl. ¶58.) Though Plaintiff does not believe this was the case, Plaintiff
17 must acknowledge it poses risks for the Class. (Kingsley Decl. ¶59.) There is certainly risk as to
18 both sides as to what declarations and depositions of class members might reveal. (Kingsley Decl.
19 ¶60.)

20 d) The Risks Associated with the Wage Statement Claims

21 Labor Code § 226(a) provides:

22 An employer ... shall furnish to his or her employee ... an accurate itemized
23 statement in writing showing ... (2) total hours worked by the employee..., (4) all
24 deductions from the employees' wages..., (6) the inclusive dates for each pay
25 period, (7) the last four digits of the employees' social security number or the
26 employees' identification number other than a social security number, (8) the name
27 and address of the legal entity that is the employer, and (9) all applicable hourly
28 rates in effect during the pay period and the corresponding number of hours worked
at each hourly rate by the employee....

These statements must be appended to the detachable part of the check for the employee's
wages twice per month, or each time wages are paid.

1 Labor Code § 226(a) specifically requires that the employer shall, semimonthly or at the
2 time of each payment of wages, furnish each of his or her employees, an accurate itemized
3 statement in writing showing total hours worked by the employee, and showing all applicable
4 hourly rates in effect during the pay period and the corresponding number of hours worked at each
5 hourly rate by the employee. Penalties for wage statement violations are calculated according to
6 the formula provided by Labor Code section 226(e)(1): An employee suffering injury as a result
7 of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to
8 recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a
9 violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent
10 pay period, not to exceed an aggregate penalty of \$4,000.

11 Specifically, Plaintiff alleged that she and the Proposed Class are issued wage statements
12 that do not include all applicable hourly rates in effect during the pay period and the corresponding
13 number of hours worked at each hourly rate by the employee in violation of Labor Code §§
14 226(a)(2) and (9). (Kingsley Decl. ¶61.) As such, Defendant's failure to provide accurate itemized
15 wage statements according to Labor Code § 226(a) was done on a regular and consistent basis.
16 Thus, Defendant has knowingly and intentionally failed to comply with Labor Code section §
17 226(a) by failing to issue accurate itemized wage statements to Plaintiff.

18 Although wage statement claims are readily certifiable, they are vulnerable to an
19 unfavorable disposition on summary judgment as defendants commonly argue that, without more,
20 wage statement claims are nothing but technical violations for which Class Members suffer no
21 injury. Before Section 226(e) was amended, the dispositive issue was whether "suffering injury"
22 was satisfied by the deprivation of a legal right (i.e., an employer's provision of non-compliant
23 wage statements), or by consequential damages caused by the non-compliant wage statements.
24 Employers had frequently prevailed in arguing for the latter interpretation. Even after the
25 enactment of section 226(e), some courts have held that this amendment merely clarifies existing
26 law and have held that plaintiffs must demonstrate actual injury. *See Loud v. Eden Med. Ctr.*, 2013
27 U.S. Dist. LEXIS 122873, **36-53 (N.D. Cal. Aug. 28, 2013) (granting summary judgment on
28 wage statement claim because plaintiff could not show injury due to defects and that incorrect

1 wage information is not willful).

2 Plaintiff also anticipated that Defendant would argue that the “subsequent” penalty applies
3 only after a determination that the employer has violated the Labor Code. See *Amaral v. Cintas*
4 *Corp. No. 2*, 163 Cal. App. 4th 1157, 1209 (2008) (“Although common sense might suggest a
5 “subsequent” violation is nothing more than a violation that occurs at a later point in time after an
6 “initial” violation, this definition is inadequate because the statutes provide for multiple penalties
7 for “each failure to pay each employee” incurred in an initial violation . . . Until the employer has
8 been notified that it is violating a Labor Code provision (whether or not the Commissioner or court
9 chooses to impose penalties), the employer cannot be presumed to be aware that its continuing
10 underpayment of employees is a “violation” subject to penalties.”).

11 e) The Risks Associated with the Waiting Time Penalties Claim

12 Under Labor Code section 203, if an employer fails to provide wages at the time of an
13 employee’s termination or within seventy-two (72) hours of resignation, then the employee’s
14 wages shall continue as a penalty for up to thirty (30) days. (Labor Code § 203.) Section 203
15 reflects a public policy that favors the full and prompt payment of earned wages. (See, e.g.,
16 *Barnhill v. Robert Saunders & Co.* (1981) 125 Cal.App.3d 1, 7; *Mamika v. Barca* (1998) 68
17 Cal.App.4th 487, 492.)

18 Under Labor Code § 203, a “‘willful’ failure to pay wages ... occurs when an employer
19 intentionally fails to pay wages to an employee when those wages are due.” Cal. Code Regs., tit.
20 8, § 13520; *see also Diaz v. Grill Concepts Services, Inc.* (2018) 23 Cal.App.5th 859 (“willful”
21 simply means that “the employer intentionally failed or refused to perform an act which was
22 required to be done[.] Willful ... does not necessarily imply anything blameable, or any malice or
23 wrong toward the other party”).

24 Here, Plaintiff contends that Defendant failed to properly pay all wages, including meal
25 and rest premiums. (Kingsley Decl. ¶ 62.) The risk analysis for the section 203 claim flows from
26 the risk analysis for the underlying wage claim discussed above as derivative waiting-time
27 penalties are only as strong as the underlying predicate claims and are subject to good faith
28 defenses. (Kingsley Decl. ¶ 63.) If Defendant could prove, as it contends, that class members were

properly paid for all hours worked, there would be no recovery of wages and no waiting time penalties that flow therefrom. (Kingsley Decl. ¶ 64.)

Plaintiff also alleged that Defendant owes waiting time penalties by not paying former alleged employees all wages owed and all premium payments for non-compliant meal or rest periods, Labor Code § 226.7. (Kingsley Decl. ¶ 65.) Pursuant to *Murphy v. Kenneth Cole Productions, Inc.* (2002) 40 Cal.4th 1094, 1120, Plaintiff contended that break premium payments constitute “wages” under Labor Code § 203. (“We hold that section 226.7’s plain language, the administrative and legislative history, and the compensatory purpose of the remedy compel the conclusion that the ‘additional hour of pay’ is a premium wage, not a penalty”). (Kingsley Decl. ¶66.)

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; Kingsley Decl. ¶67.) 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. (Kingsley Decl. ¶68.) Because of this risk, Plaintiff determined that accepting a discount for settlement purposes was appropriate. (Kingsley Decl. ¶69.)

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.

Plaintiff discounted the PAGA claim for multiple reasons. (Kingsley Decl. ¶70.) First, the aggrieved employees’ PAGA claims are arguably derivative of all the foregoing class claims. (Kingsley Decl. ¶71.) 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. (Kingsley Decl. ¶72.)

(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]; *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135–1136, disapproved on another ground in *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175, 196, fn. 8 [considering the defendant’s inability to pay as a factor in reducing the penalties imposed]; see also *Raines v. Coastal Pacific Food Distributors, Inc.* (2018) 23 Cal.App.5th 667, 681 [noting that a court should consider whether a violation was inadvertent when assessing penalties].)² Third, the likelihood of the Court reducing the PAGA damages awarded to Plaintiffs 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. (Kingsley Decl. ¶73.) (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).

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 Agreement now. (Kingsley Decl. ¶74.) If the Court did eventually certify a meal or wage statement class, trial of a case involving approximately

² On May 11, 2016, following a bench trial, Los Angeles Superior Court Judge John Wiley reduced PAGA penalties from \$409,950 to \$53,294 after finding the maximum statutory penalty amount to be unjust, arbitrary, oppressive, and/or confiscatory. (*Kaanaana et al. v. Barrett Business Serv.s Inc., et al.*, L.A. Super. Ct., Case No. BC 496090.)

675 Settlement Class Members would require the retention of expensive expert witnesses, the
accrual of extensive litigation costs, and a significant time overlay by the parties. (Kingsley Decl.
¶75.) Moreover, given the complexity and unsettled nature of the issues in this case it is likely that
any outcome at trial would have resulted in a lengthy and costly appeal. (Kingsley Decl. ¶76.) An
appeal would result in further delay for the Settlement Class Members who are waiting for a
resolution in this matter. (*Id.*)

3. The Risk of Maintaining Class Action Status through Trial

This case has not been certified to be tried as a class action. (Kingsley Decl. ¶77.) 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.*)

4. The Amount Offered in Settlement

It was very difficult for the Parties to reach this Settlement of \$700,000.00. (Kingsley Decl.
¶78.) This Settlement is the result of adversarial, non-collusive, and arms-length negotiations.
(Kingsley Decl. ¶79.) 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, Monica Ngo-Bonnici. (*Id.*)

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

Plaintiff assessed full value of the Unpaid Wages (Rounding/Failure to Blend) claim,
without any discount, at approximately \$90,728 without interest. (Kingsley Decl. ¶80.) This
calculation was Plaintiff's expert analysis of 89,121 shifts that showed approximately 1,535 of
underpaid hours due to Defendant's rounding policy. (Kingsley Decl. ¶81.) As explained above,
42.3% of shifts were underpaid due to rounding, but 34.8% of shifts were overpaid and 22.9% of

1 shifts were unaffected by rounding. (Kingsley Decl. ¶82.) The amount of unpaid wages due to the
2 rounding policy totaled approximately \$59,577. (Kingsley Decl. ¶83.) Plaintiff's expert also
3 calculated that meal break premiums and sick hours were underpaid, totaling approximately
4 \$31,151. (Kingsley Decl. ¶84.)

5 The full value of the Meal Period claim, without any discount, was approximately
6 \$2,424,713 without interest. (Kingsley Decl. ¶85.) For the reasons above, Plaintiff determined that
7 accepting a discount of the full amount was appropriate. (Kingsley Decl. ¶86.)

8 The full value of the Rest Period claim, without any discount, was approximately
9 \$2,765,447 without interest. (Kingsley Decl. ¶87.) Again, because there are no records to support
10 Plaintiff's assumed violation rate 100%, Plaintiff determined that accepting a discount of the full
11 amount was appropriate. (Kingsley Decl. ¶88.)

12 Plaintiff valued the Wage Statement Claim, without discount, at \$775,400 without interest.
13 (Kingsley Decl. ¶89.) Due to the risk discussed above that 226(a) liability wouldn't attach under
14 Naranjo and Maldonado, Plaintiff determined that a steep discount of this claim was fair for
15 settlement purposes. (Kingsley Decl. ¶90.)

16 Plaintiff valued the Waiting Time Claim, tied to the Wage/Overtime claim, at \$1,883,813.
17 (Kingsley Decl. ¶91.) Considering the derivate nature of Labor Code §203 and the dispute over
18 whether class members were owed any wages, Plaintiff determined that accepting a discount on
19 this claim was appropriate. (Kingsley Decl. ¶92.)

20 Finally, Plaintiff calculated the value of the PAGA claim at \$2,774,800 for Settlement
21 Class Members (using \$100 per pay period) and "stacked" violations for each Labor Code section
22 and \$792,800 without stacking. (Kingsley Decl. ¶93.) The main risk taken into account with PAGA
23 is the discretionary nature of the penalty award. (Kingsley Decl. ¶94.) A judge can award the
24 statutory maximum of \$100 for the initial violation and \$200 thereafter or – in theory – one cent
25 per wage statement. (Kingsley Decl. ¶95.) For example, if a court were to disallow the "stacking"
26 of PAGA penalties (given the lack of caselaw doing so), then Defendant's maximum exposure at
27 trial would actually be \$792,800 as Plaintiff stated above. (Kingsley Decl. ¶96.) While there is a
28 dearth of available authority, in Plaintiff's view, were she to succeed on any of the underlying

1 Labor Code violations, it is not likely that a Judge would also award a large amount of penalties
2 of top of any damages recovered. (Kingsley Decl. ¶97.) The allocation of PAGA penalties here
3 represents approximately 8.4% of the maximum exposure at trial, or \$8.40 penalty per pay period
4 (\$66,666.67 ÷ 7,928 pay periods = \$8.40 per pay period) which is in line with judgments reached
5 in other cases. (Kingsley Decl. ¶98; See e.g. *Carrington*, supra, 30 Cal.App.5th 504, 529 [affirming
6 the trial court's reduction from the maximum penalty of \$50 per initial violation to only \$5];
7 *Thurman*, supra, at 203 Cal.App.4th at 1135–1136, [affirming trial court's decision to reduce
8 penalties by 30%].)

9 Per Plaintiff's assessment, the maximum potential value of all of Plaintiff's and the
10 Settlement Class Members' claims was approximately \$8,732,901. (Kingsley Decl. ¶99.)
11 However, as a result of the forgoing risks on the merits, Class Counsel believes the Gross
12 Settlement Amount of \$700,000.00 is fair and reasonable. (Kingsley Decl. ¶100.)

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

14 As outlined above, Class Counsel conducted a thorough investigation into the facts of the
15 claims alleged. (Kingsley Decl. ¶101.) The agreement to settle did not occur until Class Counsel
16 exchanged and possessed sufficient information to make an informed judgement regarding the
17 likelihood of success on the merits and the results that could be obtained through further litigation.
18 (*Id.*)

19 6. The Experience and Views of Counsel

20 Kingsley Szamet Employment Lawyers is very experienced in prosecuting employment
21 litigation, and the firm has focused its practice since 2000 on wage, hour, and working condition
22 violations. (Kingsley Decl. ¶¶102-104.) The firm is well versed in class action litigation and has
23 diligently and aggressively pursued this action. (*Ibid.*) Kingsley Szamet Employment Lawyers
24 currently serves as Class Counsel for dozens of pending class action lawsuits in Northern, Central,
25 and Southern California. (*Ibid.*) A list of representative cases that Kingsley Szamet Employment
26 Lawyers has handled is included in the accompanying declaration of Eric B. Kingsley. (Kingsley
27 Decl. ¶¶102-103.) After factoring in the risks explained above, Class Counsel believes that the
28 proposed settlement is fair and reasonable. (Kingsley Decl. ¶104.)

1 7. The Presence of a Governmental Participant

2 There is no governmental participant in this action except arguably the LWDA. (Kingsley
3 Decl. ¶105.)

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

5 Plans of allocation are subject to the same standard of review as class action settlements;
6 they must be “fair, adequate and reasonable.” (See, e.g., *Officers for Justice v. Civil Service*
7 *Comm’n* (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the proposed plan of allocation
8 compensates Settlement Class Members pro rata based on the number of compensable work weeks
9 worked by the Settlement Class Member during the Class Period. The lump sum payment to each
10 Settlement Class Member not excluding him/ herself will be determined on an individualized basis
11 based upon the compensable pay periods worked by the Settlement Class Member. (Ex. 1 at
12 ¶3.2.4.) This allocation distributes Agreement funds proportionally to each class member’s
13 potential damages and should therefore be approved as fair, adequate, and reasonable. (Kingsley
14 Decl. ¶106.)

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

16 To date, there is one (1) request to be excluded from the proposed Agreement and zero (0)
17 objections. (Salinas Decl. ¶¶7-8.) Such indicates that the reaction of Settlement Class Members on
18 the whole is positive and weighs in favor of approval.

19 **V. ENHANCEMENT TO PLAINTIFF**

20 Plaintiff’s Counsel request an enhancement of \$7,500.00 to the Class Representative Irma
21 Martinez-Montano for her work on behalf of the Class. (Kingsley Decl. ¶150.) “Courts routinely
22 approve incentive awards to compensate named plaintiffs for the services they provide and the
23 risks they incurred during the course of the class action litigation.” *Ingram v. The Coca-Cola*
24 *Company*, 200 F.R.D. 685, 694 (N.D. Ga 2001) (internal quotations and citations omitted); *see*
25 *also Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995). In *Coca-*
26 *Cola*, the Court approved service awards of \$300,000 to each named plaintiff in recognition of the
27 services they provided to the class by responding to discovery, participating in the mediation
28 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).

Ms. Martinez-Montano is an adequate class representative because she has diligently, adequately and fairly represented the Class and has not placed her interests above any member of the Class. (*see* Declaration of Irma Martinez-Montano (“Martinez-Montano Decl.”) ¶¶4-11.)

Here, Class Counsel requests an enhancement for Ms. Martinez-Montano’s valiant effort and time expended in this matter. The time spent by Irma Martinez-Montano 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; preparing for her deposition; making herself available for a full-day of mediation; and responding promptly to Class Counsel’s communications regarding settlement. (Kingsley Decl. ¶151; Martinez-Montano Decl. ¶¶5-7.) As set forth in the Agreement, Plaintiff will also be entering into a general release of liability pursuant to Civil Code Section 1542. (Kingsley Decl. ¶152; Ex. 1 at ¶5.1.1.)

Class Counsel considers this to be a fair and reasonable enhancement. (Kingsley Decl. ¶153.) The enhancement takes into consideration the time, effort, and expense incurred by Ms. Martinez-Montano in coming forward to litigate this matter on behalf of all Settlement Class Members. (Kingsley Decl. ¶154.) Additionally, the Class Representative was at risk for paying for Defendant’s legal fees and costs in the event that Defendant prevailed at trial. (Kingsley Decl. ¶155.)

VI. SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY

As indicated on the Proof of Service, Plaintiff’s Motion for Final Approval of Class Action Settlement (“Motion”) will be concurrently uploaded to the Labor and Workforce Development Agency’s (“LWDA”) website on the date this Motion is filed as required by statute. Proof of submission of Plaintiff’s Motion, all related documents, and copy of the email from the LWDA confirming receipt is attached to the Declaration of Eric B. Kingsley as Exhibit “6.” (Kingsley

Decl. ¶160.)

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 \$10,500.00; and (4) award the Class Representative an enhancement of \$7,500.00; and (5) enter judgment.

DATED: December 29, 2025

KINGSLEY SZAMET EMPLOYMENT
LAWYERS

By: 

Eric B. Kingsley
Attorneys for Plaintiff IRMA MARTINEZ-
MONTANO 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 December 29, 2025, I served all interested parties in this action the following documents described as: **NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

FERBER LAW, A Professional Corporation
Michelle Ferber, Esq.
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Jon Babione, Esq.
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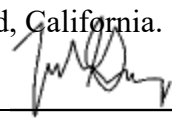
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[XX] BY ELECTRONIC SERVICE: I caused a true and correct copy thereof to be electronically filed using the Labor and Workforce Development Agency Electronic Filing ("EF") System (<https://dir.tfaforms.net/315>) and service was completed by electronic 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 December 29, 2025, at West Hollywood, California.



Taylor Gregg