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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
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

*[Filed concurrently with Declaration of Eric
B. Kingsley; Irma-Martinez-Montano; and
Proposed Order]*

Date: August 4, 2025

Time: 9:00 A.M.

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 August 4, 2025 at 9:00 A.M. in Courtroom 1 of the
3 above-entitled court, Plaintiff IRMA MARTINEZ-MONTANO will move the Court for an Order
4 of Preliminary Approval of the Class Action and PAGA Settlement Agreement (“Agreement”), a
5 copy of which is filed concurrently herewith.

6 The Motion will be made on the grounds that the proposed Agreement is fair, adequate,
7 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 Declaration of Eric B. Kingsley, the Agreement and Release, all other papers
10 and records on file in this action, and on such oral and documentary evidence as may be presented
11 at the hearing on this Motion.

12 DATED: July 10, 2025

KINGSLEY SZAMET EMPLOYMENT
LAWYERS

14 By: 

15 Eric B. Kingsley
16 Attorneys for Plaintiff IRMA MARTINEZ-
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 Memorandum of
4 Points and Authorities in support of Plaintiff’s Motion for Preliminary Approval of the Class
5 Action and PAGA Settlement Agreement reached between Plaintiff and Defendant North Valley
6 Behavioral Health, LLC (“Defendant”) (Plaintiff and Defendant together, the “Parties”).

7 By this Motion, Plaintiff requests that the Court:

8 (1) Grant preliminary approval of the fully-executed Class Action and PAGA
9 Settlement Agreement (“Agreement”). A true and correct copy of the Agreement is attached hereto
10 as Exhibit “1”;

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

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

17 **II. FACTUAL BACKGROUND**

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

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

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

25 Also on April 14, 2023, Plaintiff sent a notice letter, pursuant to Labor Code § 2699 (to the
26 Labor Workforce Development Agency (“LWDA”) regarding her intent to seek civil penalties for
27 the same Labor Code violations above, under Labor Code § 2699, et seq. (Kingsley Decl. ¶5.)

28 On June 20, 2023, Plaintiff then filed the First Amended Class and Representative Action

Complaint (“FAC”) adding an additional cause of action for penalties pursuant to Labor Code § 2699, et seq., the Private Attorneys General Act (“PAGA”) based on the underlying Labor Code violations already pled. (Kingsley Decl. ¶6.)

B. The Discovery Process and Mediation

The Parties have yet to engage in formal discovery, instead focusing their efforts on resolving this case through early mediation. (Kingsley Decl. ¶7.) 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. ¶8.) 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. ¶9.) 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. ¶10.) Defendant contends, among other things, that, at all times, it has complied with the California Labor Code, and the Industrial Wage Commission Orders. (*Id.*)

Based on their own independent investigation and evaluation, Class Counsel is of the opinion that the Agreement with Defendant is fair, reasonable and adequate, and in the best interest of the settlement classes in light of all known facts and circumstances, including the risk of significant delay, defenses asserted by Defendant, uncertainties regarding a class and representative action trial on the merits, and numerous potential appellate issues. (Kingsley Decl. ¶11.) Although Defendant denies any liability, Defendant is agreeing to this Agreement solely to avoid the cost of litigation. (*Id.*) Accordingly, the Parties and their counsel desire to fully, finally,

1 and forever settle, compromise and discharge all disputes and claims arising from or relating to
2 the Action on the terms set forth here. (*Id.*)

3 **III. THE PROPOSED SETTLEMENT CLASS SHOULD BE CERTIFIED FOR** 4 **SETTLEMENT PURPOSES**

5 Originally creatures of equity, class actions have been statutorily embraced by the
6 Legislature whenever “the question [in a case] is one of a common or general interest, of many
7 persons, or when the parties are numerous, and it is impracticable to bring them all before the
8 court” (Code Civ. Proc. § 382; *see, e.g., Fireside Bank v. Sup. Court* (2007) 40 Cal.4th 1069,
9 1078.) They serve an important function by “establishing a technique whereby the claims of many
10 individuals can be resolved at the same time” thereby “eliminat[ing] the possibility of repetitious
11 litigation and provid[ing] small claimants with a method of obtaining redress.” (*Richmond v. Dart*
12 *Industries, Inc.* (1981) 29 Cal.3d 462, 469.) Public policy supports the use of class actions to
13 enforce wage and overtime laws for the benefit of workers. (*See Sav-on Drug Stores, Inc. v. Sup.*
14 *Court* (2004) 34 Cal.4th 319, 340.)

15 The certification question is “essentially a procedural one that does not ask whether an
16 action is legally or factually meritorious.” (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 439–
17 440.) A court ruling on a certification motion must determine “whether . . . the issues which may
18 be jointly tried, when compared with those requiring separate adjudication, are so numerous or
19 substantial that the maintenance of a class action would be advantageous to the judicial process
20 and to the litigants.” (*Collins v. Rocha* (1972) 7 Cal.3d 232, 238.)

21 The California Supreme Court has identified three certification requirements: (1) “the
22 existence of an ascertainable and sufficiently numerous class”; (2) “a well-defined community of
23 interest”; and, (3) “substantial benefits from certification that render proceeding as a class superior
24 to the alternatives.” (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.)
25 The “community of interest” requirement includes three additional requirements: (1) common
26 questions of law or fact predominant over individual questions; (2) the class representatives have
27 claims or defenses typical of the class; and (3) the class representatives can adequately represent
28 the class. (*Ibid, citing Fireside Bank, supra*, 40 Cal.4th at 1089.)

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

4 A. The Proposed Classes Are Ascertainable and Sufficiently Numerous

5 1. Ascertainability

6 Putative class members are deemed “ascertainable” when they may be “readily identified
7 without unreasonable expense or time by reference to official records.” (*Rose v. City of Hayward*
8 (1981) 126 Cal.App.3d 926, 932.) In determining whether a class is ascertainable, a court
9 scrutinizes the class definition, the size of the class and the means of identifying class members.
10 (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.)

11 Here, Plaintiff maintains that the proposed Settlement Class is ascertainable for several
12 reasons: First, Defendant has agreed in the Agreement to provide a class list to the Administrator
13 containing the name, last known mailing address, social security number, and number of Class
14 Period Workweeks and PAGA Pay Periods for all putative class members after issuance of the
15 preliminary approval order. (Kingsley Decl. ¶12; Ex. 1 at ¶1.8.) Second, Settlement Class Member
16 consist of Defendant’s hourly employees, and Defendant is required to keep records of its hourly
17 employees’ names, home addresses, and social security numbers. (*See* Wage Order 5-2001,
18 subsection 7(c); Kingsley Decl. ¶13.) Third and finally, Defendant informally produced time and
19 pay records, employment records, and employee handbooks for Settlement Class Members
20 containing class member contact information, which confirms that all Settlement Class Member
21 may be readily identified based on Defendant’s records. (Kingsley Decl. ¶14.)

22 2. Numerosity

23 There is no set number that is required as a matter of law to maintain a class action. (*See*,
24 *e.g., Rose v. City of Hayward, supra*, 126 Cal.App.3d at p. 934.) Here, the proposed Settlement
25 Class contains, based upon information and belief, approximately 675 hourly non-exempt
26 employees in the State of California. (Ex. 1 at ¶4.1.) Therefore, Plaintiff is confident she will be
27 able to establish that the proposed Settlement Class is ascertainable and sufficiently numerous.
28 (Kingsley Decl. ¶15.)

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

2 1. There Are Predominant Questions of Law and Fact

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

12 Here, Plaintiff argues that there are questions of law and fact common to the proposed
13 Settlement Class that predominate over any questions affecting only individual Class Members.
14 (Kingsley Decl. ¶16.) These common questions include:

- 15 1) Whether Defendant failed to pay all wages and/or overtime compensation;
- 16 2) Whether Defendant failed to provide lawfully required meal periods and/or failed
17 to compensate employees one (1) hour’s wages in lieu thereof;
- 18 3) Whether Defendant failed to provide lawfully required rest periods and/or failed to
19 compensate employees one (1) hour’s wages in lieu thereof;
- 20 4) Whether Defendant failed to provide accurate itemized wage statements;
- 21 5) Whether Defendant failed to pay compensation due and owing upon termination
22 of employment;
- 23 6) Whether Defendant engaged in unfair competition; and,
- 24 7) Whether Defendant violated § 2699, et seq. of the Labor Code by engaging in the
25 acts previously alleged.

26 (Kingsley Decl. ¶17.)

27 Plaintiff’s challenge to Defendant’s uniform policies and practices involves common
28 factual and legal issues that are amenable to class treatment. (Kingsley Decl. ¶18.) As the

1 California Supreme Court has emphasized, “[c]aims alleging that a uniform policy consistently
2 applied to a group of employees is in violation of the wage and hour laws are of the sort routinely,
3 and properly, found suitable for class treatment.” (*Brinker, supra*, 53 Cal.4th at 1033; *see also*
4 *Bradley v. Networkers International, LLC* (2012) 211 Cal.App.4th 1129, 1141-1146.) Moreover,
5 a class of similarly situated employees may be certified based on common questions of fact or law,
6 even if each employee has to establish the amount of his or her damages. (*See Bell v. Farmers Ins.*
7 *Exch.* (2004) 115 Cal.App.4th 715, 741; *Sav-On Drug Stores, Inc. v. Superior Court, supra*, 34
8 Cal.4th at 340.)

9 Here, Plaintiff maintains that the proposed Settlement Class Members suffered the same
10 injuries, in the same manner: (1) Settlement Class Members were not properly paid all
11 wages/overtime; (2) Settlement Class Members did not receive their meal and rest periods as
12 required; (3) Settlement Class Members were not provided accurate itemized wage statements; and
13 (4) Settlement Class Members were not paid all wages owed upon termination/resignation.
14 (Kingsley Decl. ¶19.) Plaintiff alleges that Settlement Class Members worked in the same capacity
15 for the same employer and were subject to the same employment policies and practices, the
16 questions of fact and claims regarding the status of these employees are the same for each member
17 of the Settlement Class. Accordingly, for purposes of settlement, certification for settlement
18 purposes is appropriate. (Kingsley Decl. ¶20.)

19 2. The Class Representative Has Claims Typical of the Proposed Class

20 A putative class representative’s claim must be “typical,” but not necessarily identical, to
21 the claims of other class members. The test of typicality “is whether other members have the same
22 or similar injury, whether the action is based on conduct which is not unique to the Class
23 Representatives, and whether other class members have been injured by the same course of
24 conduct.” (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502.) Thus, it is sufficient
25 that the representative is similarly situated so that he or she will have the motive to litigate on
26 behalf of all class members. (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502.) Thus,
27 it is sufficient that the representative is similarly situated so that he or she will have the motive to
28 litigate on behalf of all class members. (*See, e.g., Classen v. Weller* (1983) 145 Cal.App.3d 27,

45.) It is not necessary that the class representative have personally incurred all of the damages suffered by each of the other class members. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 238.)

Plaintiff worked as an “hourly employee” for Defendant as a case manager. (Kingsley Decl. ¶21.) Plaintiff alleges that she: (1) worked without being paid all wages and/or overtime; (2) worked without being provided meal/rest periods as required by law; (3) worked without being provided accurate itemized wage statements; and (4) worked without being paid all wages due upon separation. Plaintiff also alleges that she experienced derivative claims for unfair business competition (B&P Code §17200) and Labor Code §2699, et seq. (Kingsley Decl. ¶22.) Plaintiff also contends that her claims are typical of those of the Settlement Class. (Kingsley Decl. ¶23.)

3. Plaintiff Contends That As The Class Representative She Has and Will Fairly Represent the Interests of the Settlement Class Members

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

Plaintiff believes that she is capable of fairly representing and adequately protecting the interests of the proposed Settlement Class Members. (Kingsley Decl. ¶24.) Plaintiff’s interests in this litigation are coextensive with the interests of the proposed Settlement Class Members. The members of the proposed Settlement Class all worked for Defendant during the relevant time period and incurred the same type of alleged damages with regard to Defendant’s alleged violations of the law. (Kingsley Decl. ¶25.) Moreover, Plaintiff has agreed to serve as Class Representative and has retained qualified Counsel who is experienced in prosecuting wage and hour class actions. (Kingsley Decl. ¶26.) This demonstrates her commitment to bringing about the best possible results for the benefit of the proposed Settlement Class. (Kingsley Decl. ¶27.) Plaintiff has provided her Counsel with all necessary and pertinent information. (Kingsley Decl. ¶28.) Plaintiff has been a very active participant in the litigation including having frequent contact with Settlement Class Members, and working closely with Class Counsel to develop the theories of

1 liability. (Kingsley Decl. ¶29.) Plaintiff also made herself available for the full-day mediation in
2 this matter and was informed of and involved in all of the Settlement negotiations. Therefore,
3 Plaintiff believes that she has and will continue to adequately represent the proposed Settlement
4 Class Members. (Kingsley Decl. ¶30.)

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

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

20 Plaintiff maintains that class treatment would be the superior method of managing this case.
21 A class action is superior to individual litigation “when numerous parties suffer injury of
22 insufficient size to warrant individual action and when denial of class relief would result in unjust
23 advantage to the wrongdoer.” (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.) In
24 cases such as this, where individual damages may be small, the class action device is the most
25 feasible method of recovery. (*See, e.g. Lockheed Martin, supra*, 29 Cal.4th at 1131.) In this regard,
26 the superiority of class treatment is evident here because individual pursuit of class members’
27 claims may not be economically viable. (Kingsley Decl. ¶31.) The only alternative to certification
28 would be to force over 675 employees to join this action, file individual, uniform actions, or

1 abandon their legal rights altogether. (Kingsley Decl. ¶32.) Plaintiff maintains that this economic
2 reality would result in a windfall for Defendant if this case were not certified. (Kingsley Decl.
3 ¶33.)

4 **IV. THE PROPOSED SETTLEMENT**

5 A. The Settlement Class

6 For purposes of Agreement, the settlement class is defined as: “All persons who are
7 employed or have been employed as an hourly employee by NORTH VALLEY BEHAVIORAL
8 HEALTH, LLC, in the State of California from April 14, 2019 to the earlier of preliminary
9 approval or March 7, 2025.” (“Class”) (Kingsley Decl. ¶34; Ex. 1 at ¶1.5.)

10 The Class Period means the period from April 14, 2019 to March 7, 2025 or the date of
11 preliminary approval, whichever is earlier. (Kingsley Decl. ¶35; Ex. 1 at ¶1.12.) As of April 29,
12 2025, (the date all Parties signed the Agreement), and based on documents and other information
13 produced by Defendant, there are approximately 675 Settlement Class Members who collectively
14 worked a total of 35,326 Workweeks. (Kingsley Decl. ¶36; Ex. 1 at ¶4.1.)

15 The Parties have also agreed on an escalator provision. (Kingsley Decl. ¶37; Ex. 1 at ¶8.1.)
16 If the actual number of Compensable workweeks worked by the Proposed Class during the Class
17 Release Period increases beyond 10%, Defendant shall have the option of (a) increasing the Gross
18 Settlement Amount by the percentage increase in the number of workweeks worked by the class
19 members above 10% (e.g. if the number of workweeks increases by 11%, the Gross Settlement
20 Amount will increase by 1%) or (b) rolling back the Class Release Period and PAGA Release
21 Period to the date in which 38,859 workweeks are met. (*Id.*) If Defendant elects not to increase the
22 Gross Settlement Amount proportionately, Defendant shall notify Class Counsel of its decision in
23 writing within ten (10) days of receiving the number of Class Members from the Administrator.
24 (*Id.*) Within ten (10) days of receipt of such written notice from Defendant, Plaintiff shall have the
25 option to terminate this Settlement Agreement via written notice to Defense Counsel and the
26 Parties will be restored to their positions prior to the Settlement and the Settlement shall be null
27 and void. (*Id.*)

28 ///

1 B. The Aggrieved Employees

2 For purposes of the Agreement, the Aggrieved Employees are defined as: “All persons who
3 are employed or have been employed as an hourly employee by NORTH VALLEY
4 BEHAVIORAL HEALTH, LLC, in the State of California from April 14, 2022 to the earlier of
5 preliminary approval or March 7, 2025.” (“Aggrieved Employees”) (Kingsley Decl. ¶38; Ex. 1 at
6 ¶1.4.)

7 The PAGA Period means the period from April 14, 2022 to March 7, 2025 or the date of
8 preliminary approval, whichever is earlier. (Kingsley Decl. ¶39; Ex. 1 at ¶1.31.) Based on
9 documents and other information produced by Defendant in connection with the mediation and the
10 negotiation of the Settlement Agreement, there are approximately 486 Aggrieved Employees who
11 collectively worked a total of 15,245 PAGA Pay Periods. (Kingsley Decl. ¶40; Ex. 1 at ¶4.1.)

12 C. Gross Settlement Amount

13 As detailed fully in the Agreement, the Settlement provides for Defendant to pay a Gross
14 Settlement Amount of \$700,000.00, which includes the sum of the Individual Class Payments, the
15 Class Representative service award, the Class Counsel Award, PAGA Payment, and the Settlement
16 Administration Costs. (Kingsley Decl. ¶42; Ex. 1 at ¶3.1.)

17 The Net Settlement Amount is the Gross Settlement Amount, less Class Counsel Award,
18 Class Representative Enhancement, PAGA Payment, and Settlement Administration Costs.
19 (Kingsley Decl. ¶43; Ex. 1 at ¶3.2.)

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

21	Gross Settlement Amount:	\$	700,000.00
22	Less Class Representative Enhancement:	\$	7,500.00
23	Less Class Counsel’s Fees:	\$	245,000.00
24	Less Class Counsel’s Costs:	\$	25,000.00
25	Less PAGA Payment:	\$	66,666.67
26			<i>(\$50,000.00 to the LWDA and</i>
27			<i>\$16,666.67 to remain in the Net</i>
28			<i>Settlement Amount)</i>
	<u>Less Administrator Costs:</u>	\$	<u>10,500.00</u>
	Anticipated Net Settlement Amount	\$	\$345,333.33

(Ex. 1 at ¶3.)

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1 D. Individual Settlement Payments

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

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

15 E. Process for Administering Settlement after Preliminary Approval

16 The detailed Notice Procedure established by the Agreement will efficiently and accurately
17 ensure that Notice is provided to the Settlement Class Members. (Ex. 1 at ¶7.4.) The Parties have
18 agreed to use a reputable third-party claims administrator, Phoenix Class Action Administration
19 Solutions, to administer the Agreement because their bid was the most cost effective for the
20 Settlement Class Members. (Ex. 1 at ¶7.1.)

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

22 As detailed in the Agreement, Settlement Class Members will have an opportunity to
23 request exclusion from the Agreement (i.e. opt out) and to object to the Agreement at the Final
24 Approval Hearing. (*See* Ex. 1 at ¶¶7.5-7.7; *see also* Ex. A to the Agreement at pp. 1, 2 and 4 [Class
25 Notice].) The Agreement and Class Notice contain details about the process to request exclusion
26 or object. (*Id.* at Ex. 1; *see also* Ex. A to the Agreement at pp. 3-4 [Class Notice].)

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1 G. The Release

2 The Released Claims by Participating Class Members are defined as: “ all claims that were
3 alleged, or reasonably could have been alleged, based on the Class Period facts stated in the
4 Operative Complaint and ascertained in the course of the Action. Except as set forth in Section
5 6.3¹ of this Agreement, Participating Class Members do not release any other claims, including
6 claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing
7 Act, unemployment insurance, disability, social security, workers’ compensation, or claims based
8 on facts occurring outside the Class Period.” (Ex. 1 at ¶5.2.)

9 The Release by Non-Participating Class Members Who Are Aggrieved Employees is
10 defined as: “all claims for PAGA penalties that were alleged, or reasonably could have been
11 alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice
12 and ascertained in the course of the Action.” (Ex. 1 at ¶5.3.)

13 **V. ARGUMENT**

14 A. Plaintiff Requests Approval of This Class Action Settlement

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. ¶44.) Class
23 Counsel conducted extensive informal discovery before entering into meaningful settlement
24 negotiations in this matter. (*Id* at Kingsley Decl. ¶¶7-11.) This discovery permitted Class Counsel
25 to fairly evaluate the strength of the case and the risks associated with ongoing litigation. (Kingsley
26 Decl. ¶45.) Class Counsel is experienced in handling wage and hour class actions and, after
27

28 ¹ The reference to Section 6.3 of the Agreement is an inadvertent typo and should be a reference to
Section 5.3 which covers the Released PAGA Claims. (Kingsley Decl. ¶41.)

weighing all of the following factors, supports this Agreement. (Kingsley Decl. ¶46.)

1. The Strength of Plaintiff's Case

a) The Risks Associated with Unpaid Wages Claim

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

Here, Plaintiff claimed that she and the Proposed Class earned non-discretionary bonuses, such as birthday bonuses. (Kingsley Decl. ¶47.) The birthday bonus was non-discretionary as the bonus was equal to one day’s worth of wages. (Kingsley Decl. ¶48.) Defendant allegedly failed to include the birthday bonus in the regular rate calculation when paying meal premiums and sick pay. (Kingsley Decl. ¶49.)

However, at trial, Defendant would likely argue that these nondiscretionary bonuses were so infrequently paid (i.e. the birthday bonus is paid out once per year per employee), that any actual damages because of its failure to blend is de minimis. (Kingsley Decl. ¶50.) As such, Plaintiff acknowledged this risk for purposes of settlement. (Kingsley Decl. ¶51.)

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

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

5 Here, Defendant allegedly implemented a rounding policy that, on average, favors the
6 employer and results in underpayment to Plaintiff and the Proposed Class. (Kingsley Decl. ¶52.)
7 Plaintiff’s wage statements and the time records produced by Defendant showed rounding to the
8 quarter-hour. (Kingsley Decl. ¶53.) Plaintiff’s expert reviewed Defendant’s timekeeping data and
9 contended that 42.3% of shifts were underpaid due to rounding and that 68% of employees were
10 underpaid for at least one shift. (Kingsley Decl. ¶54.) However, Plaintiff’s expert also estimated
11 that 34.8% of shifts were overpaid due to rounding, and 22.9% of shifts analyzed were neither
12 underpaid nor overpaid due to rounding. (Kingsley Decl. ¶55.) Thus, while Plaintiff maintains that
13 more than 50% of employees have been underpaid at least once according Defendant’s rounding
14 policy, Plaintiff also acknowledges that more than 50% of shifts resulted in either overpayment or
15 had no affect at all. (Kingsley Decl. ¶56.) Based on this risk, Plaintiff believed it was appropriate
16 to discount this claim for settlement purposes. (Kingsley Decl. ¶57.)

17 b) The Risks Associated with the Meal Break Claim

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

28 Moreover, employers have an obligation to both to provide meal breaks and to record

1 having done so. (IWC Wage Order 5-2001(7)(a)(3) [requiring employer to keep time records
2 showing when the employee begins and ends each work period and meal period.].) If the employer
3 fails to properly record a valid meal period, it is presumed that no meal period was provided. (*See*
4 *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, 76 [There is a rebuttable presumption of
5 liability when the records “show noncompliant meal periods.”].) The applicable wage order
6 requires employers not only to provide meal periods in the manner described above, but also “to
7 record having done so.” (*Brinker, supra*, 53 Cal.4th at pp. 1052-53 (J. Werdegar, concurring)
8 [citations omitted].) A long-standing application of burden-shifting occurs when an employer’s
9 records are so incomplete or inaccurate that an employee cannot prove his or her damages.
10 (*Anderson v. Mt. Clemens Pottery Co.* (1946) 328 U.S. 680, 687-88; *Amaral v. Cintas Corp. No.*
11 *2* (2008) 163 Cal.App.4th 1157, 1188-1190; *Safeway, Inc. v. Superior Court of Los Angeles Cnty.*
12 (2015) 238 Cal.App.4th 1138.)

13 Here, Plaintiff and Proposed Class consistently worked shifts over five (5) hours and over
14 eight (8) hours. (Kingsley Decl. ¶58.) Due to the workload, the time Plaintiff took her lunch varied.
15 (Kingsley Decl. ¶59.) However, Plaintiff maintains that many of her meal periods occurred
16 beyond the fifth hour of work, but she was unable to report her actual meal punches to Defendant
17 due to its auto-deduct policy. (Kingsley Decl. ¶60.) Plaintiff also contends that she missed meal
18 periods, but would still have time deducted as if she was able to take them. (Kingsley Decl. ¶61.)
19 Defendant told her that it would automatically deduct time to account for lunch, and Plaintiff was
20 not permitted to accurately record her hours to reflect the time she actually took lunch and the
21 length of time she was on a meal period. (Kingsley Decl. ¶62.)

22 Plaintiff acknowledges that this can be a difficult type of claim to prove because there are
23 no time records to substantiate or evaluate the allegations, except for the deducted meals in the
24 time records. (Kingsley Decl. ¶63.) Defendant would likely argue that if there was any such issue
25 of late meal periods, it would necessitate speaking to each and every employee about their
26 experiences day to day and whether meal breaks were in fact ever provided late, and if so, why.
27 (Kingsley Decl. ¶64.) Moreover, Defendant would also rely on security clock-in reports that show
28 when an employee’s badge was used to open entrances and exits to Defendant’s facilities.

1 (Kingsley Decl. ¶65.) At trial, Defendant would argue that any swipes of an entry/exit door before
2 the fifth hour of work would be an employee leaving for lunch. (Kingsley Decl. ¶66.) While
3 Plaintiff disagrees with this contention, Plaintiff acknowledges the risks nonetheless and believed
4 it was appropriate to discount this claim for settlement purposes. (Kingsley Decl. ¶67.)

5 c) The Risks Associated with the Rest Break Claim

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

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

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

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

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

27 Here, Plaintiff contends that she and the Proposed Class Members were regularly denied
28 rest periods. (Kingsley Decl. ¶68.) Plaintiff does not ever recall being informed or told that she
was entitled to rest periods. (Kingsley Decl. ¶69.) In fact, since Plaintiff would be reprimanded
for trying to take meal breaks, Plaintiff was not aware that she was even entitled to rest breaks.

1 (Kingsley Decl. ¶70.) Plaintiff also contends that the workload was so heavy that taking rest
2 periods was not possible.

3 In its defense, Defendant would have argued that Plaintiffs' rest period claim was not
4 appropriate for certification because California law does not require employees to record rest
5 periods. Absent a shift-by-shift, break-by-break, employee-by-employee inquiry, Defendant
6 would have argued that there was simply no way to know (1) whether a break was taken; and (2)
7 if not, why not. (Kingsley Decl. ¶71.) For each instance where an employee did not take a 10-
8 minute rest period by the end of the fourth hour of work, the trier of fact would still have to
9 determine why that particular employee had less than their full allotment of rest time. (Kingsley
10 Decl. ¶72.) Defendant accordingly would have argued that rest break claims are inherently
11 individualized in nature because employers only need to "authorize and permit" breaks; they need
12 not ensure that rest breaks are taken. (*Brinker*, 53 Cal. 4th at 1004.) To succeed, "[a]n employee
13 must show that the employer prevented the employee from taking breaks; mere proof of knowledge
14 that the employee was forgoing breaks is insufficient." As such, Plaintiff had to acknowledge that
15 it could potentially be easy for Defendant to defeat certification of this claim if it was able to gather
16 testimonial evidence from class members indicating that they were able to take all required rest
17 breaks each day. (Kingsley Decl. ¶73.) Though Plaintiff does not believe this was the case,
18 Plaintiff must acknowledge it poses risks for the Class. (Kingsley Decl. ¶74.) There is certainly
19 risk as to both sides as to what declarations and depositions of class members might reveal.
20 (Kingsley Decl. ¶75.)

21 d) The Risks Associated with the Inaccurate Wage Statement Claim

22 Labor Code § 226(a) provides:

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

1 wages twice per month, or each time wages are paid.

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

12 Specifically, Plaintiff contends that she and the Proposed Class are issued wage statements
13 that do not include all applicable hourly rates in effect during the pay period and the corresponding
14 number of hours worked at each hourly rate by the employee in violation of Labor Code §§
15 226(a)(2) and (9). (Kingsley Decl. ¶76.) As such, Defendant's failure to provide accurate itemized
16 wage statements according to Labor Code § 226(a) was done on a regular and consistent basis.
17 Thus, Defendant has knowingly and intentionally failed to comply with Labor Code section §
18 226(a) by failing to issue accurate itemized wage statements to Plaintiff.

19 Although wage statement claims are readily certifiable, they are vulnerable to an
20 unfavorable disposition on summary judgment as defendants commonly argue that, without more,
21 wage statement claims are nothing but technical violations for which Class Members suffer no
22 injury. Before Section 226(e) was amended, the dispositive issue was whether "suffering injury"
23 was satisfied by the deprivation of a legal right (i.e., an employer's provision of non-compliant
24 wage statements), or by consequential damages caused by the non-compliant wage statements.
25 Employers had frequently prevailed in arguing for the latter interpretation. Even after the
26 enactment of section 226(e), some courts have held that this amendment merely clarifies existing
27 law and have held that plaintiffs must demonstrate actual injury. *See Loud v. Eden Med. Ctr.*, 2013
28 U.S. Dist. LEXIS 122873, **36-53 (N.D. Cal. Aug. 28, 2013) (granting summary judgment on

1 wage statement claim because plaintiff could not show injury due to defects and that incorrect
2 wage information is not willful).

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

12 e) The Risks Associated with the Waiting Time Penalty Claim

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

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

25 Here, Plaintiff contends that Defendant failed to properly pay all wages, including meal
26 and rest premiums. (Kingsley Decl. ¶ 77.) The risk analysis for the section 203 claim flows from
27 the risk analysis for the underlying wage claim discussed above as derivative waiting-time
28 penalties are only as strong as the underlying predicate claims, and are subject to good faith

1 defenses. (Kingsley Decl. ¶ 78.) If Defendant could prove, as it contends, that class members were
2 properly paid for all hours worked, there would be no recovery of wages and no waiting time
3 penalties that flow therefrom. (Kingsley Decl. ¶ 79.)

4 Plaintiff also alleged that Defendant owes waiting time penalties by not paying former
5 alleged employees all wages owed and all premium payments for non-compliant meal or rest
6 periods, Labor Code § 226.7. (Kingsley Decl. ¶ 80.) Pursuant to *Murphy v. Kenneth Cole*
7 *Productions, Inc.* (2002) 40 Cal.4th 1094, 1120, Plaintiff contended that break premium payments
8 constitute “wages” under Labor Code § 203. (“We hold that section 226.7’s plain language, the
9 administrative and legislative history, and the compensatory purpose of the remedy compel the
10 conclusion that the ‘additional hour of pay’ is a premium wage, not a penalty”). (Kingsley Decl.
11 ¶81.)

12 The bigger risk that Plaintiff analyzed, however, is that to establish liability for waiting
13 time penalties, Plaintiff would have to establish not only that the underlying violations occurred,
14 but also that Defendant’s conduct was “willful.” (Labor Code § 203; Kingsley Decl. ¶82.) If
15 Defendant could establish that any alleged failure to blend was the result of mistake or oversight
16 and not “willful”, then it is possible that Plaintiff would not be able to recover penalties for this
17 claim. (Kingsley Decl. ¶83.) Because of this risk, Plaintiff determined that accepting a discount
18 for settlement purposes was appropriate. (Kingsley Decl. ¶84.)

19 f) The Risks Associated with the PAGA Claim

20 California’s Private Attorneys General Act (“PAGA”), Labor Code § 2698, *et seq.*, permits
21 private litigants to recover civil penalties for violations of the Labor Code. PAGA provides that
22 plaintiffs may recover previously established civil penalties (section 2699(a)) or, if none were
23 established, plaintiffs may recover default penalties provided in section 2699(f) in the amount of
24 \$100 per employee per pay period for the initial violation and \$200 for subsequent violations.

25 Plaintiff discounted the PAGA claim for multiple reasons. (Kingsley Decl. ¶85.) First,
26 the aggrieved employees’ PAGA claims are arguably derivative of all the foregoing class claims.
27 (Kingsley Decl. ¶86.) If Plaintiff cannot establish liability on the underlying claim (taking into
28 account the risks discussed above), then the derivative PAGA claim will also necessarily fail. (*Id.*)

1 Second, a court has discretion to award less than the maximum penalty. (Kingsley Decl. ¶87.)
2 (Labor Code § 2699(e)(2) (“a court may award a lesser amount than the maximum civil penalty
3 amount specified by this part if, based on the facts and circumstances of the particular case, to do
4 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory”). *See*
5 *e.g.*, *Carrington v. Starbucks Corporation* (2018) 30 Cal.App.5th 504, 241 Cal.Rptr.3d 647, 669
6 [affirming award of 10% of maximum PAGA penalty]; *Thurman v. Bayshore Transit*
7 *Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135–1136, disapproved on another ground
8 in *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175, 196, fn. 8 [considering the defendant’s
9 inability to pay as a factor in reducing the penalties imposed]; see also *Raines v. Coastal Pacific*
10 *Food Distributors, Inc.* (2018) 23 Cal.App.5th 667, 681 [noting that a court should consider
11 whether a violation was inadvertent when assessing penalties].² Third, the likelihood of the Court
12 reducing the PAGA damages awarded to Plaintiffs and the aggrieved employees – assuming
13 liability is proven as to each of Plaintiffs’ claims – is also higher in this case where these same
14 individuals will also be receiving money for the same unlawful conduct under the class claims.
15 (Kingsley Decl. ¶88.) (see *Avila v. Cold Spring Granite Co.* (E.D. Cal. Jan. 12, 2018) Case No.
16 1:16-cv-001533-AWI-SKO, 2018 U.S. Dist. LEXIS 6142 *17 (“Because the PAGA penalties
17 sought are at least partially duplicative of penalties granted by the underlying Labor Code
18 violations, see, e.g., Cal. Lab. Code §§ 203, 226, 558(a), 1194.2, and because a Court has discretion
19 in whether and in what amount to award PAGA penalties, see Cal. Lab. Code § 2699(e)(2),
20 Plaintiff recognizes that the potential PAGA penalties are highly uncertain.”); and see *Nordstrom*
21 *Commissions Cases*, 186 Cal.App.4th 576, 589 (2010) (affirming settlement allocating \$0 of \$6.4
22 million settlement to PAGA penalties).

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

24 There is significant expense associated with the class certification process, which the
25 Parties can avoid by entering into the contemplated Agreement now. (Kingsley Decl. ¶89.) If the
26

27 ² On May 11, 2016, following a bench trial, Los Angeles Superior Court Judge John Wiley reduced
28 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.)

1 Court did eventually certify a meal or wage statement class, trial of a case involving approximately
2 675 Settlement Class Members would require the retention of expensive expert witnesses, the
3 accrual of extensive litigation costs, and a significant time overlay by the parties. (Kingsley Decl.
4 ¶90.) Moreover, given the complexity and unsettled nature of the issues in this case it is likely
5 that any outcome at trial would have resulted in a lengthy and costly appeal. (Kingsley Decl. ¶91.)
6 An appeal would result in further delay for the Settlement Class Members who are waiting for a
7 resolution in this matter. (*Id.*)

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

9 This case has not been certified to be tried as a class action. (Kingsley Decl. ¶92.) While
10 Plaintiff believes there is strong evidence to support certification of several possible subclasses
11 (especially a rest period class), certification is always hard fought and subject to judicial discretion.
12 Moreover, in class actions, decertification is always a possibility. (*Id.*) In attempting to certify a
13 class, the parties would need to conduct multiple depositions, including of the Class Representative
14 and of several person(s) most knowledgeable regarding Defendant's meal and rest policies. (*Id.*)
15 There is a risk for both sides as to what these depositions will reveal and whether they will support
16 class certification to the extent expected. (*Id.*)

17 4. The Amount Offered in Settlement

18 It was very difficult for the Parties to reach this Settlement of \$700,000.00. (Kingsley
19 Decl. ¶93.) This Settlement is the result of adversarial, non-collusive, and arms-length
20 negotiations. (Kingsley Decl. ¶94.) The Parties arrived at it after extensive investigation and
21 discovery, careful evaluation of the law, risks, and all information substantiating the amount of
22 penalties reasonably likely to be awarded to the class were the trier of fact to find Defendant liable,
23 and the assistance of an experienced mediator, Monica Ngo-Bonnici. (*Id.*)

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

25 Plaintiff assessed full value of the Unpaid Wages (Rounding/Failure to Blend) claim,
26 without any discount, at approximately \$90,728 without interest. (Kingsley Decl. ¶95.) This
27 calculation was Plaintiff's expert analysis of 89,121 shifts that showed approximately 1,535 of
28 underpaid hours due to Defendant's rounding policy. (Kingsley Decl. ¶96.) As explained above,

1 42.3% of shifts were underpaid due to rounding, but 34.8% of shifts were overpaid and 22.9% of
2 shifts were unaffected by rounding. (Kingsley Decl. ¶97.) The amount of unpaid wages due to the
3 rounding policy totaled approximately \$59,577. (Kingsley Decl. ¶98.) Plaintiff's expert also
4 calculated that meal break premiums and sick hours were underpaid, totaling approximately
5 \$31,151. (Kingsley Decl. ¶99.)

6 The full value of the Meal Period claim, without any discount, was approximately
7 \$2,424,713 without interest. (Kingsley Decl. ¶100.) For the reasons above, Plaintiff determined
8 that accepting a discount of the full amount was appropriate. (Kingsley Decl. ¶101.)

9 The full value of the Rest Period claim, without any discount, was approximately
10 \$2,765,447 without interest. (Kingsley Decl. ¶102.) Again, because there are no records to support
11 Plaintiff's assumed violation rate 100%, Plaintiff determined that accepting a discount of the full
12 amount was appropriate. (Kingsley Decl. ¶103.)

13 Plaintiff valued the Wage Statement Claim, without discount, at \$775,400 without interest.
14 (Kingsley Decl. ¶104.) Due to the risk discussed above that 226(a) liability wouldn't attach under
15 *Naranjo* and *Maldonado*, Plaintiff determined that a steep discount of this claim was fair for
16 settlement purposes. (Kingsley Decl. ¶105.)

17 Plaintiff valued the Waiting Time Claim, tied to the Wage/Overtime claim, at \$1,883,813.
18 (Kingsley Decl. ¶106.) Considering the derivative nature of Labor Code §203 and the dispute over
19 whether class members were owed any wages, Plaintiff determined that accepting a discount on
20 this claim was appropriate. (Kingsley Decl. ¶107.)

21 Finally, Plaintiff calculated the value of the PAGA claim at \$2,774,800 for Settlement
22 Class Members (using \$100 per pay period) and "stacked" violations for each Labor Code section
23 and \$792,800 without stacking. (Kingsley Decl. ¶108.) The main risk taken into account with
24 PAGA is the discretionary nature of the penalty award. (Kingsley Decl. ¶109.) A judge can award
25 the statutory maximum of \$100 for the initial violation and \$200 thereafter or – in theory – one
26 cent per wage statement. (Kingsley Decl. ¶110.) For example, if a court were to disallow the
27 "stacking" of PAGA penalties (given the lack of caselaw doing so), then Defendant's maximum
28 exposure at trial would actually be \$792,800 as Plaintiff stated above. (Kingsley Decl. ¶111.)

1 While there is a dearth of available authority, in Plaintiff's view, were she to succeed on any of
2 the underlying Labor Code violations, it is not likely that a Judge would also award a large amount
3 of penalties of top of any damages recovered. (Kingsley Decl. ¶112.) The allocation of PAGA
4 penalties here represents approximately 8.4% of the maximum exposure at trial, or \$8.40 penalty
5 per pay period ($\$66,666.67 \div 7,928$ pay periods = \$8.40 per pay period) which is in line with
6 judgments reached in other cases. (Kingsley Decl. ¶113; See e.g. *Carrington, supra*, 30
7 Cal.App.5th 504, 529 [affirming the trial court's reduction from the maximum penalty of \$50 per
8 initial violation to only \$5]; *Thurman, supra*, at 203 Cal.App.4th at 1135–1136, [affirming trial
9 court's decision to reduce penalties by 30%].)

10 Per Plaintiff's assessment, the maximum potential value of all of Plaintiff's and the
11 Settlement Class Members' claims was approximately \$8,732,901. (Kingsley Decl. ¶114.)
12 However, as a result of the forgoing risks on the merits, Class Counsel believes the Gross
13 Settlement Amount of \$700,000.00 is fair and reasonable. (Kingsley Decl. ¶115.)

14 5. The Experience and Views of Counsel

15 Finally, counsel's experience and success in similar class actions also weigh in favor of
16 preliminary approval. See *Wershba, supra*, 91 Cal.App.4th at 245. Kingsley Szamet Employment
17 Lawyers is very experienced in prosecuting complex employment litigation, and the firm has
18 focused its practice since the year 2000 on complex wage, hour, and working condition violations.
19 (Kingsley Decl. ¶¶116-118.) The firm is well versed in class action litigation and has diligently
20 and aggressively pursued this action. (*Id.*) Kingsley Szamet Employment Lawyers currently
21 serves as Class Counsel for dozens of pending class action lawsuits in Northern, Central, and
22 Southern California. (*Id.*) A list of representative cases that Kingsley Szamet Employment
23 Lawyers has handled is included in the accompanying declaration of Eric B. Kingsley. (*Id.*) After
24 factoring in the risks explained above, Class Counsel believes that the proposed settlement is fair
25 and reasonable. (Kingsley Decl. ¶119.)

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

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

1 *Comm’n* (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the proposed plan of allocation
2 compensates Settlement Class Members pro rata based on the number of compensable work weeks
3 worked by the Settlement Class Member during the Class Period. The lump sum payment to each
4 Settlement Class Member not excluding him/ herself will be determined on an individualized basis
5 based upon the compensable pay periods worked by the Settlement Class Member. (Ex. 1 at
6 ¶3.2.4.) This allocation distributes Agreement funds proportionally to each class member’s
7 potential damages and should therefore be approved as fair, adequate, and reasonable. (Kingsley
8 Decl. ¶120.)

9 7. The Proposed Notice Fairly Apprises the Settlement Class Members of the
10 Terms of the Settlement and of the Class Members’ Rights under the
11 Settlement

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

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

27 Here, the Notice clearly explains the proposed Agreement and the options to opt out of the
28 Settlement or object to it at the Final Approval Hearing. (Ex. 1 at ¶7.5; ¶7.7; *see also* Ex. A to the

Agreement at pp. 1-2, 4 [Class Notice].) In short, the Court should approve the proposed Class Notice because it describes the proposed settlement with enough specificity to allow Settlement Class Members to make an informed choice regarding whether to participate.

VI. THE SERVICE AWARD TO THE NAMED PLAINTIFF

The Class Representative is entitled to an enhancement for her valiant effort and time expended in this matter. (Kingsley Decl. ¶121.) 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. (*Id.*) Thus, in addition to the sums paid to Settlement Class Members, Plaintiff requests a proposed litigation enhancement in the amount of \$7,500.00, to be paid from the Gross Settlement Amount. (Ex. 1 at § 3, ¶3.2.1.) 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. ¶122; Ex. 1 at ¶5.1.1.)

Class Counsel considers this to be a fair and reasonable enhancement. (Kingsley Decl. ¶123.) The enhancement takes into consideration the time, effort, and expense incurred by Plaintiff in coming forward to litigate this matter on behalf of all Settlement Class Members. (*Id.*) Plaintiff will provide a detailed declaration with the Final Approval Motion detailing her participation and further justification for the enhancement. (*Id.*)

VII. SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY

As indicated on the Proof of Service, Plaintiff’s Motion for Approval of Class Action Settlement (“Motion”) will be concurrently uploaded to the Labor and Workforce Development Agency’s (“LWDA”) website on the date this Motion is filed as required by statute. Proof of submission of Plaintiff’s Motion, all related documents, and copy of the email from the LWDA confirming receipt is attached to the Declaration of Eric B. Kingsley as Exhibit “2.” (Kingsley Decl. ¶124.)

1 **VIII. CONCLUSION**

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

9 DATED: July 10, 2025

KINGSLEY SZAMET EMPLOYMENT
LAWYERS

11 By: 

12 Eric B. Kingsley
13 Attorneys for Plaintiff IRMA MARTINEZ-
14 MONTANO and the proposed class
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(PROOF OF SERVICE)
[CCP 1013(a)(3)]
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 16133 Ventura Boulevard, Suite 1200, Encino, California 91436.

On July 10, 2025, I served all interested parties in this action the following documents described as **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

FERBER LAW, A Professional Corporation Michelle Ferber, Esq. mferber@ferberlaw.com Jon Babione, Esq. jbabione@ferberlaw.com Adam Arce aarce@ferberlaw.com 2603 Camino Ramon, Suite 385 San Ramon, CA 94583 <i>Attorneys for Defendant</i>	ABRAMSON LABOR GROUP WILLIAM ZEV ABRAMSON, Esq. wza@abramsonlabor.com 1700 W Burbank Blvd, Burbank, CA 91506 <i>Attorneys for Plaintiff</i>
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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/414>) 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 sent 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 July 10, 2025, at Chino, California.



Leslie Sanchez