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FARZAD AZIMA and ADAM DE LEON

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

FARZAD AZIMA, individually and on behalf of other persons similarly situated; ADAM DE LEON, individually, on behalf of other persons similarly situated, and in his representative capacity,

Plaintiffs,

v.

NETFLIX PRODUCTIONS, LLC, a foreign limited liability company; and DOES 1 through 50, inclusive,

Defendants.

Case No.: Case No.: 23STCV03337
(Related Case No: 23STCV03378)

[Assigned for all purposes to The Hon. David S. Cunningham, Dept. 11]

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

Date: January 14, 2025
Time: 10:00 AM
Dept.: SS-11

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

YOU ARE HEREBY NOTIFIED THAT on January 14, 2025 at 10:00 a.m. in Department SS-11 of the above-entitled court, Plaintiffs Farzad Azima and Adam De Leon will move for an Order for Preliminary Approval of the Stipulation of Class Action and Private Attorney General Settlement (the "Settlement Agreement"), a copy of which is filed concurrently herewith.

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

The Motion will be based on this Notice of Motion, the attached Memorandum of Points and Authorities, the Declarations of Plaintiffs Farzad Azima and Adam De Leon, Frank H. Kim, Stephen Rossi and the Settlement Administrator, the Settlement Agreement, and all other papers and records on file in this action, and on such oral and documentary evidence that may be presented at the hearing on this Motion.

DATED: September 19, 2024

KIM LEGAL, APC

By: *_/s/ Frank H. Kim_*
Frank H. Kim
Attorneys for Plaintiffs Farzad Azima, Adam De Leon and the Proposed Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Farzad Azima ("Plaintiff Azima") and Plaintiff Adam De Leon ("Plaintiff De Leon") (together, "Plaintiffs") submit this Memorandum of Points and Authorities in support of Plaintiffs' Motion for Preliminary Approval of the Stipulation of Class Action and Private Attorney General Settlement ("Settlement" or "Settlement Agreement") reached between Plaintiffs and Defendant Netflix Productions, LLC ("Defendant") (Plaintiffs and Defendant will hereinafter be referred to as the "Parties").

By this Motion, Plaintiffs requests that the Court:

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

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

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

II. FACTUAL BACKGROUND

A. Class Action and PAGA Complaint

Plaintiff Azima alleges that he was employed by Defendant as a non-exempt background extra. Plaintiff alleges that Defendant paid him an additional $5 "bump" payment for working in conditions with smoke or water. Plaintiff Azima alleges that these bump payments were non-discretionary and thus should have been factored into his regular rate of pay for purposes of calculating overtime and premium wages. Plaintiff Azima alleges that because it was not, he was underpaid (Declaration of Frank Kim ("Kim Decl.") ¶ 4)

On February 15, 2023, Plaintiff Azima filed this lawsuit on behalf of all non-union background extras who were paid overtime or premium wages on the same day that they received a bump payment. (Kim Decl. ¶ 5.)

On July 27, 2023, Plaintiff Azima filed a First Amended Complaint to add Adam De Leon ("De Leon") and to add a claim under PAGA on behalf of Plaintiff De Leon. (Kim Decl. ¶ 6.)

B. Mediation and Settlement

Shortly after the case was at issue, the Parties agreed to early mediation with the Honorable Margaret Nagle (Ret.). (Kim Decl. ¶ 7.)

In advance of mediation, Defendant provided Plaintiffs' counsel with pertinent data for the Class Members so that the Parties could fully investigate the claims at issue and understand their strengths and weaknesses. (Kim Decl. ¶ 8.) Defendant provided the number of class members and PAGA members and all relevant pay information. (Kim Decl. ¶ 9.) Plaintiffs' counsel had the mediation data analyzed by an expert to prepare a damage model for mediation. (*Id.*)

On February 21, 2024, the Parties participated in an all-day mediation presided over by the Honorable Margaret Nagle (Ret.), which resulted in a Memorandum of Understanding settling the Action. (Kim Decl. ¶10.)

Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in the Action, dispute the damages and penalties claimed by Plaintiffs, and further contend that, for any purpose other than settlement, Plaintiffs' claims are not appropriate for class or representative action treatment. (Kim Decl. ¶ 11.) Defendant contends, among other things, that, at all times, they have 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 Settlement 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. (Kim Decl. ¶ 12.) Although Defendant denies any liability, Defendant is agreeing to this Settlement Agreement solely to avoid the cost of litigation. (Kim Decl. ¶ 13.) Accordingly, the Parties and their counsel desire to settle, compromise and discharge all disputes and claims arising from or relating to the

Action on the terms set forth here fully, finally, and forever. (*Id*.)

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

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

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

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

Class certification for settlement purposes is proper in this case as the proposed Settlement

Class satisfies each of the requirements under Code of Civil Procedure § 382. Accordingly, this Court should certify the putative settlement class.

A. The Proposed Classes Are Ascertainable and Sufficiently Numerous

1. Ascertainability

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

Here, the proposed Settlement Class is ascertainable because Defendant have agreed in the Settlement Agreement to provide a class list to the Settlement Administrator containing Settlement Class Member's full name; last known address; last known home telephone number, or data that will allow the Settlement Administrator to reasonably determine the putative class members after issuance of the preliminary approval order. (Kim Decl. ¶ 14; Ex. 1 at § 4.)

The Settlement Class consists of three non-overlapping classes: (1) the 203 Class, (2) the Central Casting Class, and (3) the Wage Only Class. (Kim Decl. ¶ 15.)

2. Numerosity

There is no set number that is required as a matter of law to maintain a class action. (*See*, *e.g.*, *Rose v. City of Hayward*, *supra*, 126 Cal.App.3d at p. 934.) Here, the proposed Settlement Class consists of approximately 4,118 non-union background actors hourly non-exempt employees in the State of California. (Ex. 1 at § 8.) Therefore, Plaintiffs are confident they will be able to establish that the proposed Settlement Class is ascertainable and sufficiently numerous. (Kim Decl. ¶ 16.)

B. There Is a Well-Defined Community of Interest

1. There Are Predominant Questions of Law and Fact

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

Plaintiffs argue that there are questions of law and fact common to the proposed Settlement Class that predominate over any questions affecting only individual Class Members. (Kim Decl. ¶ 17.)

Here, the common questions concerns whether Defendant failed to factor non-discretionary remuneration into the regular rate of pay for purposes of calculating overtime and premium wages, whether Defendant failed to pay for necessary business expenses, and whether Defendant's failure to pay all wages owed upon the termination of employment was willful. (Kim Decl. ¶ 18.) Here, for purposes of settlement, the evidence reviewed by Class Counsel demonstrates that common wage policies and reimbursement polices applied to the proposed Settlement Class Members and certification for settlement purposes is appropriate. (Kim Decl. ¶ 19.)

2. The Named Plaintiffs Have Claims Typical of the Proposed Class

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

Plaintiffs Azima and De Leon are non-union background extras who each received a bump payment on the same day in which they were paid overtime wages or premium wages. (Kim Decl. ¶ 20.) On February 8, 2020, Plaintiff Azima received a $5 bump payment and was paid overtime wages based on an hourly rate of $14.25. On June 27, 2022, Plaintiff De Leon received a $5 bump payment and was paid overtime wages and a meal premium based on an hourly rate of $15.00. (Kim Decl. ¶ 21.) Plaintiffs allege that they: (1) were not paid all overtime wages; (2) were not paid all premium wages; (3) were not reimbursed for business expenses; (5) were not paid on a timely basis and upon separation; and (6) were no provided accurate wage statements. They also allege derivative claims for unfair business competition (B&P Code §17200) (Kim Decl. ¶ 22.) Plaintiffs' claims are typical of those of the Settlement Class. (Kim Decl. ¶ 23.)

3. Plaintiffs Contend That As The Named Plaintiffs They Have 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.)

Plaintiffs believe they are capable of fairly representing and adequately protecting the interests of the proposed Settlement Class Members. (Kim Decl. ¶ 24.) Plaintiffs' interests in this litigation are coextensive with the interests of the proposed Class Members. The members of the proposed Settlement Class all worked for Defendant during the relevant time period and incurred the same type of alleged damages with regard to Defendant's' alleged violations of the law. (Kim Decl. ¶ 25.) Moreover, Plaintiffs have agreed to serve as Named Plaintiffs and have retained qualified Counsel who is experienced in prosecuting wage and hour class actions. This demonstrates their commitment to bringing about the best possible results for the benefit of the proposed Settlement Class. (Kim Decl. ¶ 26.) Plaintiffs have provided their Counsel with all necessary and pertinent information. (Kim Decl. ¶ 27.) They have been very active participants in the litigation including having frequent contact with Settlement Class Members and working closely with Class Counsel to develop the theories of liability. (Kim Decl. ¶ 28.) They also participated in the mediation in this matter and were informed of and involved in all of the settlement negotiations. (Kim Decl. ¶ 29.) Therefore, Plaintiffs believe that they have and will continue to adequately represent the proposed Settlement Class Members. (Kim Decl. ¶ 30.)

C. The Class Action Vehicle Is Superior to the Alternatives

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

Plaintiffs maintain that class treatment would be the superior method of managing this case. A class action is superior to individual litigation "when numerous parties suffer injury of insufficient size to warrant individual action and when denial of class relief would result in unjust advantage to the wrongdoer." (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.) In cases such as this, where individual damages may be small, the class action device is the most feasible method of recovery. (*See, e.g. Lockheed Martin*, *supra*, 29 Cal.4th at 1131.) In this regard, the superiority of class treatment is evident here because individual pursuit of class members' claims may not be economically viable. (Kim Decl. ¶ 31.) The only alternative to certification would be to force over 4,118 employees to join this action, file individual, uniform actions, or abandon their legal rights altogether. (Kim Decl. ¶ 32.) Plaintiffs maintain that this economic reality would result in a windfall for Defendant if this case were not certified. (*Id.*)

IV. THE PROPOSED SETTLEMENT

A. The Settlement Class

For purposes of the Settlement Agreement, the settlement class is defined as: "a member of the 203 Class, Central Casting Class, or Wage Only Class, as either a Participating Class Member or Non-Participating Class Member ("Settlement Class Members" or "Class Members"). (Kim Decl. ¶ 33; Settlement Agreement, Ex. 1 at ¶ 1.12.) Based on documents and other information produced by Defendant, there are approximately 4,118 Settlement Class Members. (Kim Decl. ¶ 34; Ex. 1 at ¶ 8.)

For purposes of Settlement Agreement, the Settlement Class Member consists of the 203 Class, the Central Casting Class or the Wage Only Class (Kim Decl. ¶ 35.)

The 203 Class consists of about 2,863 background actors who worked for Defendant "non-union" (meaning they were not covered by the SAG-AFTRA Basic Agreement when they worked) and were paid additional wages (a "bump") for beard, hair and makeup, prosthetic, night work, off camera dialogue, snow work, working in smoke, or working in wet conditions on the same day they were paid for overtime or a meal or rest premium from August 19, 2019 through the date of Preliminary Approval. (Kim Decl. ¶ 36; Ex. 1 at ¶ 1.1.)

The Central Casting Class consists of about 816 background actors who worked for Defendant "non-union" (meaning they were not covered by the SAG-AFTRA Basic Agreement when they worked), were booked and paid through Central Casting, and were paid additional wages (a "bump") for beard, hair and makeup, prosthetic, night work, off camera dialogue, snow work, working in smoke, or working in wet conditions on the same day they were paid for overtime or a meal or rest premium from August 19, 2019 through the date of Preliminary Approval without such bump being factored into their regular rate of pay (Kim Decl. ¶ 37; Ex. 1 at ¶ 1.7.)

The Wage Only Class consists of about 439 background actors who worked for Defendant "non-union" (meaning they were not covered by the SAG-AFTRA Basic Agreement when they worked) and were paid additional wages (a "bump") for beard, hair and makeup, prosthetic, night work, off camera dialogue, snow work, working in smoke, or working in wet conditions on the same day they were paid for overtime or a meal or rest premium from August 19, 2018 to August

18, 2019 without such bump being factored into their regular rate of pay. (Kim Decl. ¶ 38; Ex. 1 at ¶ 1.47.)

The definition Aggrieved Employees is defined as: "all background actors who worked for Defendant "non-union" (meaning they were not covered by the SAG-AFTRA Basic Agreement when they worked) and were paid additional wages (a "bump") for beard, hair and makeup, prosthetic, night work, off camera dialogue, snow work, working in smoke, or working wet conditions on the same day they were paid for overtime or a meal or rest premium during the PAGA Period without such bump being factored into their regular rate of pay." ("Aggrieved Employees") (Kim Decl. ¶ 39; Settlement Agreement, Ex. 1 at ¶ 1.6.) Based on documents and other information produced by Defendant, there are approximately 952 Aggrieved Employees and 1194 Workweeks. (Kim Decl. ¶ 40.)

B. Gross Settlement Fund

As detailed fully in the Settlement Agreement, the Settlement provides for Defendant to pay a Gross Settlement Amount of $950,000.00, which includes the sum of the Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Litigation Expenses Payment, Class Representative Service Payments and the Administrator's Expenses. (Kim Decl. ¶ 41; Ex. 1 at ¶ 1.25.)

The Net Settlement Amount is the Gross Settlement Amount, less the Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. (Kim Decl. ¶ 42; Ex. 1 ¶ 1.31.)

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

Gross Settlement Fund:	$	950,000.00
Named Plaintiffs Service Payment:	$	20,000.00
Fees Award:	$	316,635.00
Costs Awards:	$	25,000.00
PAGA Penalties:	$	28,500.00
		($21,375.00 to the LWDA and $7,125.00 to remain in the Net Settlement Amount to the Aggrieved Employees)

Settlement Administration Costs:	$	26,500.00
Net Settlement Amount	**$**	**533,365.00**

(Kim Decl. ¶ 42; Ex. 1 at ¶¶ 3.1-3.2.7)

C. Individual Settlement Payments

Each Participating Class Member will receive a minimum payment equal to their pro rata share of the Net Settlement Amount according to his or her class membership and the number of Net Settlement Shares. (Ex. 1 at ¶ 4.3.2.) The formula accounts for the following considerations: (1) Participating Class Members who worked more should receive a greater settlement; (2) Participating Class Members who worked on more projects should receive a greater settlement than those who worked on less projects (presumably because each project triggers additional waiting time penalties); (3) Participating Class Members in the 203 Class and the Central Casting Class are entitled to waiting time penalties and should therefore receive a greater settlement than the Wage Only Class; and (4) Participating Class Members in the 203 Class should receive a greater settlement than the Central Casting Class because the latter has enforceable arbitration agreements:

a) Each Participating Class Member will receive 1 net settlement share for each day they were paid overtime and/or a meal or rest premium and were also paid a bump within the applicable Class Period, plus 10 net settlement shares for each project they worked on for Defendant and were paid overtime and/or a meal or rest premium on the same day they were paid a bump within the applicable Class Period. Each Participating Class Member will then receive a percentage of their Class Allocation based on their total net settlement shares divided by the Class's total net settlement shares. Each participating Wage Only Class Member's payment will be limited to a maximum of $20.

b) 203 Class Allocation: 90.57% of the Net Settlement Amount (860,446.00 minus deductions) will be divided among the participating Class Members in the 203 Class. This class is estimated to include approximately 2,863 individuals.

c) Central Casting Class Allocation: 8.59% of the Net Settlement Amount (81,600.00 minus deductions) will be divided among the participating Class Members in the Central Casting Class. This class is estimated to include approximately 816 individuals.

d) Wage Only Class Allocation: 0.84% of the Net Settlement Amount ($7,954.00 minus deductions) will be divided among the participating Class Members in the Wage Only Class, except the gross allocation among any such Class Members shall not exceed $20. Any unused portion of the Wage Only Class Allocation shall be divided evenly between the participating Class Members in the 203 Class and Central Casting Class. This class is estimated to include approximately 439 individuals.

(Ex. 1 ¶ 3.2.4.1)

The Individual PAGA Payment will be calculated by dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties ($7,125.00) based on the number of projects they worked on for Defendant, where they were paid a bump on the same day they were paid overtime and/or a meal or rest premium during the PAGA Period. (*See* Ex. 1 at ¶ 3.2.4.2)

Ten percent (10%) of each Participating Class Member's Individual Class Payment will be deemed payment for settlement of claims for wages and will be subject to appropriate deductions and withholdings calculated and made by the Settlement Administrator. (Ex. 1 at ¶3.2.5.) Ninety (90%) of each Participating Class Member's Individual Class Payment will be deemed payment for settlement of claims for penalties and interest not subject to withholdings. (*Id.*) All Individual Settlement Payments to the Aggrieved Employees shall be allocated as 100% non-wage payment for civil penalties. (*Id.*)

D. Process for Administering Settlement after Preliminary Approval

The detailed Notice Procedure established by the Settlement Agreement will efficiently and accurately ensure that the Class Notice is provided to the Settlement Class Members. (Ex. 1 at ¶ 4.) The Parties have agreed to use a reputable third-party claims administrator, Phoenix Settlement Administrators to administer the Settlement Agreement. (Kim Decl. ¶ 43; Ex. 1 ¶ 7.2.) Other than a professional relationship arising out of prior experiences administering settlements, neither counsel for Plaintiffs nor Defendant has an interest or relationship, financial or otherwise, with Phoenix Settlement Administrators. (Kim Decl. ¶ 87, Declaration of Stephen Rossi ¶ 3.)

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

The Class Notice will be in English only because the Class consists of a single production that was conducted entirely in English and all the casting correspondence (offer, acceptance, and logistics) was in English. (Declaration of Chip Holloway ¶ 4; Declaration of Farzad Azima ("Azima Decl.") ¶ 4; Declaration of Adam De Leon ("De Leon Decl.") ¶ 4.) Therefore, the Class Members are presumed to read English. (*Id.*)

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

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

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

F. The Release

The Released Class Claims, for the Class Period, are defined as: "all claims, debts, liabilities, demands, obligations, penalties, premium pay, guarantees, costs, expenses, attorney's fees, damages, actions or causes of action of whatever kind or nature, contingent or accrued, that have been asserted or that reasonably could have been asserted in the Operative Complaint based on the facts, claims and/or allegations therein, including under any legal theory that was alleged or that reasonably could have been alleged based on the facts, claims and/or allegations therein for failure to pay all wages due (including overtime wages, and meal and rest break premium wages), failure to pay for all hours worked, failure to timely pay wages and final wages, derivative claims for failure to furnish accurate wage statements, and failure to provide expense reimbursements. This Release shall include claims and theories arising under the California Labor Code Sections 201, 201.5, 202, 203, 204, 210, 226, 226.7, 510, 512, 515, 558, 558.1, 1174, 1174.5, 1194, 2802, as well as claims under Business and Professions Code section 17200 *et seq.*, the equivalent provisions of the Fair Labor Standards Act, and/or Labor Code Section 2698 *et seq.* based on alleged violations of the above Labor Code provisions, as alleged in the Operative Complaint." (Ex. 1 at ¶ 5.2.) The release shall run through the date of Preliminary Approval.

The Released PAGA Claims, for the PAGA Period, are defined as: "all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint or PAGA Notices including under any legal theory that was alleged or that could have been alleged for any failure to pay all wages due (including overtime wages, and meal and rest break premium wages), failure to pay for all hours worked, failure to timely pay wages and final wages, failure to furnish accurate wage statements including claims derivative and/or related to these claims, and failure to provide expense reimbursements. This Release shall include all claims and theories arising under the California Labor Code, California wage orders, and applicable regulations, including Labor Code Sections 201, 201.5, 202, 203, 204, 210, 226, 226.7, 510, 512, 515, 558, 558.1, 1174, 1174.5, and 2802. The release shall run through the end of the PAGA Period." (Ex. 1 at ¶ 5.3.)

V. ARGUMENT

A. Plaintiffs Request Approval of This Class Action Settlement

The case of *Kullar v. Foot Locker Retail, Inc* (2008) 168 Cal.App.4th 116, 128, set forth several factors that the Court should analyze in determining whether to approve a class action settlement. These factors include: (1) the strength of plaintiff's case; (2) the risk, expense, complexity and likely duration of further litigation; (3) the risk of maintaining class action status through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement. In *Munoz v. BCI Coca-Cola Bottling Co. of Los* Angeles (2010) 186 Cal. App. 4th 399, 409, the court clarified that a *Kullar* showing does not require the parties to submit the outer reaches of maximum possible recovery without taking into account the actual risks of certification, decertification, dispositive motions, and trial, so long as there is a record which allows "an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation."

The proposed settlement satisfies each of these factors. Class Counsel conducted extensive informal discovery before entering into meaningful settlement negotiations in this matter. (Kim Decl. ¶¶ 7-13, 44.) This discovery permitted Class Counsel to fairly evaluate the strength of the case and the risks associated with ongoing litigation. (Kim Decl. ¶ 45.) Class Counsel is experienced in handling wage and hour class actions and, after weighing all of the following factors, supports this Settlement Agreement. (Kim Decl. ¶ 46.)

1. The Strength of Plaintiffs' Case

a) The Risks Associated with the Overtime Claim

Plaintiffs' central allegation is that Defendant paid them non-discretionary bump payments but failed to factor the bump payments into the regular rate of pay for purposes of calculating overtime pay and premium pay. Defendant advanced two arguments against this allegation. (Kim Decl. ¶ 47.)

First, Defendant will argue that the bump payments were non-discretionary. A non-discretionary payment is one that is "owed 'pursuant to [a] prior contract, agreement, or promise,' not 'determined at the sole discretion of the employer.'" (*Ferra*, 11 Cal. 5th at 863; see also 29 U.S.C.A. § 207(e)(3); (DLSE Enforcement Manual 49.1.2.4(3)(a) (stating discretionary payments not included).) Conversely, a discretionary payment is one that is "paid without prior contract, promise or announcement and the decision as to the fact and amount of payment lay in the employer's sole discretion." 29 C.F.R. § 778.211 (b); *see Brown v. Nipper Auto Parts & Supplies, Inc.*, No. CIV.A. 7:08CV00521, 2009 WL 1437836, at *7 (W.D. Va. May 21, 2009) (holding bonuses were discretionary because they were not promised beforehand, although bonuses had been paid previously); *Vire v. Entergy Operations, Inc.*, No. 4:15-CV-00214 BSM, 2016 WL 10575139, at *5 (E.D. Ark. Oct. 31, 2016) (holding bonuses were discretionary although employees expected them, because employer never promised bonus).

Second, Defendant will argue that under the FLSA, "talent fees" paid to performers, such as the bump payments to Plaintiffs, are excluded from the regular rate. 29 U.S.C.A. § 207(e)(3)(c) (excluding from the regular rate, "[s]ums paid in recognition of services performed during a given period if … (c) the payments are talent fees (as such talent fees are defined and delimited by regulations of the Administrator) paid to performers, including announcers, on radio and television programs"); see also DLSE Enforcement Manual 49.1.2.4(3)(c) (stating talent fees are not included in the regular rate).

According to the Department of Labor, "talent fee" are "extra payments made to performers … where the payment is made: (a) "to an employee having regular duties as a staff performer (including announcers), as an extra payment for services as a performer on a particular commercial program," (b) [i]n pursuance of an applicable employment agreement or understanding … in a specific amount agreed upon in advance of the performance of the services or special services for which the extra payment is made." 29 C.F.R. § 550.1. Each of those requirements are met. Defendant will argue that Plaintiffs were "performers" because they were hired as background actors. (29 C.F.R. § 550.2 (b) (defining performer as "a person who performs a distinctive, personalized service as a part of an actual broadcast or telecast including an actor … or any person who entertains, affords amusement to, or occupies the interest of a radio or television audience by acting.").) Defendants will also argue the bump payments were "extra payments" because it was "in addition to the straight-time and overtime compensation." (29 C.F.R. § 550.2 (a) (defining "extra payment").) Finally, Defendant will argue that part b is met (if the Plaintiff's allegations are correct) because the "non-discretionary" payment was made in accordance with an advance agreement or understanding.

Plaintiffs have counterarguments to Defendant's arguments. However, because Plaintiffs' overtime claim is entirely based on this issue, they understood that the court could find no liability if it agreed with either of the arguments above. (Kim Decl. ¶ 48.)

b) The Risks Associated with the Unpaid Premium Wages Claim

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

Plaintiffs' claim for unpaid premium wages are based on Defendant's failure to factor the bump payments. Therefore, for the reasons explained above, Plaintiffs understood that the court could find no liability to their claim for premium wages. (Kim Decl. ¶ 49.)

c) The Risks Associated with the Reimbursement Claim

Under California Labor Code§ 2802(a) an employer "shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer."

Plaintiffs allege that Defendant required employees to incur business expenditures for which they were never reimbursed, including the costs of using their personal device to communicate with Defendant. (Kim Decl. ¶ 50.) Plaintiffs perceived this as a high-risk claim because the communications were performed before the day of the shoot and therefore were pre-employment activities that did not require reimbursement. (*Cochran v. Schwan's Home Services, Inc.* (2014) 228 Cal.App.4th 1137.) There is a risk that the Court would find no liability. (Kim Decl. ¶ 51.)

d) The Risks Associated with the Wage Statement Claim

Labor Code § 226(a)(2) requires that every employer shall furnish each of his or her employees an accurate itemized statement in writing showing total hours worked by the employee. Labor Code § 226(a)(9) requires the wage statement to display all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

e) The Risks Associated with the Waiting Time Penalty Claim

Under Labor Code § 201.5, an employee engaged in the production of motion pictures whose employment terminates is entitled to receive payment of the wages earned and unpaid at the time of termination by the next regular payday. Labor Code § 203 provides that an employer's non-compliance results in a penalty for up to 30 days. (*See Barnhill v. Robert Saunders & Co.* (1981) 125 Cal.App.3d 1, 7; *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.)

Here, Plaintiff contends that they and the Class are entitled to 30 days of additional wages because Defendant failed to blend the bump payment into their overtime and/or premium pay. However, Defendant's argument that the bump payments are entirely discretionary and/or fall under the definition of "talent fees" under the FLSA and therefore excluded from the regular rate, creates uncertainty. Moreover, even though the bump payments technically should have been calculated into the regular rate, the court could find that Defendant's actions were not "willful" and that penalties are unavailable. Since the waiting time penalties consists of 99% of class damages, Plaintiffs believed that a significant discount on this claim was reasonable given the attendant risks. (Kim Decl. ¶ 52.)

f) The Risks Associated with the PAGA Claim

Plaintiff De Leon is cognizant of risks associated with his PAGA claim and has therefore agreed to discount this claim for multiple reasons. First, the aggrieved employees' PAGA claims arise from the same violations as the foregoing class claims and bear the same risks on the merits. Second, the Court has discretion to award less than the maximum penalty, which Defendant argued would be appropriate considering the low amount of direct wage damages, even if Plaintiff De Leon prevails. (*See* Labor Code § 2699(e)(2) ["a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory"]; *Carrington v. Starbucks Corporation* (2018) 30 Cal.App.5th 504, 529 [affirming award of 10% of maximum PAGA penalty].) Finally, the Settlement Class is compensated for these violations in the proposed Settlement Agreement, and thus any PAGA recovery for these same violations would be duplicative. Thus, PAGA did not make up a significant percentage of the overall potential liability compared to other claims. (Kim Decl. ¶ 53.) As such, the Settlement Agreement's contemplated PAGA payment of $28,500.00 is appropriate. (Kim Decl. ¶ 54.)

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

There is significant expense associated with the class certification process, which the Parties can avoid by entering into the contemplated Settlement Agreement now. (Kim Decl. ¶ 55.) If the Court did eventually certify a class, trial of a case involving approximately 4,118 Settlement Class Members would require the retention of expensive expert witnesses, the accrual of extensive litigation costs, and a significant time overlay by the Parties. (Kim Decl. ¶ 56.) Moreover, given the complexity and unsettled nature of the issues in this case it is likely that any outcome at trial would have resulted in a lengthy and costly appeal. (Kim Decl. ¶ 57.) An appeal would result in further delay for the Settlement Class Members who are waiting for a resolution in this matter. (*Id.*)

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

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

4. The Risk of Maintaining Class Action Status through Trial

This case has not yet been certified to be tried as a class action. (Kim Decl. ¶ 58.) While Plaintiffs believe there is strong evidence to support certification of several possible subclasses, certification is always hard fought and subject to judicial discretion. Moreover, 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 Named Plaintiffs and of several person(s) most knowledgeable regarding Defendant's policies. (*Id.*) There is a risk for both sides as to what these depositions will reveal and whether they will support class certification to the extent expected. (*Id.*)

5. The Amount Offered in Settlement

It was very difficult for the Parties to reach this Settlement of $950,000.00. (Kim Decl. ¶ 59.) This Settlement is the result of adversarial, non-collusive, and arms-length negotiations. (Kim Decl. ¶ 60.) 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, Honorable Margaret Nagle (Ret.). (*Id.*)

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

Plaintiffs assessed full value of the Overtime Wages claim, without any discount, at approximately $10,377.36. (Kim Decl. ¶ 61.) Plaintiffs used the average hourly rate of $15.00

and assumed that the 4,118 individuals who make up the 203 Class, the Central Casting Class, and the Wage Class each received a $5 bump payment, and was paid two (2) hours of overtime wages (or $45) and one (1) break violation ($15) based on an unblended regular rate.[1] (Kim Decl. ¶ 62.)

Based on the same assumptions, the full value of the Meal Period and Rest Period claim, assuming a 100% violation rate, was $2,594.34.[2] (Kim Decl. ¶ 63.)

With regard to the Reimbursement Claim analysis, Plaintiffs believed that it was reasonable to value the potential reimbursement at $2 per Class Member, for reimbursement of the cost of using one's personal device for communicating with Defendants' casting agents. This brought the damages for this claim to $8,236.00 ($5 x 599 Class Members). (Kim Decl. ¶ 64.)

Plaintiffs valued the Wage Statement Claim, without discount, at approximately $53,200 (Kim Decl. ¶ 65.) This is based on 883 workweeks for 702 Class Members who worked from February 15, 2022 through the date of Preliminary Approval. (*Id.*)

Plaintiffs valued the Waiting Time Claim, tied to the claims for unpaid wages, at $20,696,582.40.[3] (Kim Decl. ¶ 66.) This was based on the full amount of waiting time penalties for 3,679 individuals who comprise of the 203 Class and the Central Casting Class. (Kim Decl. ¶ 67.) Considering the derivate nature of Labor Code section 203 and the disputes over willfulness, Plaintiffs determined that accepting a steep discount on this claim was appropriate. (Kim Decl. ¶ 68.)

Finally, Plaintiffs calculated the value of the PAGA claim at $143,600 for the PAGA Period, which consists of 1194 workweeks for 952 Aggrieved Employees during the PAGA Period. (Kim Decl. ¶ 69.) The main risk taken into account with PAGA is the discretionary nature of the penalty award. (Kim Decl. ¶ 70.) The court could award the statutory maximum of one hundred ($100) dollars for the initial violation and two hundred ($200) dollars thereafter or – in theory – one cent per wage statement. (Kim Decl. ¶ 71.) While there is a dearth of available

[1] The blended rate is $15.63 per hour [$15 + ($5/8 hours)]. Thus, each Class Member was underpaid $1.89 in overtime wages ($46.89 - $45).

[2] Plaintiff contends that the average underpayment for meal premiums is $0.63. Thus, the total underpayment for all the Class Members is $2,594.34 ($0.63 * 4,118).

[3] Daily wage of $187.52 * 30 * 3,679 = 20,696,582.40.

authority, in Plaintiffs' view, were they to succeed on any of the underlying Labor Code violations (especially waiting time penalties), it is not likely that the Court would also award a large amount of PAGA penalties on top of damages. (Kim Decl. ¶ 72.)

Per Plaintiffs' assessment, the maximum potential value of all of Plaintiffs' and the Settlement Class Members' claims was approximately $20,914,590.10 (Kim Decl. ¶ 73) However, as a result of the forgoing risks on the merits, including the fact that 99% of the total exposure is based on waiting time penalties, Class Counsel believes the Gross Settlement Fund of $950,000.00 is fair and reasonable. (Kim Decl. ¶ 74.)

6. The Experience and Views of Counsel

Finally, counsel's experience and success in similar class actions also weigh in favor of preliminary approval. (*See Wershba, supra*, 91 Cal.App.4th at 245.) Class Counsel is very experienced in prosecuting complex employment litigation in complex wage, hour, and working condition violations. (Kim Decl. ¶¶ 81-86.) Class Counsel is well versed in class action litigation and has diligently and aggressively pursued this action. (*Id.*) Class Counsel currently serves as Class Counsel for dozens of pending class action lawsuits throughout California. (*Id.*) After factoring in the risks explained above, Class Counsel believes that the proposed settlement is fair and reasonable. (Kim Decl. ¶ 82.)

7. The PAGA Allocation is Reasonable

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

Here, $28,500.00 is allocated to PAGA Penalties. (Kim Decl ¶ 75.) Given that Defendant will be pay a total of $950,000 as a result of the alleged violations, the class and PAGA settlement is a large disincentive for Defendant to engage in similar Labor Code violations in the future. (Kim

Decl ¶ 76.) And, because all Class Members will receive a Class Notice with contact information for Class Counsel, those employees will know to contact Class Counsel in the future if Defendant attempts to engage in similar practices. (Kim Decl ¶ 77_.) These factors – the payment of a large sum and employee notice of violations and potential violations – serve to maximize enforcement of state labor laws. (Kim Decl ¶ 78.) Also, unlike in *Moniz*, here there is no unsubstantiated and disproportionate allocation of civil penalties between different groups of employees. (Kim Decl ¶ 79.) Each Aggrieved Employee will receive the same amount of civil penalty because each worked one Workweek during the PAGA Period. (Kim Decl ¶ 80.) Based on the foregoing, the PAGA allocation and the individual PAGA payment satisfies policies underlying California's wage and hour laws.

8. The Class Payment Allocation Is Fair and Reasonable

Plans of allocation are subject to the same standard of review as class action settlements; they must be "fair, adequate and reasonable." (*See, e.g., Officers for Justice v. Civil Service Comm'n* (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the proposed plan of allocation compensates Settlement Class Members pro rata based on the Net Settlement Amount. Each participating Class Member will receive 1 net settlement share for each day they were paid overtime and/or a meal or rest premium and were also paid a bump within the applicable Class Period, plus 10 net settlement shares for each project they worked on for Defendant and were paid overtime and/or a meal or rest premium on the same day they were paid a bump within the applicable Class Period. Each participating Class Member will then receive a percentage of their Class Allocation based on their total net settlement shares divided by the Class's total net settlement shares. The Class Allocations are: 203 Class Allocation (90.57%), Central Casting Class Allocation (8.59%), Wage Only Class Allocation (0.84%).This allocation distributes Settlement funds proportionally to each class member's damages, and should therefore be approved as fair, adequate, and reasonable. (Ex. 1 at § 3.2.4.1)

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

Plaintiffs request that the Court approve the proposed plan and form of Class Notice. The standard for determining the adequacy of notice is whether the notice has "a reasonable chance of reaching a substantial percentage of the class members." (*Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974.) Pursuant to the Settlement Agreement, the Notice will be sent to the last known address of all Class Members, or to an updated address if one is located in the National Change of Address Database. (Ex. 1 at ¶ 7.5.) If any Notices are returned as undeliverable, the Settlement Administrator will undertake another reasonable address verification measure to locate a valid mailing address and will promptly send the Notice to the new address. (*Id*.) As such, the Notice is likely to reach most, if not all, Class Members.

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

Here, the Notice clearly explains the proposed Settlement Agreement and the options to opt out of the Settlement or object to it at the Final Approval Hearing. (Ex. 1 at ¶¶ 7.6,7.7; *see also* Ex. A to the Settlement Agreement at pp. 3, 5 [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 PLAINTIFFS

The Named Plaintiffs are entitled to an enhancement for their valiant effort and time expended in this matter. (Kim Decl. ¶ 88.) The time spent by Farzad Azima and Adam De Leon is significant and includes researching and retaining competent counsel; providing information to Class Counsel regarding the nature of the work; 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; participating during mediation; and responding promptly to Class Counsel's communications regarding settlement. (Kim Decl. ¶ 88; Azima Decl. ¶¶5-14; De Leon Decl. ¶¶ 5-15) Thus, in addition to the sums paid to Class Members, Plaintiffs request a proposed litigation enhancement in the amount of $10,000.00 each, to be paid from the Gross Settlement Fund. (Kim Decl. ¶ 89; Azima Decl. ¶¶ 15-17; De Leon Decl. ¶¶16-18; Ex. 1 at ¶ 3.2.1.) As set forth in the Settlement Agreement, Plaintiffs will also be entering into a general release of liability pursuant to Civil Code Section 1542. (Kim Decl. ¶ 89; Azima Decl. ¶ 18; De Leon Decl. ¶ 19; Ex. 1 ¶ 5.1.1.)

Class Counsel considers this to be a fair and reasonable enhancement. (Kim Decl. ¶ 90.) The enhancement takes into consideration the time, effort, and expense incurred by Plaintiffs in coming forward to litigate this matter on behalf of all Class Members. (*Id.*) Plaintiffs will provide a detailed declaration with the Final Approval Motion detailing his participation and further justification for the enhancement. (*Id.*)

VII. SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY

As indicated on the Proof of Service, Plaintiffs' Motion for Approval of Class Action Settlement 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 Plaintiffs' Motion, all related documents, and copy of the email from the LWDA confirming receipt is attached to the Declaration Frank H. Kim as Exhibit 2. (Kim Decl. ¶ 91.)

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VIII. CONCLUSION

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

DATED: September 20, 2024 **KIM LEGAL, APC**

By: *\/s/ Frank H. Kim*
FRANK H. KIM
Attorneys for Plaintiffs Farzad Azima and Adam De Leon 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 3435 Wilshire Blvd., Suite 2700, Los Angeles, California 90010.

On September 20, 2024, I served all interested parties in this action the following documents described as: **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** as follows:

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

Executed on September 20, 2024, at Los Angeles, California.

/s/ Frank Kim
Frank H. Kim