

KINGSLEY SZAMET & LY
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
11846 Ventura Blvd., Suite 100
Studio City, CA 91604
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 SAN DIEGO**

OSCAR IRUEGAS, an individual, on behalf
of himself and others similarly situated,

PLAINTIFF,

v.

BALD EAGLE SECURITY SERVICES,
INC.; and DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO. 37-2023-00030158-CU-OE-CTL

[Case Assigned for All Purposes to Hon. Blaine
K. Bowman in Dept. C-74]

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

*[Filed concurrently with Declaration of Kelsey
M. Szamet and Proposed Order]*

Date: November 1, 2024

Time: 8:30 A.M.

Dept.: C-74

Complaint Filed: July 18, 2023

FAC Filed: September 25, 2023

Trial Date: None Set

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

2 **PLEASE TAKE NOTICE** that on November 1, 2024 at 8:30a.m. in Department C-74 of
3 the above-entitled court, Plaintiff OSCAR IRUEGAS will move the Court for an Order of
4 Preliminary Approval of the Class Action and PAGA Settlement Agreement (“Agreement” or
5 “Settlement”), a copy of which is filed concurrently herewith.

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

8 The Motion will be based on this Notice of Motion, the attached Memorandum of Points
9 and Authorities, the Declaration of Settlement, the Agreement and Release, all other papers and
10 records on file in this action, and on such oral and documentary evidence as may be presented at
11 the hearing on this Motion.

12 DATED: July 23, 2024

KINGSLEY SZAMET & LY

13
14 By: 

Kelsey M. Szamet
Attorneys for Plaintiff OSCAR IRUEGAS and the
proposed class

TABLE OF CONTENTS

I.	INTRODUCTION	7
II.	FACTUAL BACKGROUND.....	7
A.	Litigation Overview and Procedural History of the <i>Iruegas</i> Action.....	7
B.	Prior Class Action: <i>Diaz v. Bald Eagle Security Services, Inc.</i>	8
C.	The Parties’ Contentions	9
III.	THE PROPOSED SETTLEMENT CLASS SHOULD BE CERTIFIED FOR SETTLEMENT PURPOSES.....	10
A.	Plaintiff Contends That The Proposed Class Is Ascertainable and Sufficiently Numerous.....	11
1.	Ascertainability	11
2.	Numerosity.....	11
B.	Plaintiff Contends That There Is a Well-Defined Community of Interest.....	12
1.	There Are Predominant Questions of Law and Fact.....	12
2.	The Class Representative Has Claims Typical of the Proposed Class	14
3.	Plaintiff Contends That As The Class Representative He Has and Will Fairly Represent the Interests of the Class Members.....	15
C.	The Class Action Vehicle Is Superior to the Alternatives	16
IV.	THE PROPOSED SETTLEMENT	17
A.	The Settlement Class.....	17
B.	Aggrieved Employees.....	17
C.	Gross Settlement Amount.....	18
D.	Individual Settlement Payments	18
E.	Process for Administering Settlement after Preliminary Approval	19
F.	Process for Class Members to Respond to Class Notice	19
G.	The Release	19

V.	ARGUMENT	20
A.	Plaintiff Requests Approval of This Class Action Settlement.....	20
1.	The Strength of Plaintiff’s Case.....	21
a)	The Risks Associated with the Meal Break Claims.....	21
b)	The Risks Associated with the Rest Periods Claim	22
c)	The Risks Associated with the Reimbursement Claim.....	23
d)	The Risks Associated with the Waiting Time Penalty Claim.....	24
e)	The Risks Associated with the PAGA Claim	25
2.	The Risk, Expense, Complexity, and Likely Duration of Further Litigation	26
3.	The Risk of Maintaining Class Action Status through Trial.....	26
4.	The Amount Offered in Settlement.....	26
a)	Plaintiff’s Assessment of Defendant’s Maximum Exposure	27
b)	Impact of the Prior <i>Diaz</i> Class Settlement.....	30
5.	The Experience and Views of Counsel.....	30
6.	The Proposed Plan of Allocation Is Fair and Reasonable.....	31
7.	The Proposed Notice Fairly Apprises the Class Members of the Terms of the Settlement and of the Class Members’ Rights under the Settlement..	31
VI.	THE SERVICE AWARD TO THE NAMED PLAINTIFF	32
VII.	SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY.	33
VIII.	CONCLUSION.....	33

TABLE OF AUTHORITIES

Federal Cases

Fleming v. Covidien Inc. No (OPX),

2011 WL 7563047 28

Officers for Justice v. Civil Service Comm’n,

(9th Cir. 1982) 688 F.2d 615 30

State Cases

Amaral v. Cintas Corp. No. 2,

(2008) 163 Cal.App.4th 1157 23

Barnhill v. Robert Saunders & Co.,

(1981) 125 Cal.App.3d 1 23

Bell v. Farmers Insurance Exchange,

(2004) 115 Cal.App.4th 715 12

Blue Chip Stamps v. Superior Court,

(1976) 18 Cal.3d 381 15

Bradley v. Networkers International, LLC,

(2012) 211 Cal.App.4th 1129 12

Brinker Restaurant Corp. v. Superior Court,

(2012) 53 Cal.4th 1004 9, 12, 20

Carrington v. Starbucks Corporation,

(2018) 30 Cal.App.5th 504, 241 Cal.Rptr.3d 647..... 24, 28

1	<u>Cartt v. Superior Court,</u>	
2	(1975) 50 Cal.App.3d 960	30
3		
4	<u>Classen v. Weller,</u>	
5	(1983) 145 Cal.App.3d 27	13
6		
7	<u>Collins v. Rocha,</u>	
8	(1972) 7 Cal.3d 232	9, 11
9		
10	<u>Diaz v. Grill Concepts Services, Inc.,</u>	
11	(2018) 23 Cal.App.5th 859	23
12		
13	<u>Fireside Bank v. Superior Court,</u>	
14	(2007) 40 Cal.4th 1069	9
15		
16	<u>Hicks v. Kaufman & Broad Home Corp.,</u>	
17	(2001) 89 Cal.App.4th 908	11
18		
19	<u>Knapp v. AT & T Wireless Services, Inc.,</u>	
20	(2011) 195 Cal.App.4th 932	11
21		
22	<u>Kullar v. Foot Locker Retail, Inc.,</u>	
23	(2008) 168 Cal.App.4th 116	19
24		
25	<u>Linder v. Thrifty Oil Co.,</u>	
26	(2000) 23 Cal.4th 429	9
27		
28	<u>Lockheed Martin Corp. v. Superior Court,</u>	
	(2003) 29 Cal.App.4th 1096	14, 15, 16
	<u>Mamika v. Barca,</u>	
	(1998) 68 Cal.App.4th 487	23

1	<u>Miller v. Woods,</u>	
2	(1983) 148 Cal.App.3d 862	10
3		
4	<u>Nordstrom Commissions Cases,</u>	
5	186 Cal.App.4th 576 (2010)	24
6		
7	<u>Richmond v. Dart Industries, Inc.,</u>	
8	(1981) 29 Cal.3d 462	9, 15
9		
10	<u>Rose v. City of Hayward,</u>	
11	(1981) 126 Cal.App.3d 926	10
12		
13	<u>Sav-on Drug Stores, Inc. v. Superior Court,</u>	
14	(2004) 34 Cal.4th 319	9, 11, 12
15		
16	<u>Seastrom v. Neways, Inc.,</u>	
17	(2007) 149 Cal.App.4th 1496	13
18		
19	<u>Simons v. Horowitz,</u>	
20	(1984) 151 Cal.App.3d 834	14
21		
22	<u>Trotsky v. L.A. Fed. Sav. & Loan Ass'n,</u>	
23	(1975) 48 Cal.App.3d 134	30, 31
24		
25	<u>Vasquez v. Superior Court,</u>	
26	(1971) 4 Cal.3d 800	15
27		
28	<u>Wershba v. Apple Computer, Inc.,</u>	
	(2001) 91 Cal.App.4th 224	13, 29
	<u>State Statutes</u>	
	Business & Professions Code § 17200	6, 14, 19

1	Civil Code § 1542.....	31
2	Code of Civil Procedure § 382.....	9, 10
3		
4	Labor Code § 201.....	19
5	Labor Code § 202.....	19
6		
7	Labor Code § 203.....	6, 19, 23, 27
8	Labor Code § 226(a)	19, 27
9		
10	Labor Code § 226.7.....	6, 18, 19
11	Labor Code § 226.7(c)	20, 21
12		
13	Labor Code § 512.....	6, 18, 19, 20
14	Labor Code § 2698.....	24
15		
16	Labor Code § 2699.....	7, 11, 14, 19
17	Labor Code § 2699(e)(2)	28
18		
19	Labor Code § 2699.3(a)(l)	7
20	Labor Code § 2802.....	6, 8, 18, 19, 22
21		
22	<u>State Regulations</u>	
23	Code of Regulations, title 8, § 11040, 11(A).....	21
24		
25	<u>Other Authorities</u>	
26	AB 2288	24
27		
28	SB 92.....	24

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff OSCAR IRUEGAS (“Plaintiff”) submits this Memorandum of Points and
4 Authorities in support of Plaintiff’s Motion for Preliminary Approval of the Class Action and
5 PAGA Settlement Agreement reached between Plaintiff and Defendant Bald Eagle Security
6 Services, Inc. (“Defendant”) (Plaintiff and Defendant together, the “Parties”).

7 By this Motion, Plaintiff requests that the Court:

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

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

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

17 **II. FACTUAL BACKGROUND**

18 A. Litigation Overview and Procedural History of the *Iruegas* Action

19 On July 18, 2023, Plaintiff filed a putative Class Action Complaint for damages against
20 Bald Eagle Security Services, Inc. Defendant in the San Diego County Superior Court, Case No.
21 37-2023-00030158-CU-OE-CTL, entitled *OSCAR IRUEGAS an individual, on behalf of himself*
22 *and others similarly situated v. BALD EAGLE SECURITY SERVICES, INC.; and Does 1 thru 50,*
23 *inclusive.* (“Action”). (Declaration of Kelsey M. Szamet (“Szamet Decl.”) ¶4.) He alleged causes
24 of action for: (1) Failure to Provide Meal Breaks Pursuant to Labor Code §§ 226.7 and 512; (2)
25 Failure to Provide Rest Breaks Pursuant to Labor Code § 226.7; (3) Failure to Reimburse Expenses
26 Pursuant to Labor Code § 2802; (4) Waiting Time Penalties Pursuant to Labor Code § 203; and
27 (5) Violation of Business & Professions Code § 17200. (Szamet Decl. ¶5.) On July 18, 2023, in
28

1 compliance with Labor Code § 2699.3(a)(1), written notice was provided via online filing to the
2 LWDA, setting forth the facts and theories of the violations alleged against Defendant. (Szamet
3 Decl. ¶6.)

4 Plaintiff initially brought this class action on behalf of himself and:

5 All persons who are employed or have been employed as a non- exempt employee
6 by BALD EAGLE SECURITY SERVICES, INC., in the State of California since
four (4) years prior to the filing of this action to the present. (“Proposed Class”)

7 (Szamet Decl. ¶7.)

8 However, in August 2023, Defendant notified Plaintiff of a prior class action, *Diaz v. Bald*
9 *Eagle Security Services Inc.*, Case No. 37-2018-00009703-CU-OR-CTL (San Diego Sup. Ct.),
10 which overlapped with Plaintiff’s action. After learning of the *Diaz* action, Plaintiff agreed to
11 redefine the class definition to encompass only non-exempt security guards from January 1, 2021
12 to the present. (Szamet Decl. ¶8.)

13 On September 25, 2023, Plaintiff filed a First Amended Complaint, adding an additional
14 claim for civil penalties pursuant to Labor Code section 2699, et seq. (“PAGA”) based upon the
15 same alleged Labor Code violations at issue in the complaint in addition to a meal record keeping
16 violation. Plaintiff also redefined the class as:

17 All persons who are employed or have been employed as a non- exempt security
18 guard by BALD EAGLE SECURITY SERVICES, INC., in the State of California
since January 1, 2021 to the present. (“Proposed Class”)

19 (Szamet Decl. ¶9.)

20 Defendant informally produced pay records for mediation. The Parties have not engaged
21 in formal discovery and focused their efforts on resolving this case through early mediation.
22 (Szamet Decl. ¶10.)

23 B. Prior Class Action: *Diaz v. Bald Eagle Security Services, Inc.*

24 The *Diaz* action settled in 2020 after the court granted certification on a rest break claim.
25 The *Diaz* Action alleged meal and rest break claims, an overtime claim, a waiting time penalties
26 claim, a wage statement claim, and derivative UCL and PAGA claims. The class definition
27 encompassed security guards from February 23, 2014, to December 31, 2020. The *Diaz* settlement
28

1 agreement released the claims alleged in the *Diaz* complaint through to the court's final approval
2 order, which was on July 8, 2022. (Szamet Decl. ¶11.)

3 Defendant informally produced documents from the *Diaz* matter in preparation for
4 mediation, and Plaintiff reviewed them. (Szamet Decl. ¶12.) In Plaintiff's view, the *Diaz* action
5 impacts the alleged meal/rest break claims and waiting time penalties claim. (*Id.*) The *Diaz* action
6 did not allege a claim under Labor Code section 2802, and as such, Plaintiff argued at mediation
7 that this time period for this claim dates back 4 years from July 18, 2023 (the date Plaintiff filed
8 his complaint). (*Id.*)

9 C. The Parties' Contentions

10 Defendant denies any liability or wrongdoing of any kind associated with the claims
11 alleged in the Action, disputes the damages and penalties claimed by Plaintiff, and further contends
12 that, for any purpose other than settlement, Plaintiff's claims are not appropriate for class or
13 representative action treatment. (Szamet Decl. ¶13.) Defendant contends, among other things,
14 that, at all times, it has complied with the California Labor Code, and the Industrial Wage
15 Commission Orders. (*Id.*)

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

23 Accordingly, the Parties and their counsel desire to fully, finally, and forever settle,
24 compromise and discharge all disputes and claims arising from or relating to the Action on the
25 terms set forth here. (*Id.*)

26 ///

27 ///

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

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

3 A. Plaintiff Contends That The Proposed Class Is Ascertainable and Sufficiently
4 Numerous

5 1. Ascertainability

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

11 Here, Plaintiff maintains that the proposed settlement Class is ascertainable for several
12 reasons: First, Defendant has agreed in the Agreement to provide a class list to the Administrator
13 containing the Class Member’s name, last-known mailing address, Social Security number, and
14 number of Class Period Workweeks and PAGA Pay Periods for all putative class members after
15 issuance of the preliminary approval order. (Szamet Decl. ¶15; Ex. 1 at § 1, ¶1.9.) Second, the
16 Class Members and Aggrieved Employees consist of Defendant’s non-exempt, hourly security
17 guards, and Defendant is required to keep records of its non-exempt, hourly security guards’
18 names, home addresses, and social security numbers. (*See* Wage Order 4-2001, subsection 7(c);
19 Szamet Decl. ¶16.) Third and finally, Defendant informally produced Plaintiff’s personnel file
20 and pay statements, sampling shift data, pay data, and wage statements for Class Members and the
21 Aggrieved Employees containing class member contact information, which confirms that all Class
22 Members and Aggrieved Employees may be readily identified based on Defendant’s records.
23 (Szamet Decl. ¶17.)

24 2. Numerosity

25 There is no set number that is required as a matter of law to maintain a class action. (*See*,
26 *e.g., Rose v. City of Hayward, supra*, 126 Cal.App.3d at p. 934.) Here, the proposed settlement
27 Class contains, based upon information and belief, approximately 452 non-exempt, hourly security
28

guards in the State of California.¹ (Ex. 1 at § 9.) Therefore, Plaintiff is confident she will be able to establish that the proposed settlement Class is ascertainable and sufficiently numerous. (Szamet Decl. ¶18.)

B. Plaintiff Contends That 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.)

Here, Plaintiff argues that there are questions of law and fact common to the proposed settlement Class that predominate over any questions affecting only individual Class Members. (Szamet Decl. ¶19.) These common questions include:

- 1) Whether Defendant failed to provide lawfully required meal periods and/or failed to compensate employees one (1) hour’s wages in lieu thereof;
- 2) Whether Defendant failed to provide lawfully required rest periods and/or failed to compensate employees one (1) hour’s wages in lieu thereof;
- 3) Whether Defendant failed to reimburse business-related expenses;
- 4) Whether Defendant failed to pay compensation due and owing upon termination of employment;
- 5) Whether Defendant engaged in unfair competition; and,
- 6) Whether Defendant violated § 2699, et seq. of the Labor Code by engaging in the

¹ Defendant also estimates there are approximately 294 Aggrieved Employees. (Ex. 1, § 9.)

acts previously alleged.

(Szamet Decl. ¶20.)

Defendant maintained a company handbook containing uniform meal and rest break policies for all hourly employees. (Szamet Decl. ¶21.) Defendant also argued that an on-duty meal break waiver is provided to all security guards for review and signature at the time of hire, and that this was a common policy and practice for all security guards. (Szamet Decl. ¶22.) However, Plaintiff maintains that Defendant's common policy and practices do not comply with California law and the presence of a company-wide meal and rest policy and practices suggest that Defendant applied the same policies to all employees, which would weigh in favor of class certification.

Plaintiff's challenge to Defendant's uniform policies and practices involves common factual and legal issues that are amenable to class treatment. (Szamet Decl. ¶23.) As the California Supreme Court has emphasized, "[c]laims alleging that a uniform policy consistently applied to a group of employees is in violation of the wage and hour laws are of the sort routinely, and properly, found suitable for class treatment." (*Brinker, supra*, 53 Cal.4th at 1033; *see also Bradley v. Networkers International, LLC* (2012) 211 Cal.App.4th 1129, 1141-1146.) Moreover, a class of similarly situated employees may be certified based on common questions of fact or law, even if each employee has to establish the amount of his or her damages. (*See Bell v. Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 741; *Sav-On Drug Stores, Inc. v. Superior Court, supra*, 34 Cal.4th at 340.)

Here, Plaintiff maintains that the proposed Class Members suffered the same injuries, in the same manner: (1) Class Members did not receive their meal and rest periods as required; (2) Class Members were not reimbursed for business-related expenses; and (3) Class Members were not paid all wages owed upon termination/resignation. (Szamet Decl. ¶24.) Plaintiff further alleges that Class Members worked in the same capacity for the same employer and were subject to the same employment policies and practices, the questions of fact and claims regarding the status of these employees are the same for each member of the settlement Class. For example, Defendant stated that it was its common policy and practice to have all security guards sign an on-duty meal

1 break waiver during their onboarding process; as such, Plaintiff contends that the question of
2 whether or not the on-duty meal agreement signed by Class Members, and whether that agreement
3 is valid, is common to the proposed Class. (Szamet Decl. ¶25.)

4 Accordingly, for purposes of settlement, the evidence reviewed by Class Counsel
5 demonstrates common meal and rest policies and wage policies and practices applied to the
6 proposed Class Members and certification for settlement purposes is appropriate. (Szamet Decl.
7 ¶26.) Specifically, nonexempt employees who work more than five hours in a workday are entitled
8 to take an unpaid 30-minute uninterrupted meal period during which they are relieved from all
9 duties, unless the employee works no more than six hours on the workday, in which case the
10 employee and the management may mutually agree to waive the meal period, and unless it is
11 waived, employees must take this meal period no later than the end of the employee's fifth hour
12 of work. In addition, nonexempt employees are entitled to paid, uninterrupted, off-duty rest periods
13 of 10-minute rest time for every four hours of work or major fraction of four hours. (Szamet Decl.
14 ¶27.)

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

16 A putative class representative's claim must be "typical," but not necessarily identical, to
17 the claims of other class members. The test of typicality "is whether other members have the same
18 or similar injury, whether the action is based on conduct which is not unique to the Class
19 Representatives, and whether other class members have been injured by the same course of
20 conduct." (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502.) Thus, it is sufficient
21 that the representative is similarly situated so that he or she will have the motive to litigate on
22 behalf of all class members. (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502.) Thus,
23 it is sufficient that the representative is similarly situated so that he or she will have the motive to
24 litigate on behalf of all class members. (*See, e.g., Classen v. Weller* (1983) 145 Cal.App.3d 27,
25 45.) It is not necessary that the class representative have personally incurred all of the damages
26 suffered by each of the other class members. (*Wershba v. Apple Computer, Inc.* (2001) 91
27 Cal.App.4th 224, 238.)
28

1 Plaintiff worked as a non-exempt a security guard for Defendant from approximately
2 January 4, 2021 to April 22, 2021. (Szamet Decl. ¶28.) Plaintiff alleges that he (1) worked without
3 being provided meal/rest periods as required by law; (2) worked without being reimbursed for
4 costs associated with personal cell-phone usage; and (3) worked without being paid all wages due
5 upon separation. He also alleges that he experienced derivative claims for unfair business
6 competition (B&P Code §17200) and Labor Code §2699, et seq. (Szamet Decl. ¶29.) Plaintiff also
7 contends that his claims are typical of those of the settlement Class. (Szamet Decl. ¶30.)

8 3. Plaintiff Contends That As The Class Representative He Has and Will
9 Fairly Represent the Interests of the Class Members

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

14 Plaintiff believes that he is capable of fairly representing and adequately protecting the
15 interests of the proposed Class Members. (Szamet Decl. ¶31; Declaration of Oscar Iruegas, ¶8.)
16 Plaintiff’s interests in this litigation are coextensive with the interests of the proposed Class
17 Members. (Szamet Decl. ¶32; Iruegas Decl. ¶9.) The members of the proposed settlement Class
18 all worked for Defendant during the relevant time period and incurred the same type of alleged
19 damages with regard to Defendant’s alleged violations of the law. (Szamet Decl. ¶33; Iruegas Decl.
20 ¶7.) Moreover, Plaintiff has agreed to serve as Class Representative and has retained qualified
21 Counsel who is experienced in prosecuting wage and hour class actions. (Szamet Decl. ¶34;
22 Iruegas Decl. ¶5.) This demonstrates his commitment to bringing about the best possible results
23 for the benefit of the proposed settlement Class. (Szamet Decl. ¶35; Iruegas Decl. ¶8.) Plaintiff
24 has provided his Counsel with all necessary and pertinent information. (Szamet Decl. ¶36; Iruegas
25 Decl. ¶6.) He has been a very active participant in the litigation including having frequent contact
26 with Class Members, providing informal discovery, and working closely with Class Counsel to
27 develop the theories of liability. (Szamet Decl. ¶37; Iruegas Decl. ¶4.) In preparation for mediation,
28

1 Plaintiff provided numerous documents to support his claims. (Szamet Decl. ¶38; Iruegas Decl.
2 *Id.*) As such, Plaintiff has provided his Counsel with all necessary and pertinent information.
3 (Szamet Decl. ¶39; Iruegas Decl. ¶6.) He also made himself available for the full-day mediation
4 in this matter and was informed of and involved in all of the Settlement negotiations. (Szamet
5 Decl. ¶40; Iruegas Decl. ¶4.) Therefore, Plaintiff believes that he has and will continue to
6 adequately represent the proposed Class Members. (Szamet Decl. ¶41; Iruegas Decl. ¶¶8-9.)
7 Plaintiff has provided his Counsel with all necessary and pertinent information. (Szamet Decl. ¶42;
8 Iruegas Decl. ¶6.)

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

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

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

1 cases such as this, where individual damages may be small, the class action device is the most
2 feasible method of recovery. (*See, e.g. Lockheed Martin, supra*, 29 Cal.4th at 1131.) In this regard,
3 the superiority of class treatment is evident here because individual pursuit of class members’
4 claims may not be economically viable. (Szamet Decl. ¶43.) The only alternative to certification
5 would be to force over 452 employees to join this action, file individual, uniform actions, or
6 abandon their legal rights altogether. (Szamet Decl. ¶44.) Plaintiff maintains that this economic
7 reality would result in a windfall for Defendant if this case were not certified. (Szamet Decl. ¶45.)

8 **IV. THE PROPOSED SETTLEMENT**

9 **A. The Settlement Class**

10 For purposes of Agreement, the settlement Class is defined as: “All persons who are
11 employed or have been employed as a non-exempt security guard by Defendant in the State of
12 California during the Class Period.” (“Class”, “Class Members” or “Settlement Class Members”).
13 (Szamet Decl. ¶46; Agreement, Ex. 1 at § 1, ¶1.5.)

14 The Class Period is January 1, 2021 to May 23, 2024. (Szamet Decl. ¶47; Ex. 1 at § 1,
15 ¶1.13.) As of April 23, 2024 (the date of mediation), and based on documents and other information
16 produced by Defendant, there are approximately 452 Class Members. (Szamet Decl. ¶48; Ex. 1 at
17 §9.)

18 **B. Aggrieved Employees**

19 For purposes of Agreement, the Aggrieved Employees are defined as: “All persons who
20 are employees or have been employed as an hourly employee by Defendant in the State of California
21 during the PAGA Period.” (“Aggrieved Employees”). (Szamet Decl. ¶49; Agreement, Ex. 1 at §
22 1, ¶1.4.)

23 The PAGA Period is January 1, 2021 to May 23, 2024. (Szamet Decl. ¶50; Ex. 1 at § 1,
24 ¶1.13.) As of April 23, 2024 (the date of mediation), and based on documents and other information
25 produced by Defendant, there are approximately 294 Aggrieved Employees. (Szamet Decl. ¶51;
26 Ex. 1 at § 9.)

27 ///

1 C. Gross Settlement Amount

2 As detailed fully in the Agreement, the Settlement provides for Defendant to pay a Gross
3 Settlement Amount of \$160,000.00, which includes the sum of the Individual Class Payments, the
4 Class Representative service award, the LWDA PAGA Payment, the Individual PAGA payments,
5 the Class Counsel Award, and the Settlement Administration Costs. (Szamet Decl. ¶52; Ex. 1 at §
6 3, ¶3.1.)

7 The Net Settlement Amount is the Gross Settlement Amount, less the following payments
8 in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment,
9 Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation
10 Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to
11 Participating Class Members as Individual Class Payments. (Szamet Decl. ¶53; Ex. 1 at § 1, ¶1.31.)

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

13	Gross Settlement Amount:	\$	160,000.00
14	Less Class Representative Enhancement:	\$	5,000.00
15	Less Class Counsel's Fees:	\$	53,333.33
16	Less Class Counsel's Costs:	\$	12,000.00
17	Less PAGA Payment:	\$	7,500.00
18			<i>(\$5,625.00 to the LWDA and</i>
19			<i>\$1,875.00 to remain in the Net</i>
20			<i>Settlement Amount)</i>
21	<u>Less Administrator Costs:</u>	<u>\$</u>	<u>9,950.00</u>
22	Anticipated Net Settlement Amount	\$	74,091.67

23 (Ex. 1 at § 3.)

24 D. Individual Settlement Payments

25 The amount of each Participating Class Member's Individual Class Payment is an
26 individualized amount that is based on the number of Workweeks worked by each Participating
27 Class Member during the Class Period in proportion to the aggregate number of Workweeks
28 worked by all Participating Class Members in the Class Period. (Ex. 1 at § 1, ¶1.26; *see also* Ex.
A to the Agreement at pp.7 [Class Notice].) This individual amount shall be determined by (a)
dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating

1 Class Members during the Class Period and (b) multiplying the result by each Participating Class
2 Member's Workweeks during the Class Period. according to the settlement payment formula set
3 forth in the Agreement. (*See* Ex. 1 at § 3, ¶3.2.4; *Id.* at Ex. A to the Agreement [Class Notice].)
4 The Agreement provides for a specific and detailed Workweek dispute process. (*See* Ex. 1 at § 8,
5 ¶8.6.)

6 The amount of each Aggrieved Employees' Individual PAGA Payment is an individualized
7 amount that is based on the number of PAGA Pay Periods worked by each individual Aggrieved
8 Employee during the PAGA Period in proportion to the aggregate number of PAGA Pay Periods
9 worked by all Aggrieved Employees in the PAGA Period. (Ex. 1 at § 1, ¶27; *see also* Ex. A to the
10 Agreement at pp.7 [Class Notice].)

11 E. Process for Administering Settlement after Preliminary Approval

12 The detailed Notice Procedure established by the Agreement will efficiently and accurately
13 ensure that Notice is provided to the Class Members. (Ex. 1 at § 8, ¶8.4.) The Parties have agreed
14 to use a reputable third-party claims administrator, ILYM Group, Inc., to administer the
15 Settlement.. (Ex. 1 at § 1, ¶1.2.)

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

17 As detailed in the Agreement, Class Members will have an opportunity to request exclusion
18 from the Agreement (i.e. opt out) and to object to the Agreement at the Final Approval Hearing.
19 (*See* Ex. 1 at § 8, ¶¶8.5;8.7; *see also* Ex. A to the Agreement at pp. 2-4, 5, 8-9 [Class Notice].)
20 The Agreement and Class Notice contain details about the process to request exclusion or object.
21 (*Id.* at Ex. 1; *see also* Ex. A to the Agreement at pp. 2-4, 5, 8-9 [Class Notice].)

22 G. The Release

23 The Release Class Claims are defined as: "(i) all claims that were alleged, or reasonably
24 could have been alleged, based on the Class Period facts stated in the First Amended Complaint
25 and PAGA Notice, including, (1) Failure to Provide Meal Breaks Pursuant to Labor Code §§ 226.7
26 and 512; (2) Failure to Provide Rest Breaks Pursuant to Labor Code § 226.7; (3) Failure to
27 Reimburse Expenses Pursuant to Labor Code § 2802; (4) Waiting Time Penalties Pursuant to
28

1 Labor Code § 203; (5) Violation of Business & Professions Code § 17200; (6) Penalties Pursuant
2 to Labor Code §2699, et seq. as against Defendant based on the facts alleged in the Action during
3 the Class Period; and (ii) any damages, premiums, penalties, liquidated damages, interest, punitive
4 damages, costs, attorneys’ fees, injunctive relief, declaratory relief, or accounting based on the
5 Operative Complaint or PAGA Notice and which occurred during the Class Period. Except as set
6 forth in Sections 6.1 and 6.3 of this Agreement, Participating Class Members do not release any
7 other claims, including claims for vested benefits, wrongful termination, violation of the Fair
8 Employment and Housing Act, unemployment insurance, disability, social security, workers’
9 compensation, or claims based on facts occurring outside the Class Period.” (Ex. 1 at § 6, ¶6.2.)

10 The Release PAGA Claims are defined as: “all claims for PAGA penalties that were
11 alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the
12 Operative Complaint, and the PAGA Notice for alleged violations of Labor Code §§ 201, 202,
13 203, 226(a), 226.7, 512, and 2802; (ii) and any damages, civil penalties, interest, punitive damages,
14 costs, attorneys’ fees, based on the Operative Complaint or PAGA Notice and which occurred
15 during the PAGA Period.” (Ex. 1 at § 6, ¶6.3.)

16 **V. ARGUMENT**

17 **A. Plaintiff Requests Approval of This Class Action Settlement**

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

25 The proposed settlement satisfies each of these factors. (Szamet Decl. ¶54.) Class Counsel
26 conducted extensive informal discovery before entering into meaningful settlement negotiations
27 in this matter. (*Id* at Szamet Decl. ¶10.) This discovery permitted Class Counsel to fairly evaluate
28

1 the strength of the case and the risks associated with ongoing litigation. (Szamet Decl. ¶55.) Class
2 Counsel is experienced in handling wage and hour class actions and, after weighing all of the
3 following factors, supports this Agreement. (Szamet Decl. ¶56.)

4 1. The Strength of Plaintiff's Case

5 a) The Risks Associated with the Meal Break Claims

6 Under California Labor Code section 512 and IWC Wage Order No. 4, no employer shall
7 employ any person for a work period of more than five hours without providing a meal period of
8 not less than thirty minutes. The first meal period must be permitted to commence no later than
9 after five hours of work, or the start of the sixth hour of work (5.0 hours on the clock). (*Brinker*
10 *Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1049.) The second meal period must be
11 permitted to commence no later than after ten hours of work, or the start of the eleventh hour of
12 work (10.0 hours on the clock). (*Ibid.*) The California Supreme Court succinctly described Section
13 512's mandate: "Employers must afford employees uninterrupted half-hour periods in which they
14 are relieved of any duty or employer control and are free to come and go as they please." (*Brinker*
15 *Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1037.) Defendant must pay an additional
16 hour at the employee's regular rate of compensation for each workday the employer failed to
17 provide a lawful meal period to each employee. (See Lab. Code, § 226.7, subd. (c).)

18 Here, Defendant allegedly required Plaintiff and the Proposed Class to take on-duty
19 meal/rest breaks or miss their meal/rest periods entirely. (Szamet Decl. ¶57.) Plaintiff contends
20 that he was the only security guard on the premises he was assigned for each shift, thus no one was
21 there to relieve him for meal or rest breaks. (Szamet Decl. ¶58.) Defendant allegedly told Plaintiff
22 that either a supervisor or another employee would come to relieve him for his meal and rest
23 breaks, but no one ever came. (Szamet Decl. ¶59.) Plaintiff sustains that he could not leave his
24 post at all to take a meal or rest break, to get food, or even to use the restroom. (Szamet Decl. ¶60.)
25 If Plaintiff was able to bring lunch to his shift, he would eat his meals on-duty because no one was
26 around to relieve him of his duties. (Szamet Decl. ¶61.) Plaintiff further alleges that this was
27 Defendant's practice throughout his employment. (*Id.*)
28

1 However, prior to and at mediation, Defendant vigorously argued that all security guards
2 signed an on-duty meal break waiver at the time of hire. (Szamet Decl. ¶62.) As such, there is a
3 great risk to Plaintiff's meal break claim if many proposed Class Members did indeed sign valid
4 on-duty meal break waivers. (Szamet Decl. ¶63.) Nonetheless, Defendant acknowledged that
5 Plaintiff's personnel file does not contain such a meal break waiver. (Szamet Decl. ¶64.) As such,
6 Plaintiff would still argue that many proposed Class Members actually did not sign meal break
7 waivers. (Szamet Decl. ¶65.) However, Plaintiff has to acknowledge that Defendant's contention
8 that meal break waivers are commonly signed by most Class Members poses a significant risk to
9 his meal periods claim. (Szamet Decl. ¶66.)

10 b) The Risks Associated with the Rest Periods Claim

11 Under IWC Wage Order No. 4, every employer shall authorize and permit all employees
12 to take rest periods. Employees are entitled to a paid ten-minute rest break for every four hours
13 worked, or major fraction thereof. (Cal. Code Regs., tit. 8, § 11040, subd. 11(A).)

14 The Brinker court clarified what steps an employer must take to make rest breaks available
15 to its employees:

16 An employer is required to authorize and permit the amount of rest break
17 time called for under the wage order for its industry. If it does not—if, for
18 example, it adopts a uniform policy authorizing and permitting only one rest
19 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.

(*Ibid.*)

20 Labor Code section 226.7, subdivision (c), also requires an employer to pay an additional
21 hour of compensation for each workday the employer fails to provide a rest period according to
22 law.

23 Here, the same circumstances that give rise to the meal periods claim give rise to the rest
24 periods claim. (Szamet Decl. ¶67.) As the only security guard on the premises, Plaintiff alleges
25 that he was not permitted to take rest periods because no one came to relieve him. (Szamet Decl.
26 ¶68.) Plaintiff acknowledges that because rest periods are not typically recorded in time records.

1 As such, there is an inherent risk to Plaintiff's ability to prove the rest periods claim. (Szamet Decl.
2 ¶69.)

3 However, Defendant maintains that security guards' activity during their shifts are
4 recorded in detail using company-provided tablets/cell phones through the use of an app called
5 SilverTrac. (Szamet Decl. ¶70.) Plaintiff would argue that this is sufficient to show whether rest
6 periods were truly provided based on the detailed reports that Defendant required be submitted
7 through SilverTrac. (Szamet Decl. ¶71.) On the contrary, Defendant would argue that these records
8 would show that rest breaks were provided to the proposed Class Members, regardless of whether
9 another employee came to relieve them for a rest break. (Szamet Decl. ¶72.) As such, Plaintiff
10 acknowledges there are significant risks in litigating the rest periods claim. (Szamet Decl. ¶73.)

11 c) The Risks Associated with the Reimbursement Claim

12 Labor Code section 2802 provides that an employer must "indemnify his or her employee
13 for all necessary expenditures or losses incurred by the employee in direct consequence of the
14 discharge of his or her duties" (Lab. Code, § 2802, subd. (a).)

15 Plaintiff alleges that Defendant failed to reimburse Plaintiff and the Proposed Class
16 members the cost of using their personal cell phones for business related purposes. (Szamet Decl.
17 ¶74.) Specifically, Defendant allegedly required that Plaintiff and the Proposed Class members be
18 available by personal cell phone and answer/use their cell phones for work purposes. (Szamet Decl.
19 ¶75.) Plaintiff also alleges that he used an app to clock in and out for each of his shifts. (Szamet
20 Decl. ¶76.) Plaintiff further alleges that Defendant texted Plaintiff and the Proposed Class about
21 their work schedules to their personal cell phones, and Plaintiff would respond to confirm. (Szamet
22 Decl. ¶77.) Moreover, Plaintiff alleges that Defendant would also text him instructions throughout
23 his shifts and would ask for updates and reports. (Szamet Decl. ¶78.) Plaintiff produced numerous
24 documents showing alleged text messages from Defendant sent to his personal cell phone. (Szamet
25 Decl. ¶79.) These personal cell phones were not provided by Defendant, nor did Defendant
26 reimburse Plaintiff and the Proposed Class for this use. (Szamet Decl. ¶80.)

27 However, Defendant would staunchly argue that there was no need for Plaintiff and the
28

1 Proposed Class to use their personal cell phones because it provided company tablets/cell phones
2 for business use. (Szamet Decl. ¶81.) Defendant would further argue that any texts sent to
3 employees' cell phones were *de minimis* such that it would not give rise to a failure to reimburse
4 claim, and that even if the business use of Plaintiff's personal cell phone was more substantial, that
5 such an inquiry is individualized and uncommon to the class. (Szamet Decl. ¶82.)

6 As such, Plaintiff acknowledges there are also significant risks to the reimbursement claim.

7 d) The Risks Associated with the Waiting Time Penalty Claim

8 Under Labor Code section 203, if an employer fails to provide wages at the time of an
9 employee's termination or within seventy-two (72) hours of resignation, then the employee's
10 wages shall continue as a penalty for up to thirty (30) days. (Labor Code § 203.) Section 203
11 reflects a public policy that favors the full and prompt payment of earned wages. (See, e.g.,
12 *Barnhill v. Robert Saunders & Co.* (1981) 125 Cal.App.3d 1, 7; *Mamika v. Barca* (1998) 68
13 Cal.App.4th 487, 492.) "The failure to pay is willful if the employer 'knows what [it] is doing
14 [and] intends to do what [it] is doing', and does not also require proof that the employer acted with
15 "a deliberate evil purpose to defraud work[ers] of wages which the employer knows to be due.'" (See
16 *Diaz v. Grill Concepts Services, Inc.* (2018) 23 Cal.App.5th 859, 868.)

17 Here, Plaintiff and numerous Proposed Class members are no longer employed by
18 Defendant. Due to Defendant's alleged failure to pay all wages and meal and rest period premiums
19 as detailed above, Defendant also failed to pay all wages owed and due upon their termination
20 and/or resignation. (Szamet Decl. ¶83.) Plaintiff alleges that Defendant's actions were willful, as
21 they have intentionally failed or refused to perform an act which was required to be done. (See
22 *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201.) However, Defendant would
23 argue that any failure to pay wages was not willful, and that it is Plaintiff's burden to meet the high
24 standard of willfulness. (Szamet Decl. ¶84.)

25 As such, there are significant risks to the waiting time penalties claim.

26 ///

27 ///

1 e) The Risks Associated with the PAGA Claim

2 California’s Private Attorneys General Act (“PAGA”), Labor Code § 2698, *et seq.*, permits
3 private litigants to recover civil penalties for violations of the Labor Code. PAGA provides that
4 plaintiffs may recover previously established civil penalties (section 2699(a)) or, if none were
5 established, plaintiffs may recover default penalties provided in section 2699(f) in the amount of
6 \$100 per employee per pay period for the initial violation and \$200 for subsequent violations.

7 The Parties discounted the PAGA claim for multiple reasons. First, the aggrieved
8 employees’ PAGA claims are derivative of all the foregoing class claims. Second, a court has
9 discretion to award less than the maximum penalty. Labor Code § 2699(e)(2) (“a court may award
10 a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts
11 and circumstances of the particular case, to do otherwise would result in an award that is unjust,
12 arbitrary and oppressive, or confiscatory”). *See e.g., Carrington v. Starbucks Corporation* (2018)
13 30 Cal.App.5th 504, 241 Cal.Rptr.3d 647, 669 (affirming award of 10% of maximum PAGA
14 penalty). Finally, the settlement Class is compensated for these violations in the proposed
15 Agreement, and thus any PAGA recovery for these same violations would be duplicative. As such,
16 the Agreement’s contemplated PAGA payment of \$7,500.00 is appropriate. (Szamet Decl. ¶85.)
17 *See Nordstrom Commissions Cases*, 186 Cal.App.4th 576, 589 (2010) (affirming settlement
18 allocating \$0 of \$6.4 million settlement to PAGA penalties).

19 An additional and important issue to consider when evaluating the risks associated with a
20 representative PAGA claim are the recent amendments to the statute. (Szamet Decl. ¶86.) On July
21 1, 2024, Governor Newsom signed AB 2288 and SB 92 which reformed PAGA’s penalty structure
22 as well as its standing requirements.² (Szamet Decl. ¶87.) Specifically, the new legislation caps
23 penalties imposed on employers who quickly cure the Labor Code violations after receiving a
24 PAGA notice, and also requires that the representative plaintiff personally experience the alleged
25 Labor Code violations brought in the action. (Szamet Decl. ¶88.) While this new legislation is not
26

27 ² <https://www.gov.ca.gov/2024/07/01/governor-newsom-signs-paga-reform/>
28

1 retroactive, courts may still take these reforms into consideration when adjudicating a PAGA
2 action at trial. (Szamet Decl. ¶89.) As such, there is substantial risk in litigating Plaintiff's PAGA
3 claim.

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

5 There is significant expense associated with the class certification process, which the
6 Parties can avoid by entering into the contemplated Agreement now. (Szamet Decl. ¶90.) If the
7 Court did eventually certify a meal, rest, reimbursement, or wage statement class, trial of a case
8 involving approximately 452 Class Members would require the retention of expensive expert
9 witnesses, the accrual of extensive litigation costs, and a significant time overlay by the parties.
10 (Szamet Decl. ¶91.) Moreover, given the complexity and unsettled nature of the issues in this case
11 it is likely that any outcome at trial would have resulted in a lengthy and costly appeal. (Szamet
12 Decl. ¶92.) An appeal would result in further delay for the Class Members who are waiting for a
13 resolution in this matter. (*Id.*)

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

15 This case has not been certified to be tried as a class action. (Szamet Decl. ¶93.) While
16 Plaintiff believes there is strong evidence to support certification of several possible subclasses
17 (especially a reimbursement subclass), certification is always hard fought and subject to judicial
18 discretion. Moreover, in class actions, decertification is always a possibility. (*Id.*) In attempting
19 to certify a class, the parties would need to conduct multiple depositions, including of the Class
20 Representative and of several person(s) most knowledgeable regarding Defendant's meal and rest
21 policies. (*Id.*) There is a risk for both sides as to what these depositions will reveal and whether
22 they will support class certification to the extent expected. (*Id.*)

23 4. The Amount Offered in Settlement

24 It was very difficult for the Parties to reach this Settlement of \$160,000.00. (Szamet Decl.
25 ¶94.) This Settlement is the result of adversarial, non-collusive, and arms-length negotiations.
26 (Szamet Decl. ¶95.) The Parties retained Honorable Leo Papas (Ret.) to mediate the claims as a
27 neutral third-party. (Szamet Decl. ¶96.) The Parties arrived at this settlement after extensive
28

1 investigation and discovery, careful evaluation of the law, risks, and all information substantiating
2 the amount of penalties reasonably likely to be awarded to the class were the trier of fact to find
3 Defendant liable, and the assistance of an experienced mediator, Hon. Leo Papas. (*Id.*)

4 Plaintiff worked with a third-party expert to analyze the potential damages in this matter.
5 (Szamet Decl. ¶98.)

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

7 Working with the damages expert, Plaintiff assessed the full value of the Meal Period
8 claim, without any discount, at approximately \$123,680 in damages through to the date of
9 mediation. (Szamet Decl. ¶99.) This amount was calculated by using 16,446 workweeks to
10 estimate approximately 77,296 shifts. (Szamet Decl. ¶100.) Plaintiff assumed a 10% violation
11 rate, amounting to approximately 7,730 meal break violations. (Szamet Decl. ¶101.) Given that
12 Defendant argued that Class Members largely signed valid meal break waivers, and if Defendant
13 was successful in its argument, then the actual violation rate could be much lower than 10%.
14 (Szamet Decl. ¶102.) As such, Plaintiff determined that accepting a discount of the full amount
15 was appropriate. (Szamet Decl. ¶103.)

16 The full value of the Rest Period claim, without any discount, was assessed at
17 approximately \$123,680 in damages and interest through to the date of mediation. (Szamet Decl.
18 ¶104.) This amount was also calculated by using 16,446 workweeks to estimate approximately
19 77,296 shifts. (Szamet Decl. ¶105.) Again, Plaintiff assumed a 10% violation rate, amounting to
20 approximately 7,730 rest break violations. (Szamet Decl. ¶106.) Again, because Defendant's time
21 records do not record rest breaks, the actual violation rate will be difficult to determine, and
22 Defendant will likely argue that its written policies provided for complaint rest breaks and even if
23 security guards are single-staffed, there is enough idle time for employees to take their rest periods.
24 (Szamet Decl. ¶107.) Thus, the actual rest break violation may actually be lower than 10% and
25 dramatically reduce Defendant's exposure. (Szamet Decl. ¶108.) For these reasons, Plaintiff
26 determined that accepting a discount of the full amount was appropriate. (Szamet Decl. ¶109.)

27 With regard to the Reimbursement Claim analysis, Plaintiff believed that it was reasonable
28

1 to value the potential reimbursement at \$10 per month, per employee, for reimbursement of
2 personal cell phone usage. (Szamet Decl. ¶110.) This brought the potential exposure for this claim
3 to \$41,115. (Szamet Decl. ¶111.) This amount is calculated by dividing the number of workweeks
4 by 4 to approximate the number of months, then multiplied by \$10 per month: 16,446 workweeks
5 / 4 weeks = approximately 4,111.50 months x \$10 per month. However, Plaintiff acknowledges
6 that Defendant provided company tablets/cell phones to security guards and thus any failure to
7 reimburse is an individualized inquiry, not a class-wide one. (Szamet Decl. ¶112.) If Defendant
8 can prove that it provided tablets to all Class Members, this would also dramatically reduce
9 Defendant's exposure on this claim if not zero it out altogether. (Szamet Decl. ¶113.) Taking this
10 into account, Plaintiff determined that accepting a discount of the full amount was appropriate.
11 (Szamet Decl. ¶114.)

12 Plaintiff determined the maximum potential value of the Waiting Time Claim to be
13 \$1,297,920. (Szamet Decl. ¶115.) Considering the derivative nature of Labor Code §203 and the
14 dispute over whether class members were owed any wages due to unpaid meal or rest premiums,
15 Plaintiff determined that accepting a discount on this claim was appropriate. (Szamet Decl. ¶116.)

16 Plaintiff determined the maximum potential value of the Wage Statement claim to be
17 \$885,350. (Szamet Decl. ¶117.) In the data, there were 267 employees and 8,987 wage statements
18 issued during the relevant liability period for Labor Code § 226(a). (Szamet Decl. ¶118.) Again,
19 given the derivative nature of a Labor Code § 226(a) claim, the number of wage statements actually
20 containing a 226(a) violation may be very low. (Szamet Decl. ¶119.)

21 Finally, Plaintiff calculated the value of the PAGA claim at \$1,489,650 for Class Members
22 (using \$100 per pay period). (Szamet Decl. ¶120.) This amount is comprised of \$89,900 in
23 PAGA penalties for meal periods, \$89,900 in PAGA penalties for rest periods, \$411,150 in PAGA
24 penalties for failure to reimburse necessary business expenses, and \$898,700 in PAGA penalties
25 for 226(a) violations. While there is no caselaw available yet on this issue, a court could
26 conceivably "stack" per pay period violations as Plaintiff has done above, and the recent
27 amendment to the PAGA statute now expressly permits a court to stack penalties if it so chooses.
28

1 (Szamet Decl. ¶121.) Nonetheless, the main risk taken into account with PAGA is the
2 discretionary nature of the penalty award. (*Id.*) For example, if a court were to decide not to “stack”
3 the PAGA penalties for multiple violations arising from the same conduct or omission, then the
4 maximum exposure would actually be approximately \$89,870 (\$100 per pay period x 8,987 PAGA
5 pay periods). (Szamet Decl. ¶122.) From there, the court could reduce the penalty amount per pay
6 period. (Szamet Decl. ¶123.)

7 A judge can award the statutory maximum of \$100 for the initial violation and \$200
8 thereafter or – in theory – one cent per wage statement. (Szamet Decl. ¶124.) Labor Code section
9 2699(e)(2) states that “a court may award a lesser amount than the maximum civil penalty amount
10 specified by this part if, based on the facts and circumstances of the particular case, to do otherwise
11 would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” (See *Fleming v.*
12 *Covidien Inc.* (C.D. Cal., Aug. 12, 2011, No (OPX)), 2011 WL 7563047 [court awarded \$18 per
13 wage statement, reflecting 18% of the potential exposure]; *Carrington v. Starbucks Corp.* (2018)
14 30 Cal. App. 5th 504, 529 [awarding 10% of maximum civil penalty for meal break claims in light
15 of Starbucks’ “good faith attempts” to comply and because the violations were minimal].) Thus,
16 Class Counsel also considered the possibility of an outcome similar to the outcome in *Carrington*,
17 where the court awarded a small fraction of the maximum civil penalty because of Starbucks’
18 “good faith attempts” to comply with the Labor Code and minimal violations. (Szamet Decl. ¶125.)

19 Here, Defendant would likely argue that in light of the *Diaz* Class Settlement, it has made
20 good faith attempts to comply with the Labor Code thereafter to avoid future wage and hour
21 violations, and that the actual meal and rest break violations are much less than even Plaintiff’s
22 10% assumption. (Szamet Decl. ¶126.) The assumptions made for the derivative claims for waiting
23 time penalties and wage statement penalties would significantly decrease as well. (Szamet Decl.
24 ¶127.) Additionally, while there is a dearth of available authority, in Plaintiff’s view, were he to
25 succeed on any of the underlying Labor Code violations, it is not likely that a Judge would also
26 award a large amount of penalties of top of any damages recovered. (Szamet Decl. ¶128.) For
27 example, it is very possible that a court could disallow “stacking” and also reduce Plaintiff’s PAGA
28

claim to 10% of the maximum exposure of a single stack. Thus, Plaintiff determined that accepting a substantial discount on the PAGA penalties was reasonable.

Per Plaintiff's assessment, the maximum potential value of all of Plaintiff's and the Class Members' claims was approximately \$3,990,049. (Szamet Decl. ¶129.) However, as a result of the significant risks on the merits, and the impact of the prior *Diaz* Class Settlement, Class Counsel believes the Gross Settlement Amount of \$160,000.00 is fair and reasonable under these circumstances. (Szamet Decl. ¶130.)

b) Impact of the Prior *Diaz* Class Settlement

One of the main factors affecting settlement of this action was the prior class action settlement in the *Diaz* matter. (Szamet Decl. ¶131.) Defendant maintained that it has legally compliant policies in place and consistently enforces its lawful policies. Class Counsel worked closely with Judge Papas (who also mediated the *Diaz* matter) to verify the information and representation made by Defendant regarding its policies, practices, and defenses to potential liability. (Szamet Decl. ¶132.) 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. ¶133.)

5. 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. KINGSLEY SZAMET & LY is very experienced in prosecuting complex employment litigation, and the firm has focused its practice since the year 2000 on complex wage, hour, and working condition violations. (Szamet Decl. ¶¶134-136.) The firm is well versed in class action litigation and has diligently and aggressively pursued this action. (*Id.*) KINGSLEY SZAMET & LY currently serves as Class Counsel for dozens of pending class action lawsuits in Northern, Central, and Southern California. (*Id.*) A list of representative cases that KINGSLEY SZAMET & LY has handled is included in the accompanying declaration of Kelsey M. Szamet. (*Id.*) After factoring in the risks explained above, Class Counsel believes that the proposed settlement is fair and reasonable. (Szamet Decl.

¶137.)

6. The Proposed Plan of 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 Class Members pro rata based on the number of Workweeks worked by each Participating Class Member during the Class Period. The lump sum payment to each Class Member not excluding him/ herself will be determined on an individualized basis by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member’s Workweeks during the Class Period. (Ex. 1 at §3, ¶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. ¶138.)

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

Plaintiff requests that the Court approve the proposed plan and form of Class Notice. The standard for determining the adequacy of notice is whether the notice has “a reasonable chance of reaching a substantial percentage of the class members.” (*Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974.) Pursuant to the 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 § 4, ¶4.4.1). If any Notices are returned as undeliverable, the 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.)

1 The purpose of a class notice is to give class members sufficient information to decide whether
2 they should accept the benefits offered, opt out and pursue their own remedies, or object to the
3 settlement. (*Ibid.*)

4 Here, the Notice clearly explains the proposed Agreement and the options to opt out of the
5 Settlement or object to it at the Final Approval Hearing. (Ex. 1 at § 8, ¶8.5; 8.7; *see also* Ex. A to
6 the Agreement at pp. 2-4, 5, 8-9 [Class Notice].) In short, the Court should approve the proposed
7 Class Notice because it describes the proposed settlement with enough specificity to allow Class
8 Members to make an informed choice regarding whether to participate.

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

10 The Class Representative is entitled to an enhancement for his valiant effort and time
11 expended in this matter. (Szamet Decl. ¶139; Iruegas Decl. ¶10.) The time spent by Oscar Iruegas
12 is significant and includes researching and retaining competent counsel; providing information to
13 Class Counsel regarding the nature of the work at Defendant; compiling relevant documents;
14 working closely with Class Counsel to develop the theories of liability and martial relevant
15 evidence; regularly discussing the status of the case with Class Counsel; discussing the case via
16 telephone with many Class Members; making himself available for a full-day of mediation; and
17 responding promptly to Class Counsel's communications regarding settlement. (*Id.*) Thus, in
18 addition to the sums paid to Class Members, Plaintiff requests a proposed litigation enhancement
19 in the amount of \$5,000.00, to be paid from the Gross Settlement Amount. (Ex. 1 at § 3, ¶3.2.1.)
20 As set forth in the Agreement, Plaintiff will also be entering into a general release of liability
21 pursuant to Civil Code Section 1542. (Szamet Decl. ¶140; Ex. 1 at § 6, ¶6.1.1.)

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

27 ///

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

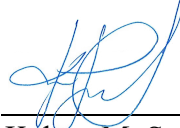
2 As indicated on the Proof of Service, Plaintiff's Motion for Approval of Class Action
3 Settlement ("Motion") will be concurrently uploaded to the Labor and Workforce Development
4 Agency's ("LWDA") website on the date this Motion is filed as required by statute. Proof of
5 submission of Plaintiff's Motion, all related documents, and copy of the email from the LWDA
6 confirming receipt is attached to the Declaration of Kelsey M. Szamet as Exhibit "2." (Szamet
7 Decl. ¶142.)

8 **VIII. CONCLUSION**

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

16 DATED: July 23, 2024

KINGSLEY SZAMET & LY

17
18 By: 

Kelsey M. Szamet

Jessica Bulaon

Attorneys for Plaintiff OSCAR IRUEGAS 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 July 23, 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; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

FERRIS & BRITTON A Professional Corporation Elyssa K. Kulas Scott H. Toothacre Michael R. Weinstein Debra L. Barker 501 West Broadway, Suite 1450 San Diego, California 92101 ekulas@ferrisbritton.com stoothacre@ferrisbritton.com mweinstein@ferrisbritton.com dbarker@ferrisbritton.com <i>Attorneys for Defendant</i>	ABRAMSON LABOR GROUP WILLIAM ZEV ABRAMSON Wza@abramsonlabor.com 11846 Ventura Blvd., Suite 100 Studio City, CA 91604 <i>Attorneys for Plaintiff</i>
--	---

[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 sent to the persons at the e-mail address(es) listed on the attached service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. A pdf copy of which was sent via email to the above email address(es).

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

Executed on July 23, 2024, at Woodland Hills, California.



Michelle Tanzer