KINGSLEY SZAMET
EMPLOYMENT LAWYERS
ERIC B. KINGSLEY, Esq. (SBN 185123)
eric@kingsleylawyers.com
KELSEY M. SZAMET, Esq. (SBN 260264)
kelsey@kingsleylawyers.com
JESSICA BULAON, Esq., (SBN 340749)
jessi@kingsleylawyers.com
16133 Ventura Blvd., Suite 1200
Encino, CA 91436
Tel: (818) 990-8300, Fax (818) 990-2903

ABRAMSON LABOR GROUP
WILLIAM ZEV ABRAMSON, Esq. (SBN 289387)
Wza@abramsonlabor.com
1700 W Burbank Blvd.,
Burbank, CA 91506
Tel: (213) 493-6300, Fax (213) 382-4083

Attorneys for Plaintiff and the proposed class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF STANISLAUS

ERNESTINE JIMENEZ, an individual, on behalf of herself and others similarly situated, PLAINTIFF, v. MOM365 NEWBORN PHOTOGRAPHY; and DOES 1 thru 50, inclusive, DEFENDANTS.	CASE NO. CV-23-003097 [Consolidated with Case No. CV-23-004587] [Case Assigned for All Purposes to Hon. John R. Mayne in Dept. 21] **NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** *[Filed concurrently with Motion for Approval of Attorneys' Fees and Costs; Declarations of Kelsey M. Szamet, Ernestine Jimenez and Lluvia Islas, Proposed Order, and Judgment]* Date: February 18, 2026 Time: 8:30 AM Dept.: 21 Complaint Filed: June 2, 2023 Trial Date: None Set

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on February 16, 2026 at 8:30 AM in Department 21 of the above-entitled court, Plaintiff Ernestine Jimenez ("Plaintiff") will, and hereby does, move the Court for an Order of Final Approval of the Class Settlement in this case. Plaintiff moves the Court for an order:

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

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

3. Affirming Ernestine Jimenez as Class Representative and awarding an enhancement award of $5,000.00;

4. Awarding Phoenix Class Action Administration Solutions claims administration fees of $10,750.00 for its services as Administrator; and,

5. Entering judgment.

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

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

DATED: January 15, 2026

KINGSLEY SZAMET EMPLOYMENT LAWYERS

By: ______________________________

Kelsey M. Szamet
Attorneys for Plaintiff ERNESTINE JIMENEZ and the proposed class

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Cases

State Cases

State Statutes

State Regulations

Other Authorities

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Ernestine Jimenez ("Plaintiff") submits this Motion for Final Approval of Class Settlement and requests that the Court:

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

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

3. Affirm named Plaintiff Ernestine Jimenez as Class Representative and award a cumulative Class Representative payment of $5,000.00; and

4. Award Phoenix Class Action Administration Solutions claims administration fees of $10,750.00 for its services as Administrator;

5. Enter judgment.

II. FACTUAL BACKGROUND

A. Litigation Overview and Procedural History

Mom365 Newborn Photography is a Missouri corporation operating within the State of California that employs photographers to take photos of newborns and sell photo packages at various hospitals statewide.

On June 2, 2023, Plaintiff filed this wage and hour class action lawsuit in Stanislaus Superior Court Case No. CV-23-003097 ("Class Action Complaint"), alleging seven causes of action, including: (1) failed to pay wages and/or overtime under Labor Code sections 510, 1194, and 1199; (2) failure to pay minimum wage pursuant to Labor Code section 1194; (3) failure to provide rest breaks pursuant to Labor Code section 226.7; (4) failure to reimburse expenses pursuant to Labor Code section 2802; (5) failure to issue accurate itemized wage statements pursuant to Labor Code section 226(a); (6) penalties under Labor Code section 203; and (7) violation of Business & Professions Code section 17200. ("Declaration of Kelsey M. Szamet, "Szamet Decl.") ¶5.) Also on June 2, 2023, Plaintiff sent a notice letter, pursuant to Labor Code section 2699 ("PAGA"), to the Labor Workforce Development Agency ("LWDA") regarding her intent to seek civil penalties for the same Labor Code violations listed above and alleging additional Labor Code violations, under Labor Code section 2699, et seq. (Szamet Decl. ¶6.)

On July 27, 2023, Defendant filed a Motion to Compel Binding Arbitration, which was denied by the Court on October 5, 2023. (Szamet Decl. ¶7.)

On August 15, 2023, Plaintiff filed a Representative Action Complaint, Stanislaus Superior Court Case No. CV-23-004587, ("PAGA Complaint") with a single cause of action for penalties pursuant to Labor Code § 2699, et seq., the Private Attorneys General Act ("PAGA") for violations of Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 1194, 1194.2, 1199 and 2802. (Szamet Decl. ¶8.)

On September 7, 2023, Plaintiff filed a First Amended Class and Representative Action Complaint ("FAC"), consolidating the Class Action Complaint and PAGA Complaint. (Hereafter, the "Action".) (Szamet Decl. ¶9.)

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

The Parties agreed to focus their efforts on resolving this case through early mediation. (Szamet Decl. ¶10.) On January 14, 2025, the Parties participated in an all-day mediation presided over by Henry Bongiovi, which led to the Agreement to settle the Action. (Szamet Decl. ¶11.)

Prior to mediation, Plaintiff obtained, through informal discovery, Plaintiff's personnel file, time and pay records, employment records, employee handbooks, and Class data, including time and pay records and employment dates. (Szamet Decl. ¶12.) 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. (Szamet Decl. ¶13.) Defendant contends, among other things, that, at all times, it has complied with the California Labor Code, and the Industrial Wage Commission

Orders. (*Id.*)

Based on their own independent investigation and evaluation, Class Counsel is of the opinion that the Agreement with Defendant is fair, reasonable and adequate, and in the best interest of the settlement classes in light of all known facts and circumstances, including the risk of significant delay, defenses asserted by Defendant, uncertainties regarding a class and representative action trial on the merits, and numerous potential appellate issues. (Szamet Decl. ¶14.) Although Defendant denies any liability, Defendant is agreeing to this Agreement solely to avoid the cost of litigation. (*Id.*) Accordingly, the Parties and their counsel desire to fully, finally, and forever settle, compromise and discharge all disputes and claims arising from or relating to the Action on the terms set forth here. (*Id.*)

C. Preliminary Approval

On September 10, 2025, the Court issued an Order preliminarily approving the settlement in this case, approving the proposed Class Notice, ordering that the Administrator send notice to the Class, and setting a date for the Final Approval and Fairness Hearing. (Szamet Decl. ¶15.)

III. THE PRELIMINARILY APPROVED SETTLEMENT

A. The Settlement Class

The settlement class is defined as: "all non-exempt employees who worked for Defendant in California at any time between June 2, 2019 through March 15, 2025." ("Class"). (Szamet Decl. ¶16; Ex. 1 at ¶1.5.)

The Class Period is June 2, 2019 through March 15, 2025. (Szamet Decl. ¶17; Ex. 1 at § ¶1.12.) As of January 14, 2025, (the date of mediation), and based on documents and other information produced by Defendant, there are approximately 487 Settlement Class Members who worked a total of 14,280 Workweeks. (Szamet Decl. ¶18; Ex. 1 at ¶4.1.)

The final Class contained 535 individuals. (Islas Decl. ¶3.)

B. Aggrieved Employees

The Aggrieved Employees are defined as: "all non-exempt employees who worked for Defendant in California at any time between June 2, 2022 through March 15, 2025." ("Aggrieved Employees") (Szamet Decl. ¶19; Settlement, Ex. 1 at ¶1.4.) The PAGA Period is

June 2, 2022 through March 15, 2025. (Szamet Decl. ¶20; Ex. 1 at ¶1.31.) Based on documents and other information produced by Defendant in connection with the mediation and the negotiation of the Settlement Agreement, there are approximately 151 Aggrieved Employees who collectively worked a total of 2,162 PAGA Pay Periods. (Szamet Decl. ¶21; Ex. 1 at ¶4.1.)

C. Settlement Payments

As detailed fully in the Agreement, the Settlement provides for Defendant to pay a Gross Settlement Amount of $392,700.00, which includes the sum of the Individual Class Payments, the Class Representative service award, the Class Counsel Award, PAGA Payment, and the Settlement Administration Costs. (Szamet Decl. ¶22; Ex. 1 at ¶3.1.) Plaintiff now requests final approval of the allocation of the Gross Settlement Amount to determine the Net Settlement Amount for distribution to the Class as follows:

Gross Settlement Amount:	$	392,700.00
Less Class Counsel's Fees:	$	130,900.00
Less Class Counsel's Costs:	$	24,149.99[1]
Less Administrator Costs:	$	10,750.00
Less PAGA Payment:	$	10,000.00 *($*7,500.00 *to the LWDA; $*2,500.00 *to remain in the* Net Settlement Amount*)*
Less Class Representative Enhancement:	$	5,000.00
Net Settlement Amount:	**$**	211,900.01

D. Individual Settlement Payments

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

[1] The Agreement provided for counsel to receive cost reimbursement up to $25,000.00. However, counsel's final costs come to $24,149.99, which includes the anticipated cost of $600 for filing the instant motions. (Szamet Decl. ¶23, Ex. 5), The extra $850.01 will remain in the net settlement fund, causing the net distribution to the Class Members to be slightly higher than the $211,050.00 contemplated in the settlement agreement. (*Id.*, Ex. 1 at ¶3.2.2.)

The Individual PAGA Payment is an individualized amount based on the number of PAGA Period Pay Periods worked by the aggrieved employee during the PAGA Period. (Ex. 1 at ¶3.2.5.1; see also Ex. A to the Agreement at pp. 3 [Class Notice].) It shall be calculated as follows: twenty-five percent (25%) of the PAGA Payment (or $2,500) divided by the total number of PAGA Period Pay Periods worked by all aggrieved employees during the PAGA Period and multiplying the result by each aggrieved employee's PAGA Period Pay Periods. (See Ex. 1 at ¶3.2.5.1; Id. at Ex. A to the Agreement [Class Notice].)

Based on these calculations, the average potential recovery is $394.49 per Settlement Class Member. (Islas Decl. ¶13.)

E. Class Notice

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

To date, Phoenix Class Action Administration Solutions received zero (0) requests to be excluded ("opt-outs") from the proposed Agreement and zero (0) objections. (Islas Decl. ¶¶7- 8.)

F. Check Mailed Settlement – No Reversion

The Parties agreed to, and the Court preliminary approved, a checks-mailed settlement without the possibility of reversion of settlement funds to Defendant. Under the Agreement, every Settlement Class Member will receive a settlement check and Settlement Class Members do not need to submit a claim in order to receive a settlement check. Any funds that remain uncashed after the void date shall be turned over by the Administrator, with information for each Settlement Class Member who failed to timely cash his/her settlement check, to the State of California Controller's Office Unclaimed Property Fund. (Ex. 1 at ¶4.4.3.)

IV. THE COURT SHOULD ORDER FINAL APPROVAL OF THE SETTLEMENT

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

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

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

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

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

Third, Class Counsel have significant experience in cases of this type, including several years prosecuting wage, hour, and working condition violations. (Szamet Decl. ¶28.) Class Counsel is thus qualified to evaluate the class claims and viability of the defenses. Class Counsel believes that the settlement is fair, reasonable, adequate, and in the best interests of the class and that the average recovery for each Settlement Class Member of over $394.49 is substantial, given the risks inherent in litigation and the defenses asserted. (Szamet Decl. ¶29.)

Finally, the fourth *Dunk* factor considers the percentage of objectors. Here, there were zero (0) requests to be excluded and no objectors. (Islas Decl. ¶¶7-8.) As all of the *Dunk* factors are satisfied, this settlement is entitled to a presumption of fairness.

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

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

The proposed settlement satisfies each of these factors. (Szamet Decl. ¶30.) Class Counsel conducted extensive informal discovery before entering into meaningful settlement negotiations in this matter. (*Id* at Szamet Decl. ¶¶12-13.) This discovery permitted Class Counsel to fairly evaluate the strength of the case and the risks associated with ongoing litigation. (Szamet Decl. ¶31.) Class Counsel is experienced in handling wage and hour class actions and, after weighing all of the following factors, supports this Agreement. (Szamet Decl. ¶32.)

1. The Strength of Plaintiffs' Case

a) The Risks Associated with the Unpaid Wages Claim and Minimum Wage Claim

"California employees are entitled to compensation for all hours worked, which means "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." (Title 8 Cal. Code of Regs., § 11080(2)(G); *See Troester v. Starbucks Corp*. (2018) 5 Cal.5th 829, 845, as modified on denial of reh'g (Aug. 29, 2018).) Time is compensable if an employee is "subject to the control of an employer" even if not working, or if an employee "is suffered or permitted to work" even if not "under the employer's control, provided the employer has or should have knowledge of the employee's work." (*Frlekin v. Apple Inc*. (2020) 8 Cal.5th 1038, 1046, reh'g denied (May 13, 2020) (citations omitted.) An employer controls an employee if the employer directs an employee and the employee is unable to use their time how they wish. (*Id*. at p. 1047.) Other factors courts may consider include whether the activity is required, "the location of the activity, the degree of the employer's control, whether the activity primarily benefits the employee or employer, and whether the activity is enforced through disciplinary measures." (*Id*. at p. 1056; *Cf. Gibbs v. TWC Administration, LLC* (S.D. Cal., Jan. 3, 2020, No. 17CV01513DMSAGS) 2020 WL 42768, at *9 (denying Defendant's motion for summary judgment when Plaintiff-employees conducted off-the-clock pre-shift activity in preparation to start work right when they clocked in).)

In *Troester*, employees spent four to ten minutes completing tasks to close up the store, such as setting the alarm and locking the door. (*Troester*, 5 Cal.5th 829 at p. 843.) The Court held that California law prohibits employers from requiring employees to work off the clock, even for minutes, without compensation. (*Id*. at p. 848.) The Court explained:

> An employer that requires its employees to work minutes off the clock on a regular basis or as a regular feature of the job may not evade the obligation to compensate the employee for that time by invoking the de minimis doctrine. As the facts here demonstrate, a few extra minutes of work each day can add up. . . . .What Starbucks calls "de minimis" is not de minimis at all to many ordinary people who work for hourly wages.
> (*Id*. at p. 847.)

Additionally, California workers are statutorily entitled to overtime compensation, unless they are properly classified as falling within one of the narrow exemption categories. Under California law, "[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek…shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee." (Lab. Code, § 510, subd. (a).) Furthermore, "[a]ny work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee." (Lab. Code, § 510, subd. (a).)

"Under California's minimum wage law, employees must be compensated for each hour worked at either the legal minimum for the contractual hourly rate, and compliance cannot be determined by averaging hourly compensation." *Bluford*, 216 Cal. App. 4th at 872. Labor Code § 1194(a) provides that it is unlawful to pay less than the minimum wage established by law. Defendant's failure to pay minimum wage and required by IWC Wage Order 4 violates Labor Code § 1194(a) and is therefore unlawful. Labor Code § 1194.2 further provides that in any action under to recover wages because of the payment of a wage less than minimum wage, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

Throughout the relevant period, Plaintiff maintains that she and other Class Members were required to work on a regular and consistent basis without receiving compensation for all hours worked at the appropriate rate of pay. (Szamet Decl. ¶33.) Plaintiff contends she was working off the clock during that time and is owed wages. (Szamet Decl. ¶34.) Specifically, Plaintiff contends that the time spent performing cash-to-check duties was all done off the clock because she was not permitted to remain clocked in if she left the hospital premises. (Szamet Decl. ¶35.) She also alleges that there is additional unpaid off-the-clock time due to lengthy clock-in/out procedures per shift. (Szamet Decl. ¶36.) Plaintiff estimates clocking in and out using the hospital landline took approximately 5 minutes. (Szamet Decl. ¶37.) Additionally, Plaintiff contends there are potential issues arising from Defendant's guaranteed "fallback pay" policy and the way this time is shown on employees' wage statements. (Szamet Decl. ¶38.) Plaintiff contends that Defendant would need to prove that it applied Plaintiff's appropriate blended rate when calculating her overtime rate. (Szamet Decl. ¶39.)

Plaintiff also alleged that there are numerous shifts where employees made less than the minimum wage even with the guaranteed fallback pay. (Szamet Decl. ¶40.) Specifically, Plaintiff estimates that shifts where she did go to the bank and convert the cash to check, it took her approximately 45 minutes to one hour off the clock. (Szamet Decl. ¶41.) Thus, even if Plaintiff received guaranteed fallback pay because she did not make enough in commissions, she still would have been paid less than the minimum wage when dividing her pay by all hours worked. (Szamet Decl. ¶42.)

First, Defendant vehemently denied this claim and argued that its labor policies prohibit off-the-clock work and Class Members were not working off the clock. (Szamet Decl. ¶43.) Second, Defendant argued that Plaintiff's theory of liability would be extremely difficult to prove on a classwide basis because Plaintiff will not be able to rely on the time records because – by definition – the alleged work is performed while not clocked in. (Szamet Decl. ¶44.) Defendant argued that this case would devolve into a series of mini-trials wherein each Class Member would have to testify as to whether he or she ever performed work off the clock. (Szamet Decl. ¶45.) Of course, Defendant argued that this would defeat class certification altogether. (Szamet Decl. ¶46.) See Brinker, 53 Cal. 4th at 1051-52 (holding that in the absence of a uniform, companywide policy, proof of liability is individual); *Amey v. Cinemark USA Inc*., No. 13-CV-05669-WHO, 2015 WL 2251504, at *12 (N.D. Cal. May 13, 2015) (denying certification of off-the-clock claim because plaintiffs' work requirements depended on the manager); *Brewer v. Gen. Nutrition Corp*., No. 11-CV-3587 YGR, 2014 WL 5877695, at *12 (N.D. Cal. Nov. 12, 2014) (denying certification based on policy requiring employees to finish closing duties within 30 minutes, because the court would still be left with numerous individual issues); *Pryor v. Aerotek Scientific, LLC*, 278 F.R.D. 516, 532-33 (C.D. Cal. 2011) (denying certification of off-the-clock claim).

Plaintiff acknowledges that this can be a highly difficult type of claim to prove because there are no time records to substantiate or evaluate the claim. (Szamet Decl. ¶47.) Instead, Defendant would argue that if there was any such issue of working off the clock, it would necessitate speaking to each and every Settlement Class Member about their experiences day to day and whether any off the clock time was ever worked and if so, why it was worked, when this allegedly occur, and for what amount of time. (Szamet Decl. ¶48.) This type of inquiry, Defendant would argue, makes its very difficult to establish liability based on common proof. (Szamet Decl. ¶49.) Based on this acute risk, Plaintiff believed it was appropriate to discount this claim for settlement purposes. (Szamet Decl. ¶50.)

b) The Risks Associated with the Rest Period Claim

Labor Code section 226.7, subdivision (c), requires an employer to pay an additional hour of compensation for each workday the employer fails to provide a paid rest period according to law. Employees are entitled to a paid ten (10) minute rest break for every four (4) hours worked, or major fraction thereof. (Cal. Code Regs., tit. 8, § 11040, subd. 12(A).)

Plaintiff and the Proposed Class Members' rest period claims arise from a common allegation that Defendant did not provide employees with the opportunity to take first, second, and/or third 10-minute paid rest breaks in compliance with California law. The California Supreme

Court has held: "Employees are entitled to 10 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours and so on." (*Brinker Rest. Corp v. Superior Court*, supra, 53 Cal.4th at 1029.) In an eight-hour workday, being denied the two paid rest breaks in a day is "essentially perform[ing] 20 minutes of 'free' work." (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1104).

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

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

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

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

Moreover, commission-based employees are entitled to be paid for their rest breaks. In *Vaquero v. Stoneledge Furniture LLC* (2017), the court held that employers must separately compensate employees for rest periods when they are paid by commission. The court held that the wage order requiring employers to count "rest period time" as "hours worked for which there shall be no deduction from wages" applies to commissioned employees, and the commission plan must separately pay for rest periods. (*Vaquero v. Stoneledge Furniture LLC*, 9 Cal.App.5th 98 (2017).)

Here, Plaintiff contends that the nature of the work did not permit Plaintiff and the Proposed Class to take their rest periods. (Szamet Decl. ¶51.) Because Plaintiff needed to make sales, Plaintiff was tasked with selling as many newborn photography packages as possible throughout her shift. (Szamet Decl. ¶52.) As expected when working with newborns, sometimes Plaintiff would spend a lot of time with a prospective client, waiting for the baby to be fed, to stop being fussy, etc. (Szamet Decl. ¶53.) Oftentimes, even after Plaintiff took the photos, the families would decide against purchasing a photo package. (Szamet Decl. ¶54.) As such, Plaintiff would make no commission during this time but could have spent hours with a single prospective client and was unable to take a lawful rest break. (Szamet Decl. ¶55.)

Arguably, *Vaquero* applies here when employees were paid solely commission, i.e. did not need guaranteed fallback pay. (Szamet Decl. ¶56.) If an employee was "trued up" via guaranteed fallback pay, then the employee was essentially paid for any rest breaks taken. (*Id.*) However, if an employee was paid solely commissions, then the employee would need to have been paid separately for rest periods under *Vaquero*. (*Id.*) As such, Plaintiff maintained that Defendant's commission plan is unlawful under *Vaquero*, because it does not separately pay for rest periods. (*Id.*)

In its defense, Defendant would have argued that Plaintiffs' rest period claim was not appropriate for certification because California law does not require employees to record rest periods. Absent a shift-by-shift, break-by-break, employee-by-employee inquiry, Defendant would have argued that there was simply no way to know (1) whether a break was taken; and (2) if not, why not. (Szamet Decl. ¶57.) For each instance where an employee did not take a 10-minute rest period by the end of the fourth hour of work, the trier of fact would still have to determine why that particular employee had less than their full allotment of rest time. (Szamet Decl. ¶58.) Defendant accordingly would have argued that rest break claims are inherently individualized in nature because employers only need to "authorize and permit" breaks; they need not ensure that rest breaks are taken. *Brinker*, 53 Cal. 4th at 1004. To succeed, "[a]n employee must show that the employer prevented the employee from taking breaks; mere proof of knowledge that the employee was forgoing breaks is insufficient." As such, Plaintiff had to acknowledge that it could potentially by easy for Defendant to defeat certification of this claim if it was able to gather testimonial evidence from class members indicating that they were able to take all required rest breaks each day. (Szamet Decl. ¶59.) Though Plaintiff does not believe this was the case, Plaintiff must acknowledge it poses risks for the Class. (Szamet Decl. ¶60.) There is certainly risk as to both sides as to what declarations and depositions of class members might reveal. (Szamet Decl. ¶61.)

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." An employee acts in "discharge of his duties," for purposes of this Section when the employee acts within the "course and scope of employment." See *O'Hara v. Teamsters Union Local No. 856*, C.A.9 (Cal.)1998, 151 F.3d 1152.

Plaintiff alleges that Defendant failed to reimburse Plaintiff and the Proposed Class for all necessary business expenses. (Szamet Decl. ¶62.) Specifically, Defendant failed to reimburse Plaintiff for all mileage incurred when performing cash-to-check duties when she drove to her bank from the hospital and back. (Szamet Decl. ¶63.) Defendant's written mileage reimbursement policy states that it only reimburses for travel between hospitals, thereby failing to inform Plaintiff and the Proposed Class that they were entitled to reimbursement for any mileage incurred for work-related purposes. (Szamet Decl. ¶64.) Plaintiff also argued that Defendant encouraged employees to purchase props for the newborn photoshoots as a way to entice customers to purchase photo packages, but never reimbursed Plaintiff for these costs. (*Id.*) Additionally, Plaintiff contends that Defendant's written policies impose an unlawful timeframe upon its employees to seek reimbursement for work-related expenses. (Szamet Decl. ¶65.) This timeframe is invalid under Sections 2802 and 2804 of the Labor Code. (*Id.*)

Defendant argued that its reimbursement policy was lawful and, in fact, clearly stated that it reimbursed for travel between hospitals. (Szamet Decl. ¶66.) Defendant would also argue that its timeframe for reimbursement requests was reasonable to ensure that all requests were submitted and timely paid. (Szamet Decl. ¶67.) Defendant would argue that it cannot reimburse for mileage that it is not aware of or that is not timely submitted. (Szamet Decl. ¶68.) Finally, Defendant would again argue this claim is not amenable to certification because it is a highly individualized inquiry as to whether some class members, like Plaintiff, may have taken trips to the bank or perhaps bought their own props. (Szamet Decl. ¶69.) Defendant would argue that you would need to inquire of each class member whether they contend they are owed reimbursement for any outstanding travel and if so, for how much. (Szamet Decl. ¶70.) As to the props, Defendant would maintain it never required the purchase of props and if employees chose to do that, it was not something they were aware so could not reimburse for it. (Szamet Decl. ¶71.)

Taken together, Plaintiff recognized that there was acute risk to this claim and ultimately believed a discount was resolution purposes was appropriate. (Szamet Decl. ¶72.)

d) The Risks Associated with the Wage Statement Claims

Labor Code § 226(a) provides:

> An employer … shall furnish to his or her employee … an accurate itemized statement in writing showing … (2) total hours worked by the employee…, (4) all deductions from the employees' wages…, (6) the inclusive dates for each pay period, (7) the last four digits of the employees' social security number or the employees' identification number other than a social security number, (8) the name 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 wages twice per month, or each time wages are paid.

Labor Code § 226(a) specifically requires that the employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing total hours worked by the employee, and showing all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. (Szamet Decl. ¶73.) Penalties for wage statement violations are calculated according to the formula provided by Labor Code section 226(e)(1): An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of $4,000.

Specifically, Plaintiff contends that she and the Proposed Class are issued wage statements that do not include all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee in violation of Labor Code §§ 226(a)(2) and (9). (Szamet Decl. ¶74.) All of Plaintiff's wage statements do not show any applicable pay rate and instead show “$0.0000” or is left entirely blank. (Szamet Decl. ¶75.) As such, Defendant’s failure to provide accurate itemized wage statements according to Labor Code § 226(a) was done on a regular and consistent basis. Thus, Defendant has knowingly and intentionally failed to comply with Labor Code section § 226(a) by failing to issue accurate itemized wage statements to Plaintiff.

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

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

e) The Risks Associated with the Waiting Time Penalties Claim

Under Labor Code section 203, if an employer fails to provide wages at the time of an employee's termination or within seventy-two (72) hours of resignation, then the employee's wages shall continue as a penalty for up to thirty (30) days. (Labor Code § 203.) Section 203 reflects a public policy that favors the full and prompt payment of earned wages. (See, e.g., *Barnhill v. Robert Saunders & Co*. (1981) 125 Cal.App.3d 1, 7; *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.) Under Labor Code § 203, a "'willful' failure to pay wages … occurs when an employer intentionally fails to pay wages to an employee when those wages are due." Cal. Code Regs., tit. 8, § 13520; see also *Diaz v. Grill Concepts Services, Inc.* (2018) 23 Cal.App.5th 859 ("willful" simply means that "the employer intentionally failed or refused to perform an act which was required to be done[.] Willful … does not necessarily imply anything blameable, or any malice or wrong toward the other party").

Here, Plaintiff contends that Defendant failed to properly pay overtime for any work in excess of eight (8) hours per day and/or any work in excess of forty (40) hours per week. (Szamet Decl. ¶76.) The risk analysis for the section 203 claim flows from the risk analysis for the underlying wage claim discussed above as derivative waiting-time penalties are only as strong as the underlying predicate claims, and are subject to good faith defenses. (Szamet Decl. ¶77.) If Defendant could prove, as it contends, that class members were properly paid for all hours worked, there would be no recovery of wages and no waiting time penalties that flow therefrom. (Szamet Decl. ¶78.)

Plaintiff also alleged that Defendant owes waiting time penalties by not paying former alleged employees all wages owed and all premium payments for non-compliant meal or rest periods, Labor Code § 226.7. Pursuant to *Murphy v. Kenneth Cole Productions, Inc*. (2002) 40 Cal.4th 1094, 1120, Plaintiff contended that break premium payments constitute "wages" under Labor Code § 203. ("We hold that section 226.7's plain language, the administrative and legislative history, and the compensatory purpose of the remedy compel the conclusion that the 'additional hour of pay' is a premium wage, not a penalty"). (Szamet Decl. ¶79.)

The bigger risk that Plaintiff analyzed, however, is that to establish liability for waiting time penalties, Plaintiff would have to establish not only that the underlying violations occurred, but also that Defendant's conduct was "willful." (Labor Code § 203; Szamet Decl. ¶80.) If

Defendant could establish that any alleged failure to blend was the result of mistake or oversight and not "willful", then it is possible that Plaintiff would not be able to recover penalties for this claim. (Szamet Decl. ¶81.) Because of this risk, Plaintiff determined that accepting a discount for settlement purposes was appropriate. (Szamet Decl. ¶82.)

f) The Risks Associated with the PAGA Claim

California's Private Attorneys General Act ("PAGA"), Labor Code § 2698, et seq., permits private litigants to recover civil penalties for violations of the Labor Code. PAGA provides that plaintiffs may recover previously established civil penalties (section 2699(a)) or, if none were established, plaintiffs may recover default penalties provided in section 2699(f) in the amount of $100 per employee per pay period for the initial violation and $200 for subsequent violations.[2]

Plaintiff discounted the PAGA claim for multiple reasons. First, the aggrieved employees' PAGA claims are arguably derivative of all the foregoing class claims. (Szamet Decl. ¶83.) If Plaintiff cannot establish liability on the underlying claim (taking into account the risks discussed above), then the derivative PAGA claim will also necessarily fail. (*Id.*) Second, a court has discretion to award less than the maximum penalty. (Szamet Decl. ¶84.) (Labor Code § 2699(e)(2) ("a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory"). See e.g., Carrington v. Starbucks Corporation (2018) 30 Cal.App.5th 504, 241 Cal.Rptr.3d 647, 669 (affirming award of 10% of maximum PAGA penalty). Third, the likelihood of the Court reducing the PAGA damages

[2] The comprehensive reform of California's Private Attorneys General Act is now the law (AB 2288 and SB 92). The PAGA reform took effect immediately and applies to cases filed after June 19, 2024. Though it does not apply here as this was prior-filed, it is instructive to courts and practitioners on many issues including when "Subsequent' Penalties" may apply.

Where a penalty was not provided for under the PAGA, the default penalty was $100 for an initial violation and $200 for a subsequent violation. Plaintiffs argued that "subsequent" meant any violation after the first violation. Defendants generally argued, often citing *Gunther v. Alaska Airlines, Inc*., 72 Cal. App. 5th 334 (2021) that a subsequent violation could only occur after an initial violation was found to have occurred by a court or the Labor Commissioner.

The PAGA reform clarifies that the default $100 penalty applies to all violations, unless (1) a court or the Labor Commissioner finds that the employer's practice or policy violated the law within the last five years, or (2) a court determines that the employer acted "maliciously, fraudulently, or oppressively." The new law does not define what constitutes "maliciously, fraudulently, or oppressively." But, if either of the above apply, the default penalty will increase to $200 for subsequent violations.

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

2. <u>The Risk, Expense, Complexity, and Likely Duration of Further Litigation</u>

There is significant expense associated with the class certification process, which the Parties can avoid by entering into the contemplated Agreement now. (Szamet Decl. ¶86.) If the Court did eventually certify a meal or wage statement class, trial of a case involving approximately 487 Settlement Class Members would require the retention of expensive expert witnesses, the accrual of extensive litigation costs, and a significant time overlay by the parties. (Szamet Decl. ¶87.) Moreover, given the complexity and unsettled nature of the issues in this case it is likely that any outcome at trial would have resulted in a lengthy and costly appeal. (Szamet Decl. ¶88.) An appeal would result in further delay for the Settlement Class Members who are waiting for a resolution in this matter. (*Id.*)

3. <u>The Risk of Maintaining Class Action Status through Trial</u>

This case has not been certified to be tried as a class action. (Szamet Decl. ¶89.) While Plaintiff believes there is strong evidence to support certification of several possible subclasses (especially a rest period class), certification is always hard fought and subject to judicial discretion. Moreover, in class actions, decertification is always a possibility. (*Id.*) In attempting to certify a class, the parties would need to conduct multiple depositions, including of the Class Representative and of several person(s) most knowledgeable regarding Defendant's meal and rest policies. (*Id.*) There is a risk for both sides as to what these depositions will reveal and whether they will support class certification to the extent expected. (*Id.*)

4. The Amount Offered in Settlement

It was very difficult for the Parties to reach this Settlement of $392,700.00. (Szamet Decl. ¶90.) This Settlement is the result of adversarial, non-collusive, and arms-length negotiations. (Szamet Decl. ¶91.) 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, Henry Bongiovi, Esq. (Id.)

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

Plaintiff was provided with a data sample for mediation purposes and had it analyzed by an expert.[3] (Szamet Decl. ¶92.) There were 61 employees in the sample and the expert extrapolated the sample to 550 employees for purpose of analysis.[4] (Szamet Decl. ¶93.)

Working with the data expert, Plaintiff assessed the full value of the minimum wage/overtime claim, without any discount, at approximately $6,271. (Szamet Decl. ¶94.) Out of the sample of 61 employees, 10 appeared to have a small underpayment totaling 45 hours and when analyzed the approximate underpayment for those employees was $565. (Szamet Decl. ¶95.) Extrapolated to 550 employees this alleged underpayment was 496 hours and the exposure estimated at $6,271. (*Id.*)

Plaintiff assessed the full value of the rest period claim, without any discount, at approximately $206,818. (Szamet Decl. ¶96.) This amount is based upon 13,660 shifts of over 3.5 hours with each and every shift assumed to have a violation. (Szamet Decl. ¶97.) For the reasons above, Plaintiff determined that accepting a discount of the full amount was appropriate. (Szamet Decl. ¶98.)

With regard to the reimbursement claim analysis, Plaintiff believed that it was reasonable to value the potential reimbursement at $50 per month, per employee, per month. (Szamet Decl.

[3] Of the 61 employees in the sample, 55 were former employees; the data set covered the time period June 2, 2019 to December 26, 2023; and it included 2,520 shifts, 435 pay periods, and 811 workweeks. The average hourly rate was $16.16. (Szamet Decl. ¶92.)

[4] Noticeably, the analysis and the figures discussed below are actually somewhat overstated because there are actually only 487 Settlement Class Members. (Szamet Decl. ¶93.)

¶99.) These assumptions spanned 2,796 months as extrapolated bringing the damages for this claim to $139,800.00. (Szamet Decl. ¶100.)

Plaintiff valued the wage statement claim, without discount, at $178,633. (Szamet Decl. ¶101.) Plaintiff used $100 for each wage statement issued for 1,975 pay periods in the sample with an alleged violation. (Szamet Decl. ¶102.) Due to the risk discussed above that 226(a) liability would not attach under *Naranjo* and *Maldonado*, Plaintiff determined that a discount of this claim was fair for settlement purposes. (Szamet Decl. ¶103.)

Plaintiff valued the waiting time claim, tied to the wages/overtime claim, at $1,922,758. (Szamet Decl. ¶104.) Considering the derivate nature of Labor Code §203 and the dispute over whether class members were actually owed any wages, Plaintiff determined that accepting a steep discount on this claim was appropriate. (Szamet Decl. ¶105.)

As to the exposure for PAGA penalties under Labor Code §2699, et seq., Plaintiff valued this claim at approximately $197,500. (Szamet Decl. ¶106.) This was based upon expert analysis of the number of pay periods at issue during the PAGA relevant time period beginning June 2, 2022, multiplied by $100 per pay period (1,975 pay periods in the data x $100 = $197,500. (Szamet Decl. ¶107.) Plaintiff's exposure analysis assumes that she can prove there was an underlying Labor Code in each and every pay period that would trigger a civil penalty under PAGA. (Szamet Decl. ¶108.)

Thus, per Plaintiff's assessment, the maximum potential value of all of Plaintiff's and the Settlement Class Members' claims was approximately $2,651,780.00. (Szamet Decl. ¶109.) However, in looking at just the core damages related to the claims for alleged unpaid wages, rest period violations, and reimbursement, the maximum exposure was $352,889. (Szamet Decl. ¶110.) The amount attributable to statutory and civil penalties far outweighs the exposure on the underlying claims. (Szamet Decl. ¶111.) Plaintiff and Class Counsel believe that examining the core exposure together with the significant foregoing risks on the merits, supports a finding that the Gross Settlement Amount of $392,700.00 is fair and reasonable. (Szamet Decl. ¶112.)

b) Defendant's Financial Status

In addition to the risks considered above, one of the factors affecting settlement of this action was Defendant's financial status. (Szamet Decl. ¶113.) Defendant is an in-hospital newborn photography company which has faced declining sales in recent years due in part to photographer services not being offered by hospitals for a period of time due to the COVID-19 pandemic. (Szamet Decl. ¶114.) Class Counsel worked closely with the mediator and Counsel for Defendant the day of the mediation to verify the information and representations made by Defendant regarding their financial condition. (Szamet Decl. ¶115.) Class Counsel determined that obtaining a settlement on behalf of the Settlement Class now as opposed to protracted litigation with the uncertainty of Defendant's ability to pay made the most practical sense. (Szamet Decl. ¶116.)

5. <u>The Extent of Discovery Completed and Stage of the proceedings</u>

As outlined above, Class Counsel conducted a thorough investigation into the facts of the claims alleged. (Szamet Decl. ¶117.) The agreement to settle did not occur until Class Counsel exchanged and possessed sufficient information to make an informed judgement regarding the likelihood of success on the merits and the results that could be obtained through further litigation. (*Id*.)

6. <u>The Experience and Views of Counsel</u>

Kingsley Szamet Employment Lawyers is very experienced in prosecuting employment litigation, and the firm has focused its practice since 2000 on wage, hour, and working condition violations. (Szamet Decl. ¶¶118-120.) The firm is well versed in class action litigation and has diligently and aggressively pursued this action. (*IbId*.) Kingsley Szamet Employment Lawyers currently serves as Class Counsel for dozens of pending class action lawsuits in Northern, Central, and Southern California. (*Ibid*.) A list of representative cases that Kingsley Szamet Employment Lawyers has handled is included in the accompanying declaration of Kelsey M. Szamet. (Szamet Decl. ¶¶118-119.) After factoring in the risks explained above, Class Counsel believes that the proposed settlement is fair and reasonable. (Szamet Decl. ¶120.)

7. <u>The Presence of a Governmental Participant</u>

There is no governmental participant in this action except arguably the LWDA. (Szamet Decl. ¶121.)

8. <u>The Proposed Plan of Allocation Is Fair and Reasonable</u>

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 number of compensable work weeks worked by the Settlement Class Member during the Class Period. The lump sum payment to each Settlement Class Member not excluding him/ herself will be determined on an individualized basis based upon the compensable pay periods worked by that individual. (Ex. 1 at ¶3.2.4.) This allocation distributes Agreement funds proportionally to each class member's potential damages and should therefore be approved as fair, adequate, and reasonable. (Szamet Decl. ¶122.)

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

To date, there are zero (0) requests to be excluded from the proposed Agreement and zero (0) objections. (Islas Decl. ¶¶7-8.) Such indicates that the reaction of Settlement Class Members on the whole is positive and weighs in favor of approval.

V. ENHANCEMENT TO PLAINTIFF

Plaintiff's Counsel request an enhancement of $5,000.00 to the Class Representative Ernestine Jimenez for her work on behalf of the Class. (Szamet Decl. ¶165.) "Courts routinely approve incentive awards to compensate named plaintiffs for the services they provide and the risks they incurred during the course of the class action litigation." *Ingram v. The Coca-Cola Company*, 200 F.R.D. 685, 694 (N.D. Ga 2001) (internal quotations and citations omitted); *see also Van Vranken v. Atlantic Richfiled Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995). In *Coca-Cola*, the Court approved service awards of $300,000 to each named plaintiff in recognition of the services they provided to the class by responding to discovery, participating in the mediation process, and taking the risk of stepping forward on behalf of the class. *Coca-Cola*, 200 F.R.D. at 694; *see also*, *e.g. Van Vranken*, 901 F. Supp. at 299 (approving $50,000 participation award to plaintiffs); *Glass v. UBS Financial Services, Inc.*, Case No. C-06-4068 MMC, 2007 WL 227862, at *17 (N.D. Cal. Jan. 26, 2007) (approving $25,00 enhancement to each named plaintiff).

Ms. Jimenez is an adequate class representative because she has diligently, adequately and fairly represented the Class and has not placed her interests above any member of the Class. (*see* Declaration of Ernestine Jimenez ("Jimenez Decl.") ¶¶3-12.)

Here, Class Counsel requests an enhancement for Ms. Jimenez's valiant effort and time expended in this matter. The time spent by Ernestine Jimenez is significant and includes researching and retaining competent counsel; providing information to Class Counsel regarding the nature of the work at Defendant; compiling relevant documents; working closely with Class Counsel to develop the theories of liability and martial relevant evidence; regularly discussing the status of the case with Class Counsel; discussing the case via telephone with many Settlement Class Members; making herself available for a full-day of mediation; and responding promptly to Class Counsel's communications regarding settlement. (Szamet Decl. ¶166; Jimenez Decl. ¶¶6-7.) As set forth in the Agreement, Plaintiff will also be entering into a general release of liability pursuant to Civil Code Section 1542. (Szamet Decl. ¶167; Ex. 1 at ¶5.1.1.)

Class Counsel considers this to be a fair and reasonable enhancement. (Szamet Decl. ¶168.) The enhancement takes into consideration the time, effort, and expense incurred by Ms. Jimenez in coming forward to litigate this matter on behalf of all Settlement Class Members. (Szamet Decl. ¶169.) Additionally, the Class Representative was at risk for paying for Defendant's legal fees and costs in the event that Defendant prevailed at trial. (Szamet Decl. ¶170.)

VI. SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY

As indicated on the Proof of Service, Plaintiff's Motion for Final Approval of Class Action Settlement ("Motion") will be concurrently uploaded to the Labor and Workforce Development Agency's ("LWDA") website on the date this Motion is filed as required by statute. Proof of submission of Plaintiff's Motion, all related documents, and copy of the email from the LWDA confirming receipt is attached to the Declaration of Kelsey M. Szamet as Exhibit "6." (Szamet Decl. ¶175.)

VII. CONCLUSION

Plaintiff respectfully submits that the proposed Agreement is fair, adequate, reasonable, and in the best interest of the Settlement Class Members. Therefore, Plaintiff respectfully requests that the Court (1) grant Final Approval of the Agreement and all of its terms; (2) award attorneys' fees and costs in the amount detailed in the concurrently filed Motion for Attorneys' Fees and Costs; (3) award Phoenix Class Action Administration Solutions claims administration fees of $10,750.00; and (4) award the Class Representative an enhancement of $5,000.00; and (5) enter judgment.

DATED: January 15, 2026

KINGSLEY SZAMET EMPLOYMENT LAWYERS

By: ______________________________
Kelsey M. Szamet
Attorneys for Plaintiff ERNESTINE JIMENEZ and the proposed class

(PROOF OF SERVICE)
[CCP 1013(a)(3)]
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On January 15, 2026, I served all interested parties in this action the following documents described as: **NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Gordon Rees Scully Mansukhani, LLP Jennifer Jambor-Delgado Debra Ellwood Meppen Rebecca Marsden Delia Guerrero jjambordelgado@grsm.com rmarsden@grsm.com dmeppen@grsm.com dmguerrero@grsm.com 633 W. Fifth., 52nd Floor, Los Angeles, CA 90071 cc : mtabizon@grsm.com Attorneys for Defendant	ABRAMSON LABOR GROUP WILLIAM ZEV ABRAMSON, Esq. wza@abramsonlabor.com 1700 W Burbank Blvd, Burbank, CA 91506 Attorneys for Plaintiff

[XX] BY ELECTRONIC SERVICE: I caused a true and correct copy thereof to be electronically filed using the Labor and Workforce Development Agency Electronic Filing ("EF") System (https://dir.tfaforms.net/315) and service was completed by electronic means by transmittal of the documents referenced herein on the EF System.

[XX] BY ELECTRONIC MAIL TRANSMISSION: I caused the document to be send to the persons at the e-mail address(es) listed on the attached service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. A pdf copy of which was sent via email to the below email address(es).

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

Executed on January 15, 2026, at West Hollywood, California.

Taylor Gregg