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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

MARIA SANDOVAL NUNEZ, an
individual, on behalf of herself and others
similarly situated,

PLAINTIFF,

v.

MERRITT HOSPITALITY, LLC; and DOES
1 thru 50, inclusive,

DEFENDANTS.

CASE NO. 20STCV07198

[Case Assigned for All Purposes to Hon. Maren
Nelson in Dept. 17]

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

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

Date: March 18, 2021

Time: 9:30 a.m.

Dept.: 17

Complaint Filed: February 25, 2020

FAC Filed: May 4, 2020

SAC Filed: February 11, 2021

Trial Date: None Set

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

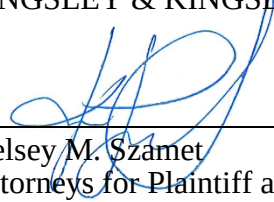
2 **PLEASE TAKE NOTICE** that on March 18, 2021 at 9:30 a.m. in Department 17 of the
3 above-entitled court, Plaintiff MARIA SANDOVAL NUNEZ will move the Court for an Order of
4 Preliminary Approval of the Joint Stipulation of Class Action Settlement and Release of Claims
5 (“Settlement Agreement” or “Settlement”), a copy of which is filed concurrently herewith.

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

12
13 DATED: February 24, 2021

KINGSLEY & KINGSLEY, APC

14
15 By: 

16 Kelsey M. Szamet
17 Attorneys for Plaintiff and the Proposed Class
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff MARIA SANDOVAL NUNEZ (“Plaintiff”) submits this Memorandum of Points
4 and Authorities in support of Plaintiff’s Motion for Preliminary Approval of the Joint Stipulation
5 of Class Action Settlement and Release of Claims reached between Plaintiff and Defendant
6 MERRITT HOSPITALITY, LLC (“Defendant”) (Plaintiff and Defendant together, the “Parties”).

7 By this Motion, Plaintiff requests that the Court:

8 (1) Grant preliminary approval of the fully-executed Joint Stipulation of Class Action
9 Settlement and Release of Claims (“Settlement” or “Settlement Agreement”)”) and conditionally
10 grant certification of the proposed Settlement Class solely for the purposes of settlement. A true
11 and correct copy of the Settlement Agreement is attached to the Declaration of Kelsey M. Szamet
12 as Exhibit “1”;

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

16 (3) Preliminarily appoint Plaintiffs as the Class Representatives and Plaintiff’s
17 Counsel as Class Counsel;

18 (4) Approve the appointment of ILYM Group, Inc. as Settlement Administrator; and

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

22 **II. FACTUAL BACKGROUND**

23 A. Litigation Overview and Procedural History

24 MERRITT HOSPITALITY, LLC operates fifteen (15) first-class hotels and has roughly
25 four thousand (4,000) statewide employees in California. (Declaration of Kelsey M. Szamet
26 (“Szamet Decl.”) ¶4.) Plaintiff was hired as an hourly non-exempt “Front Desk Agent” for
27 Defendant in California at its Warner Center location from approximately October 2018 through
28 February 2020. (Szamet Decl. ¶5.) Plaintiff’s job duties included general administrative and

1 clerical tasks. Plaintiff earned roughly \$16.63 per hour. (*Id.*) Plaintiff has agreed to limit this action
2 to the hotel location where she worked in Woodland Hills, California. (*Id.*)

3 On February 25, 2020, Plaintiff filed a Class Action Complaint and a notice with
4 California’s Labor and Workforce Development Agency (“LWDA”), mailed February 24, 2020,
5 regarding her intent to file an action seeking civil penalties under PAGA. (Szamet Decl. ¶6.)
6 (Settlement Agreement, Ex. 1 at (“Ex. 1 at”) § II, ¶2.)

7 Plaintiff alleges that throughout Plaintiff and the Proposed Class’ employment with
8 Defendant, Defendant failed to: pay all wages; provide lawful meal and rest periods; issue accurate
9 itemized wage statements; and failed to pay all wages due upon termination. (*Id.*) Plaintiff has
10 also asserted a representative claim under PAGA for Defendant’s failure to provide a suitable
11 seating accommodation. (*Id.*)

12 On May 4, 2020, Plaintiff filed a First Amended Complaint (“FAC”), adding the PAGA
13 claim based on the facts previously alleged in the Complaint. (Szamet Decl. ¶7.) After learning
14 additional facts at mediation on November 23, 2020, on January 22, 2021, Plaintiff and Defendant
15 executed a Stipulation to Permit Plaintiff to File Second Amended Class and Representative
16 Complaint. On February 11, 2021, Plaintiff filed a Second Amended Complaint (“SAC”), adding
17 an additional cause of action for penalties for failure to pay wages and/or overtime pursuant to
18 Labor Code §§ 510, 1194, and 1199 and amending the class definition.

19 In the operative Complaint, Plaintiff alleges seven causes of action for: (1) Failure to Pay
20 Wages and/or Overtime Under Labor Code §§ 510, 1194, and 1199; (2) Failure to Provide Meal
21 Breaks Pursuant to Labor Code §§ 226.7 and 512; (3) Failure to Provide Rest Breaks Pursuant to
22 Labor Code § 226.7; (4) Failure to provide accurate, itemized wage statements; (5) Waiting time
23 penalties Pursuant to Labor Code § 203; (6) Violation of Business & Professions Code § 17200;
24 and (7) Penalties Pursuant to Labor Code § 2699, et seq. (hereafter, the “Action” or “Lawsuit”).
25 (Szamet Decl. ¶8.)

26 B. The Discovery Process and Mediation

27 After the matter was at issue, the Parties began to engage in informal discovery to
28 understand the nature of the allegations and the scope of potential liability. (Szamet Decl. ¶9; Ex.

1 at § II, ¶2.) Defendant provided Plaintiff’s counsel with pertinent data for the Class Members so that the Parties could fully-investigate the claims at issue and understand their strengths and weaknesses. (*Id.*) This data included Proposed Class data, Plaintiff’s payroll data, and Defendant’s internal policies. (*Id.*) The Parties agreed to mediate with experienced mediator, Jeff Krivis, and to an informal exchange of documents and information related to the putative class. (Szamet Decl. ¶10). Defendant produced a sampling of records and class data, including the timecards, pay records, and written policies related to putative class members. (Szamet Decl. ¶11).

On November 23, 2020, the Parties attended a full-day mediation with experienced mediator Hon. Jeffrey Krivis. (Szamet Decl. ¶12; Ex. 1 at § II, ¶2.) Though the matter did not settle that day, the Parties continued to work with the mediator and ultimately accepted the mediator’s settlement proposal to settle Plaintiff’s claims on a class-wide basis in December 2020. (*Id.*)

Based on their own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement Agreement with Defendant is fair, reasonable, and adequate, and in the best interest of the settlement classes in light of all known facts and circumstances, including the risk of significant delay, defenses asserted by Defendant, Defendant’s inability to pay, uncertainties regarding a class and representative action trial on the merits, and numerous potential appellate issues. (Szamet Decl. ¶13.) Although Defendant denies any liability, Defendant is agreeing to this Settlement 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.*)

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.)

From commencement of this action, Plaintiffs have argued Defendant’s policies were applied uniformly to all class members. Plaintiff’s allegations present common legal and factual questions of, *inter alia*, whether Defendant applied the same policies to all class members; whether these policies resulted in Labor Code violations; whether Defendant’s conduct was intentional; and whether class members are entitled to penalties. (Szamet Decl. ¶14.) These questions could be resolved using Defendant’s time and payroll records and written policies and practices. (Szamet Decl. ¶15.)

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

1 A. The Proposed Classes Are Ascertainable and Sufficiently Numerous

2 1. Ascertainability

3 Putative class members are deemed “ascertainable” when they may be “readily identified
4 without unreasonable expense or time by reference to official records.” (*Rose v. City of Hayward*
5 (1981) 126 Cal.App.3d 926, 932.) In determining whether a class is ascertainable, a court
6 scrutinizes the class definition, the size of the class and the means of identifying class members.
7 (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.)

8 Here, Plaintiff maintains that the proposed Settlement Class is ascertainable for several
9 reasons: First, Defendant has agreed in the Settlement Agreement to provide a class list to the
10 Settlement Administrator containing the full name, last known address, last known home telephone
11 number, social security number, and dates of employment for all putative class members after
12 issuance of the preliminary approval order. (Szamet Decl. ¶16; Ex. 1 at § I, ¶4.) Second, Settlement
13 Class member consists of Defendant’s hourly employees, and Defendant is required to keep
14 records of its hourly employees’ names, home addresses, and social security numbers. (*See Wage*
15 *Order 5-2001*, subsection 7(c); Szamet Decl. ¶17.) Third and finally, Defendant informally
16 produced Plaintiff’s personnel file and pay statements, relevant commission policies, sampling
17 shift data, pay data, and wage statements for Settlement Class Members containing class member
18 contact information, which confirms that all Settlement Class member may be readily identified
19 based on Defendant’s records. (Szamet Decl. ¶18.)

20 2. Numerosity

21 There is no set number that is required as a matter of law to maintain a class action. (*See,*
22 *e.g., Rose v. City of Hayward, supra*, 126 Cal.App.3d at p. 934.) Here, the proposed Settlement
23 Class contains, based upon information and belief, approximately 261 hourly non-exempt
24 employees in the State of California. (Ex. 1 at § III, ¶31.) Therefore, Plaintiff is confident she will
25 be able to establish that the proposed Settlement Class is ascertainable and sufficiently numerous.
26 (Szamet Decl. ¶19.)

27 ///

28 ///

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

2 1. There Are Predominant Questions of Law and Fact

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

12 Here, Plaintiff argues that there are questions of law and fact common to the proposed
13 Settlement Class that predominate over any questions affecting only individual Class Members.
14 (Szamet Decl. ¶20.) These common questions include:

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

26 (Szamet Decl. ¶21.)

27 Defendant maintained a company handbook containing uniform meal and rest break
28 policies for all hourly employees. (Szamet Decl. ¶22.) Plaintiff maintains that the presence of a

company-wide meal and rest policy suggests 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 Settlement Class Members suffered the same injuries, in the same manner: (1) Settlement Class Members were not paid all wages/overtime; (2) Settlement Class Members did not receive their meal and rest periods as required; (3) Settlement Class Members were not provided accurate itemized wage statements; (4) Settlement Class Members were not paid all wages owed upon termination/resignation; and (5) Defendant failed to provide suitable seating. (Szamet Decl. ¶24.) Plaintiff alleges that Settlement 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. Accordingly, for purposes of settlement, the evidence reviewed by Class Counsel demonstrates that common meal and rest policies and wage policies applied to the proposed Settlement Class Members and certification for settlement purposes is appropriate. (Szamet Decl. ¶25.)

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

A putative class representative's claim must be "typical," but not necessarily identical to the claims of other class members. The test of typicality "is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the Class

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

Plaintiff worked as a “Front Desk Agent” for Defendant at its Warner Center location, earning roughly \$16.63 per hour. (Szamet Decl. ¶26.) Plaintiff alleges that she: (1) worked without being paid all wages and/or overtime; (2) worked without being provided meal/rest periods as required by law; (3) worked without being provided accurate itemized wage statements; and (4) worked without being paid all wages due upon separation. She also alleges that she experienced derivative claims for unfair business competition (B&P Code §17200) and Labor Code §2699, et seq. based on the previously alleged Labor Code violations and for Defendant’s alleged failure to provide suitable seating. (Szamet Decl. ¶27.) Plaintiff contends that her claims are typical of those of the Settlement Class. (Szamet Decl. ¶28.)

Plaintiffs seek relief for these claims and derivative claims on behalf of all class members. (Szamet Decl. ¶29.) Thus, Plaintiff’s claims arise from the same employment practices and are based on the same legal theories as those applicable to the other Class Members.

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

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

Plaintiff believes that she is capable of fairly representing and adequately protecting the interests of the proposed Settlement Class Members. (Szamet Decl. ¶30.) Plaintiff’s interests in this litigation are coextensive with the interests of the proposed Settlement Class Members. The members of the proposed Settlement Class all worked for Defendant during the relevant time

1 period and incurred the same type of alleged damages with regard to Defendant’s alleged violations
2 of the law. (Szamet Decl. ¶31.) Plaintiff has already demonstrated her ability to advocate for the
3 interests of the class by initiating this litigation, gathering documents and information, and
4 obtaining a fair settlement on behalf of class members. (Szamet Decl. ¶32.) Moreover, Plaintiff
5 has agreed to serve as Class Representative and has retained qualified Counsel who is experienced
6 in prosecuting wage and hour class actions. (Szamet Decl. ¶33.) This demonstrates her
7 commitment to bringing about the best possible results for the benefit of the proposed Settlement
8 Class. (Szamet Decl. ¶34.) Plaintiff has provided her Counsel with all necessary and pertinent
9 information. (Szamet Decl. ¶35.) She has been a very active participant in the litigation including
10 having frequent contact with Settlement Class Members and working closely with Class Counsel
11 to develop the theories of liability. (Szamet Decl. ¶36.) Plaintiff has provided her Counsel with all
12 necessary and pertinent information to evaluate the case. (Szamet Decl. ¶37.) Therefore, Plaintiff
13 believes that she has and will continue to adequately represent the proposed Settlement Class
14 Members. (Szamet Decl. ¶38.)

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

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

1 can be manageably tried.

2 Plaintiff maintains that class treatment would be the superior method of managing this case.
3 A class action is superior to individual litigation “when numerous parties suffer injury of
4 insufficient size to warrant individual action and when denial of class relief would result in unjust
5 advantage to the wrongdoer.” (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.) In
6 cases such as this, where individual damages may be small, the class action device is the most
7 feasible method of recovery. (*See, e.g. Lockheed Martin, supra*, 29 Cal.4th at 1131.) In this regard,
8 the superiority of class treatment is evident here because individual pursuit of class members’
9 claims may not be economically viable. (Szamet Decl. ¶39.) The only alternative to certification
10 would be to force over 261 employees to join this action, file individual, uniform actions, or
11 abandon their legal rights altogether. (Szamet Decl. ¶40.) Plaintiff maintains that this economic
12 reality would result in a windfall for Defendant if this case were not certified. (Szamet Decl. ¶41.)

13 **IV. THE PROPOSED SETTLEMENT**

14 **A. The Settlement Class**

15 For purposes of Settlement Agreement, the settlement class is defined as: “all persons
16 employed by Defendant as hourly non-exempt employees at the Warner Center Marriott during the
17 Class Period.” (“Settlement Class Members” or “Class Members”) (Szamet Decl. ¶42; Settlement
18 Agreement, Ex. 1 at § I, ¶5.)

19 The Class Period is February 25, 2016, up to January 22, 2021. (Szamet Decl. ¶43; Ex. 1 at
20 § I, ¶6.) As of November 23, 2020 (the date of mediation) and based on documents and other
21 information produced by Defendant, there are approximately 261 Settlement Class Members.
22 (Szamet Decl. ¶44; Ex. 1 at § III, ¶31.)

23 **B. Gross Settlement Fund**

24 As detailed fully in the Settlement Agreement, the Settlement provides for Defendant to
25 pay a Gross Settlement Fund of \$190,000.00, which includes the sum of the Individual Settlement
26 Payments, the Class Representative Enhancement Award, the Class Counsel Award, PAGA
27 Payment, and the Settlement Administration Costs. (Szamet Decl. ¶45; Ex. 1 at § III, ¶16.)

28 The Net Settlement Fund is the Gross Settlement Fund, less Class Counsel Award, Class

Representative Enhancement, PAGA Payment, and Settlement Administration Costs. (Szamet Decl. ¶46; Ex. 1 at § III, ¶16.)

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

Gross Settlement Fund:	\$	190,000.00
Class Representative Enhancement Award:	\$	5,000.00
Class Counsel Fees:	\$	63,333.33
Class Counsel Costs:	\$	15,000.00
PAGA Payment:	\$	10,000.00
		<i>(\$7,500.00 to the LWDA and \$2,500.00 to remain in the Net Settlement Fund)</i>
<u>Settlement Administrator Costs:</u>	<u>\$</u>	<u>12,000.00</u>
Net Settlement Fund	\$	87,166.67

(Ex. 1 at § III, ¶16.)

C. Individual Settlement Payments

The amount of each Participating Class Member's Individual Settlement Payment is an individualized amount that is based on the number of compensable workweeks worked by the Participating Class Member during the Class Period. (Ex. 1 at § III, ¶17; *see also* Ex. A to the Settlement Agreement at pp. 3 [Class Notice].) This individual amount shall be determined according to the settlement payment formula set forth in the Settlement Agreement. (*See* Ex. 1 at § III, ¶17; *Id.* at Ex. A to the Settlement Agreement [Class Notice].) The Settlement Agreement provides for a specific and detailed Work Week dispute process. (*See* Ex. 1 at § III, ¶10; *see also* Ex. A to the Settlement Agreement at pp. 3 [Class Notice].)

D. Process for Administering Settlement after Preliminary Approval

The detailed Notice Procedure established by the Settlement Agreement will efficiently and accurately ensure that Notice is provided to the Settlement Class Members. (Ex. 1 at § III, ¶8.) The Parties have agreed to use a reputable third-party claims administrator, ILYM Group, Inc., to administer the Settlement Agreement. (Ex. 1 at § I, ¶39.)

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

As detailed in the Settlement Agreement, Settlement Class Members will have an opportunity to request exclusion from the Settlement (i.e. opt out) and to object to the Settlement

1 Agreement. (See Ex. 1 at § III, ¶¶12-13; see also Ex. A to the Settlement Agreement at pp. 2, 4,
2 and 5 [Class Notice].) The Settlement Agreement and Class Notice contain details about the
3 process to request exclusion or object. (*Id.*)

4 F. The Release

5 The Released Claims are defined as: “any and all claims that are asserted in the operative
6 complaint and which could have been asserted based on the facts alleged in the complaint, which
7 are or could be the basis of claims for failure to provide meal breaks pursuant to Labor Code §§
8 226.7 and 512; failure to provide rest breaks pursuant to Labor Code § 226.7; failure to pay wages
9 pursuant to Labor Code §§ 510, 1194, and 1199; penalties pursuant to Labor Code § 203, failure
10 to issue accurate itemized wage statements under Labor Code § 226(a); violation of Business &
11 Professions Code § 17200; and claims for restitution and other equitable relief, liquidated damages,
12 punitive damages, or penalties based upon Labor Code §§203, 226(a), 226.7, 510, 512, 1194, and
13 1199.” (Ex. 1 at § I, ¶¶33-34.) Released PAGA Claims are defined as any and all claims for
14 penalties under the Labor Code Private Attorneys General Act of 2004 for a violation of Labor
15 Code §§203, 226(a), 226.7, 510, 512, 1194, and 1199. (*Id.*)

16 V. **ARGUMENT**

17 A. Plaintiff Requests Approval of This Class Action Settlement

18 A settlement does not have to provide 100% of the damages sought to be considered a
19 fair and reasonable settlement. *Rebney v. Wells Fargo Bank*, 220 Cal.App.3d 1117, 1139 (1991).
20 Rather, compromise is expected:

21 Compromise is inherent and necessary in the settlement process . . . even if
22 “the relief afforded by the proposed settlement is substantially narrower
23 than it would be if the suits were to be successfully litigated,” this is no bar
24 to a class settlement because “the public interest may indeed be served by a
voluntary settlement in which each side gives ground in the interest of
avoiding litigation.”

25 *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 250 (2001).

26 The case of *Kullar v. Foot Locker Retail, Inc* (2008) 168 Cal.App.4th 116, 128, sets forth
27 several factors that the Court should analyze in determining whether to approve a class action
28

1 settlement. These factors include: (1) the strength of plaintiff's case; (2) the risk, expense,
2 complexity and likely duration of further litigation; (3) the risk of maintaining class action status
3 through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and stage
4 of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental
5 participant; and (8) the reaction of the class members to the proposed settlement.

6 The proposed settlement satisfies each of these factors. Class Counsel conducted extensive
7 informal discovery before entering into meaningful settlement negotiations in this matter. (*Id* at
8 Szamet Decl. ¶¶9-11.) This discovery permitted Class Counsel to fairly evaluate the strength of
9 the case and the risks associated with ongoing litigation. (Szamet Decl. ¶47.) Class Counsel is
10 experienced in handling wage and hour class actions and, after weighing all of the following
11 factors, supports this Settlement Agreement. (Szamet Decl. ¶48.)

12 1. The Strength of Plaintiff's Case

13 a) The Risks Associated with the Wage and Overtime Claim

14 Labor Code § 510(a) states that eight (8) hours of labor constitutes a day's work and any
15 work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in
16 any one workweek must be compensated at the rate of no less than one and one-half times the
17 regular rate of pay for an employee. Labor Code §§ 1194 and 1199 require an employer to pay its
18 employees the legal minimum wage and the legal overtime compensation applicable. "Under
19 California's minimum wage law, employees must be compensated for each hour worked at either
20 the legal minimum for the contractual hourly rate, and compliance cannot be determined by
21 averaging hourly compensation." *Bluford*, 216 Cal. App. 4th at 872; *Armenta v. Osmose, Inc.*, 135
22 Cal.App.4th 314, 324 (2005).

23 Plaintiff contends that Defendant failed to properly compensate Plaintiff for all work in
24 excess of eight (8) hours in a workday and/or forty (40) hours at the rate of one-half (1 ½) their
25 regular rate of pay. (Szamet Decl. ¶49.) Plaintiff alleges that she and the Settlement Class were
26 forced to work on a regular and consistent basis without receiving compensation for all hours
27 worked at the proper rate. (*Id.*) Specifically, Plaintiff alleges the way that Defendant calculated
28 overtime it was slightly underpaying Settlement Class Members, thus resulting in a failure to

1 compensate Plaintiff and similarly situated employees for all overtime hours worked at the correct
2 overtime rate. (Szamet Decl. ¶50.) Plaintiff alleges that the underpayment was slight with the
3 overtime rate being off by a few cents. (Szamet Decl. ¶51.)

4 Defendant strongly disputes this contention and argues that all overtime worked was paid
5 at the correct rate. (Szamet Decl. ¶52.)

6 While Plaintiff is confident that certification of the wage and overtime class is appropriate,
7 at the same time, it cannot be ignored that there are significant risks associated with moving
8 forward and attempting to certify the wage and overtime claim. (Szamet Decl. ¶53.) Most
9 importantly, Plaintiff acknowledges that did Defendant did pay overtime pay and the potential
10 dispute is limited to whether the rate is correct or not. (Szamet Decl. ¶54.) While Plaintiff alleged
11 that the overtime rate was paid at a rate that was a few cents off resulting in an alleged cumulative
12 underpayment of approximately \$31,686.87 to the Proposed Class, Defendant walked Plaintiff
13 through it overtime calculations as part of the negotiating process in an effort to establish that it
14 was paying at the correct overtime rate. (Szamet Decl. ¶55.)

15 In the end, though the Court may find that Plaintiff's wage and overtime claim is
16 certifiable, the monetary damages are small because Plaintiff acknowledges that alleged
17 underpayment was quite small. (Szamet Decl. ¶56.) If litigation continued, it is anticipated
18 extensive discovery would be necessary to support Plaintiff's contention, including through further
19 written discovery and depositions of Defendant's person(s) most knowledgeable. (Szamet Decl.
20 ¶57.) As such, Plaintiff could not attribute full value to this claim in the negotiations. (*Id.*)

21 b) The Risks Associated with the Meal Break Claim

22 Labor Code § 512 provides:

23 An employer may not employ an employee for a work period of more than
24 five hours per day without providing the employee with a meal period of
25 not less than 30 minutes An employer may not employ an employee
26 for a work period of more than 10 hours per day without providing the
employee with a second meal period of not less than 30 minutes, except that
if the total hours worked is no more than 12 hours, the second meal period
may be waived by mutual consent of the employer and the employee only
if the first meal period was not waived.

27 Under this rule, "[e]mployers must afford employees uninterrupted half-hour periods in
28 which they are relieved of any duty or employer control and are free to come and go as they

1 please.” (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1037.) In order for a meal
2 period to qualify as a lawful break under California law, an employer must (1) relieve its
3 employees of all duty; (2) relinquish control over their activities; (3) permit them a reasonable
4 opportunity to take an uninterrupted 30-minute break; and (4) not impede or discourage them from
5 doing so. (*Id.* at p. 1040.)

6 The applicable wage order requires employers not only to provide meal periods in the
7 manner described above, but also “to record having done so.” (*Brinker, supra*, 53 Cal.4th at pp.
8 1052-53 (J. Werdegarr, concurring) [citations omitted].) A long-standing application of burden-
9 shifting occurs when an employer’s records are so incomplete or inaccurate that an employee
10 cannot prove his or her damages. (*Anderson v. Mt. Clemens Pottery Co.* (1946) 328 U.S. 680, 687-
11 88; *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1188-1190; *Safeway, Inc. v.*
12 *Superior Court of Los Angeles Cnty.* (2015) 238 Cal.App.4th 1138.)

13 Plaintiff alleges that that her managers frequently told her that she could not take a meal
14 break during shifts, and Plaintiff contends that she was frequently refused a meal break. (Szamet
15 Decl. ¶58.) In addition, Plaintiff’s managers routinely instructed her to clock-out for meal breaks
16 on the premise that another employee would cover her position. (Szamet Decl. ¶59.) Often,
17 however, the other employee never showed up and despite being “clocked out” Plaintiff was not
18 able to take her meal break. (Szamet Decl. ¶60.)

19 While Plaintiff is confident that certification of the meal period class is appropriate, at the
20 same time, it cannot be ignored that there are significant risks associated with moving forward and
21 attempting to certify the meal period claim. (Szamet Decl. ¶61.) Most importantly, Plaintiff must
22 acknowledge that the Court might find that Defendant did in fact maintain an accurate written meal
23 period policy. (Szamet Decl. ¶62.) In addition, there was risk that at certification (and trial),
24 Defendant would introduce evidence that employees were regularly advised of the timing of meal
25 periods. (Szamet Decl. ¶63.) With this analysis in mind, there is significant risk that the Court
26 could have determined that the written meal period policy does comply with California law, and
27 in that scenario, the likelihood that Plaintiff would have been able to certify a meal period class
28 was very low. (Szamet Decl. ¶64.) As Plaintiff’s analysis of the data above may suggest, the extent

1 to which Defendant actually “provided” employees with lawful breaks according to its policy
2 would be highly disputed were the case to have continued, a considerable discount from the
3 maximum settlement value of this claim was required. (Szamet Decl. ¶65.)

4 As for the damage analysis, Plaintiff’s Counsel conducted an analysis of the sample of
5 wage statements at issue and determined the meal period violation rate. (Szamet Decl. ¶66.) This
6 analysis revealed that, of the sample payroll documents provided by Defendant prior to mediation,
7 the records show that, for shifts of greater than five (5) hours, Plaintiff and other employees missed
8 their meal periods approximately 4.5% of the time and took late meal periods 2.7% of time. (*Id.*)
9 Using these violations rates, Plaintiff’s Counsel assessed the maximum potential liability on the
10 meal period claim to be \$43,432.27. (Szamet Decl. ¶67.)

11 Plaintiff must acknowledge Defendant’s contention that Defendant maintained a valid
12 written meal break policy and that any missed or late meal periods were waived by the employees.
13 (Szamet Decl. ¶68.) Accordingly, a considerable discount from the maximum settlement value of
14 this claim is appropriate. (*Id.*)

15 c) The Risks Associated with the Rest Break Claim

16 Here, just as with meal periods, Plaintiff alleges that was regularly and consistently told by
17 managers that she could not take rest breaks. (Szamet Decl. ¶69.) Defendant maintains that its
18 policy makes rest breaks available and that no violation has been committed. (Szamet Decl. ¶70.)
19 Accordingly, while Plaintiff believes that certification of the rest period class is appropriate as a
20 result of Defendant’s common policies, at the same time, it cannot be ignored that there are
21 significant risks associated with moving forward and attempting to certify the rest period claim.
22 (Szamet Decl. ¶71.) Most importantly, Plaintiff must acknowledge that the Court might find that
23 Defendant did in fact maintain an accurate written rest period policy that does comply with
24 California law, and in that scenario, the likelihood that Plaintiff would have been able to certify a
25 rest period class was very low. (Szamet Decl. ¶72.) As Plaintiff’s analysis of the data above may
26 suggest, the extent to which Defendant actually “provided” employees with lawful rest according
27 to its policy would be highly disputed were the case to have continued, a considerable discount
28 from the maximum settlement value of this claim was required. (Szamet Decl. ¶73.) Defendant

1 would certainly have relied upon its written rest period policy and argued that any alleged
2 violations Plaintiff asserted were unique to her and you would have to ask each person whether or
3 not they were able to take complaint rest periods per day, thereby defeating commonality. (Szamet
4 Decl. ¶74.) The reliance on Plaintiff's experiences and further need for supportive testimony
5 through depositions and declarations (which will assuredly to be countered with Defendants' own
6 testimony) makes the value of this claim uncertain. (Szamet Decl. ¶75.) As a result, Plaintiff did
7 not give significant value to the meal period claim. (Szamet Decl. ¶76.)

8 Unlike the meal period claim, there was no time data to analyze to determine the rest period
9 violation rate. (Szamet Decl. ¶77.) Instead, Plaintiff maintained that each and every fractional shift
10 triggered a rest period violation. Per this conclusion, Plaintiff's Counsel assessed the maximum
11 potential liability on the rest period claim to be \$716,222.43 (\$17.13 average hourly rate x 41,811
12 eligible shifts). (*Id.*) However, for the reasons stated, Plaintiff's counsel believes that significant
13 discount of this claim is appropriate. (*Id.*)

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

15 Labor Code § 226(a) provides:

16 An employer ... shall furnish to his or her employee ... an accurate itemized
17 statement in writing showing ... (2) total hours worked by the employee..., (4) all
18 deductions from the employees' wages..., (6) the inclusive dates for each pay
19 period, (7) the last four digits of the employees' social security number or the
20 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....

21 An employee suffering injury as a result of a knowing and intentional failure by an
22 employer to comply with Labor Code section 226(a) is entitled to recover the greater of all actual
23 damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurs and one
24 hundred dollars (\$100.00) per employee for each violation in a subsequent pay period, not
25 exceeding an aggregate penalty of four thousand dollars (\$4,000.00), and is entitled to an award
26 of costs and reasonable attorneys' fees. (Labor Code § 226(a).) Plaintiff's counsel has calculated
27 the maximum value of the wage statement claim under Labor Code section 226(a) to be
28 \$65,550.00. (Szamet Decl. ¶78.)

1 Here, Plaintiff alleged that Defendant failed to accurately show Plaintiff's and the Proposed
2 Class' overtime rates on the wage statements it issued. (Szamet Decl. ¶79.) By way of example,
3 attached to the Declaration of Kelsey M. Szamet as Exhibit "2" is document Bates Stamped Maria
4 Nunez 0034. (Szamet Decl. ¶80.) This paystub reflects Plaintiff's hourly rate of \$16.63 per hour.
5 (Szamet Decl. ¶81.) Plaintiff's accurate overtime rate was \$24.95 (\$16.63 x 1.5). (Szamet Decl.
6 ¶82.) On Plaintiff's paystub, there are two overtime categories which show overtime rates of
7 \$24.85 and \$25.00. (Szamet Decl. ¶83.) Consequently, Plaintiff alleges that Defendant has
8 violated Labor Code § 226(a) and the IWC Wage Order as a matter of law and is liable. (Szamet
9 Decl. ¶84.)

10 While Plaintiff is confident that certification of the inaccurate wage statement claim is
11 appropriate, Plaintiff must acknowledge that there are significant risks associated with moving
12 forward and attempting to certify the inaccurate wage statement claim. (Szamet Decl. ¶85.)

13 The main risk Plaintiff considered is addressed in *Maldonado v. Epsilon Plastics* (2018)
14 22 Cal.App.5th 1308. The Court of Appeal confirmed that a wage statement claim fails as a matter
15 of law when it is based on the alleged failure to show all wages purportedly "earned", but the wage
16 statements accurately reflect the wages actually paid to the employee. *Id.* The Court agreed with
17 the employer's "commonsense position that the pay stubs were accurate in that they correctly
18 reflected . . . the pay received" and held that a failure to pay wages "does not mandate that
19 [employees] also receive penalties for the wage statements which accurately reflected the[]
20 compensation" they were paid. (*Maldonado, supra*, 22 Cal.App.5th at 1336.) Here, Plaintiff
21 anticipated that Defendant would argue that the itemized wage statements issued were "accurate"
22 because they do show what the Class Members were actually paid. (Szamet Decl. ¶86.) Defendant
23 would argue that, like *Maldonado*, simply because Plaintiff asserted a failure to pay wages claim,
24 that would not automatically result in penalties for inaccurate wage statements so long as the wage
25 statements show "the pay received" by the Class Members. (Szamet Decl. ¶87.) Because of this
26 argument, Plaintiff believes that a significant discount is appropriate. (Szamet Decl. ¶88.)

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

28 This claim alleges that Defendant failed to pay all wages due and owing upon termination

1 or resignation. Labor Code § 203(a) provides:

2 If an employer willfully fails to pay ... any wages of an employee
3 who is discharged or who quits, the wages of the employee shall
4 continue as a penalty from the due date thereof at the same rate until
paid or until an action therefor is commenced; but the wages shall
not continue for more than 30 days.

5 Under Labor Code § 203, a “‘willful’ failure to pay wages ... occurs when an employer
6 intentionally fails to pay wages to an employee when those wages are due.” Cal. Code Regs., tit.
7 8, § 13520; *see also Diaz v. Grill Concepts Services, Inc.* (2018) 23 Cal.App.5th 859 (“willful”
8 simply means that “the employer intentionally failed or refused to perform an act which was
9 required to be done[.] Willful ... does not necessarily imply anything blameable, or any malice or
10 wrong toward the other party”).

11 Here, Plaintiff contends that Defendant failed to pay overtime at the correct rate for any
12 work in excess of eight (8) hours per day and/or any work in excess of forty (40) hours per week.
13 (Szamet Decl. ¶89.) The risk analysis for the section 203 claim flows from the risk analysis for the
14 underlying wage claim discussed above. (Szamet Decl. ¶90.) If Defendant could prove, as it
15 contends, that class members were properly paid for all hours worked, there would be no recovery
16 of wages and no waiting time penalties that flow therefrom. (Szamet Decl. ¶91.)

17 Plaintiff also contends that Defendant owes waiting time penalties by not paying former
18 alleged employees all wages owed and all premium payments for non-compliant meal or rest
19 periods. Labor Code § 226.7. Pursuant to *Murphy v. Kenneth Cole Productions, Inc.* (2002) 40
20 Cal.4th 1094, 1120, Plaintiff contended that break premium payments constitute “wages” under
21 Labor Code § 203. (“We hold that section 226.7’s plain language, the administrative and legislative
22 history, and the compensatory purpose of the remedy compel the conclusion that the ‘additional
23 hour of pay’ is a premium wage, not a penalty”). (Szamet Decl. ¶92.) However, the Court in
24 *Naranjo* recently held that unpaid break premiums do not entitle employees to additional remedies
25 under the California Labor Code for waiting time penalties. *Naranjo, et al. v. Spectrum Security*
26 *Services, Inc.* (2019) 40 Cal.App.5th 444. Though *Naranjo* is no longer citable as the California
27 Supreme Court accepted review in late December 2019, this issue is still certainly undecided.
28 (Szamet Decl. ¶93.) Further, to establish liability for waiting time penalties, Plaintiff would have

1 to establish not only that the underlying violations occurred, but also that Defendant's conduct was
2 "willful." Labor Code § 203. (Szamet Decl. ¶94.)

3 f) The Risks Associated with the PAGA Claim

4 California's Private Attorneys General Act ("PAGA"), Labor Code § 2698, *et seq.*, permits
5 private litigants to recover civil penalties for violations of the Labor Code. PAGA provides that
6 plaintiffs may recover previously established civil penalties (section 2699(a)) or, if none were
7 established, plaintiffs may recover default penalties provided in section 2699(f) in the amount of
8 \$100 per employee per pay period for the initial violation and \$200 for subsequent violations.

9 There are multiple risks associated with the PAGA claim. First, with the exception of the
10 aggrieved employees' claim for failure to provide suitable seating, the aggrieved employees'
11 PAGA claims are derivative of all the foregoing class claims. Second, a court has discretion to
12 award less than the maximum penalty. Labor Code § 2699(e)(2) ("a court may award a lesser
13 amount than the maximum civil penalty amount specified by this part if, based on the facts and
14 circumstances of the particular case, to do otherwise would result in an award that is unjust,
15 arbitrary and oppressive, or confiscatory"). *See e.g., Carrington v. Starbucks Corporation* (2018)
16 30 Cal.App.5th 504, 241 Cal.Rptr.3d 647, 669 (affirming award of 10% of maximum PAGA
17 penalty). Finally, the Settlement Class is compensated for these violations in the proposed
18 Settlement Agreement, and thus any PAGA recovery for these same violations would be
19 duplicative.

20 Regarding the claim for failure to provide suitable seating, Defendant contends that it fully
21 satisfied its obligation to provide suitable seating to its employees. (Szamet Decl. ¶95.) Defendant
22 contends that during lulls in guest activity, Defendant provides Front Desk Agents with chairs
23 located directly behind the Front Desk. (Szamet Decl. ¶96.) Furthermore, Defendant provided
24 photographic evidence of this alleged seating arrangement. (*Id.*) As such, Plaintiff believes that a
25 significant discount of this claim is appropriate for settlement purposes and the Settlement
26 Agreement's contemplated PAGA payment of \$10,000.00 is appropriate. (*Id.*) *See Nordstrom*
27 *Commissions Cases*, 186 Cal.App.4th 576, 589 (2010) (affirming settlement allocating \$0 of \$6.4
28 million settlement to PAGA penalties).

g) Defendant's Financial Status

It cannot be ignored that Defendant's financial status also poses a risk to recovery by the Proposed Class. (Szamet Decl. ¶97.) Defendant is a hotel in Southern California that has been hugely impacted by the state stay at home orders including travel restrictions. (*Id.*) Indeed, for many months over the past year Defendant has been closed altogether or under very restrictive occupancy requirements. (*Id.*) Defendant's financial status was raised at mediation and Plaintiff certainly had to consider Defendant's ability to withstand a sizeable judgment against it. (*Id.*) These risks were carefully considered in the negotiating process and further support Plaintiff's belief that the settlement is fair, adequate, and reasonable.

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

There is significant expense associated with the class certification process, which the Parties can avoid by entering into the contemplated Settlement Agreement now. (Szamet Decl. ¶98.) If the Court did eventually certify a class, trial of a case involving approximately 261 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. ¶99.) 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. ¶100.) An appeal would result in further delay for the Settlement Class Members who are waiting for a resolution in this matter. (*Id.*)

3. The Risk of Maintaining Class Action Status through Trial

This case has not been certified to be tried as a class action. (Szamet Decl. ¶101.) While Plaintiff believes there is strong evidence to support certification of several possible subclasses, certification is always hard fought and subject to judicial discretion. Moreover, in class actions, decertification is always a possibility. (*Id.*) In attempting to certify a class, the parties would need to conduct multiple depositions, including of the 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.*)

///

1 4. The Amount Offered in Settlement

2 It was very difficult for the Parties to reach this Settlement of \$190,000.00. (Szamet Decl.
3 ¶102.) This Settlement is the result of adversarial, non-collusive, and arms-length negotiations
4 aided by experienced mediator, Jeffrey Krivis. (Szamet Decl. ¶103.) The Parties arrived at it after
5 extensive investigation and discovery, careful evaluation of the law, risks, and all information
6 substantiating the amount of penalties reasonably likely to be awarded to the class were the trier
7 of fact to find Defendant liable. (*Id.*)

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

9 Working with a data expert, Plaintiff was able to analyze Defendant's maximum potential
10 exposure on the operative claims alleged. (Szamet Decl. ¶104.)

11 As discussed above, Plaintiff assessed full value of the Wage/Overtime claim, without any
12 discount, at approximately \$31,686.87. (Szamet Decl. ¶105.)

13 The full value of the Meal Period claim, without any discount, was approximately
14 \$43,432.27. (Szamet Decl. ¶106.) Plaintiff assessed the full value of the Rest Period claim, without
15 any discount, was approximately \$716,222.43. (Szamet Decl. ¶107.) For the reasons above,
16 Plaintiff determined that accepting a steep discount of these full amount was appropriate. (Szamet
17 Decl. ¶108.)

18 Using \$50/\$100 per wage statement with a cap of \$4,000 per employee, Plaintiff valued
19 the Wage Statement Claim, without discount, at \$65,550.00. (Szamet Decl. ¶109.) Due to the risk
20 discussed above that 226(a) liability wouldn't attach under *Naranjo* and *Maldonado*, Plaintiff
21 determined that a discount of this claim was fair for settlement purposes. (Szamet Decl. ¶110.)

22 Plaintiff valued the Waiting Time Penalty Claim, without discount, at \$34,427.51. (Szamet
23 Decl. ¶111.) Due to the risk discussed above that 226(a) liability wouldn't attach under *Naranjo*
24 and *Maldonado*, Plaintiff determined that a discount of this claim was fair for settlement purposes.
25 (Szamet Decl. ¶112.)

26 Finally, using \$100/\$200 per pay period, Plaintiff calculated the value of the PAGA claim
27 at \$131,100.00 for Settlement Class Members. (Szamet Decl. ¶113.) The main risk taken into
28 account with PAGA is the discretionary nature of the penalty award. (Szamet Decl. ¶114.) A judge

1 can award the statutory maximum of \$100 for the initial violation and \$200 thereafter or – in theory
2 – one cent per wage statement. (Szamet Decl. ¶115.) While there is a dearth of available authority,
3 in Plaintiff’s view, were she to succeed on any of the underlying Labor Code violations, it is
4 certainly speculative that a Judge would also award large penalties on top of any damages
5 recovered on the underlying claims. (Szamet Decl. ¶116.)

6 Per Plaintiff’s assessment, the maximum potential value of all of Plaintiff’s and the
7 Settlement Class Members’ claims was approximately \$1,022,043.68 (\$31,686.87 + \$43,432.27 +
8 \$716,222.43 + \$65,550.00 + \$34,427.51 + \$131,100.00). (Szamet Decl. ¶117.) However, as a
9 result of the forgoing risks on the merits and the attendant discounts taken for purposes of
10 negotiating, Class Counsel believes the Gross Settlement Fund of \$190,000.00 is fair and
11 reasonable. (Szamet Decl. ¶118.)

12 5. The Experience and Views of Counsel

13 Finally, counsel’s experience and success in similar class actions also weigh in favor of
14 preliminary approval. *See Wershba, supra*, 91 Cal.App.4th at 245. Kingsley & Kingsley, APC is
15 very experienced in prosecuting complex employment litigation, and the firm has focused its
16 practice since the year 2000 on complex wage, hour, and working condition violations. (Szamet
17 Decl. ¶¶119-121.) The firm is well versed in class action litigation and has diligently and
18 aggressively pursued this action. (*Id.*) Kingsley & Kingsley, APC currently serves as Class
19 Counsel for dozens of pending class action lawsuits in Northern, Central, and Southern California.
20 (*Id.*) A list of representative cases that Kingsley & Kingsley, APC has handled is included in the
21 accompanying declaration of Kelsey M. Szamet. (*Id.*) After factoring in the risks explained above,
22 Class Counsel believes that the proposed settlement is fair and reasonable. (Szamet Decl. ¶122.)

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

24 Plans of allocation are subject to the same standard of review as class action settlements;
25 they must be “fair, adequate and reasonable.” (*See, e.g., Officers for Justice v. Civil Service*
26 *Comm’n* (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the proposed plan of allocation
27 compensates Settlement Class Members pro rata based on the number of compensable Work
28 Weeks worked by the Settlement Class member during the Class Period. The lump sum payment

1 to each Settlement Class member not excluding him/ herself will be determined on an
2 individualized basis based upon the compensable pay periods worked by the Settlement Class
3 member. (Ex. 1 at § I, ¶18.) This allocation distributes Settlement Agreement funds proportionally
4 to each class member’s potential damages and should therefore be approved as fair, adequate, and
5 reasonable. (Szamet Decl. ¶123.)

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

9 Plaintiff requests that the Court approve the proposed plan and form of Class Notice. The
10 standard for determining the adequacy of notice is whether the notice has “a reasonable chance of
11 reaching a substantial percentage of the class members.” (*Cartt v. Superior Court* (1975) 50
12 Cal.App.3d 960, 974.) Pursuant to the Settlement Agreement, the Notice will be sent to the last
13 known address of all Settlement Class Members, or to an updated address if one is located in the
14 National Change of Address Database. (Ex. 1 at § III, ¶8.) If any Notices are returned as
15 undeliverable, the Settlement Administrator will undertake another reasonable address verification
16 measure to locate a valid mailing address and will promptly send the Notice to the new address.
17 (Ex. 1 at § III, ¶9.) As such, the Notice is likely to reach most, if not all, Settlement Class Members.

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

24 The Notice clearly explains the proposed Settlement Agreement and the options to opt out
25 of the Settlement or object to it at the Final Approval Hearing. (Ex. 1 at § III, ¶12-13; *see also* Ex.
26 A to the Settlement Agreement at pp. 2, 4, and 5 [Class Notice].) In short, the Court should approve
27 the proposed Class Notice because it describes the proposed settlement with enough specificity to
28 allow Settlement Class Members to make an informed choice regarding whether to participate.

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

2 The Class Representative is entitled to an enhancement for her valiant effort and time
3 expended in this matter. (Szamet Decl. ¶124.) The time spent by MARIA SANDOVAL NUNEZ
4 is significant and includes researching and retaining competent counsel; providing information to
5 Class Counsel regarding the nature of the work at Defendant; compiling relevant documents;
6 working closely with Class Counsel to develop the theories of liability and martial relevant
7 evidence; regularly discussing the status of the case with Class Counsel; discussing the case via
8 telephone with many Settlement Class Members; and responding promptly to Class Counsel's
9 communications regarding settlement. (*Id.*) Thus, in addition to the sums paid to Settlement Class
10 Members, Plaintiff requests a proposed litigation enhancement in the amount of \$5,000.00, to be
11 paid from the Gross Settlement Fund. (Ex. 1 at § III, ¶23.) As set forth in the Settlement
12 Agreement, Plaintiff will also be entering into a general release of liability pursuant to Civil Code
13 Section 1542. (Szamet Decl. ¶125; Ex. 1 at § III, ¶3.)

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

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

20 As indicated on the Proof of Service, Plaintiff's Motion for Approval of Class Action
21 Settlement ("Motion") will be concurrently uploaded to the LWDA website on the date this Motion
22 is filed as required by statute. Proof of submission of Plaintiff's Motion, all related documents,
23 and copy of the email from the LWDA confirming receipt is attached to the Declaration of Kelsey
24 M. Szamet as Exhibit "3." (Szamet Decl. ¶127.)

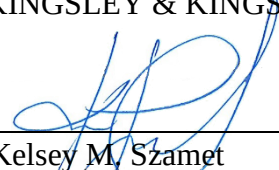
25 **VIII. CONCLUSION**

26 Plaintiff respectfully submits that the proposed Settlement Agreement is fair, adequate,
27 reasonable, and in the best interest of the Settlement Class Members. Therefore, the Parties
28 respectfully request that the Court (1) grant preliminary approval of the Joint Stipulation of Class

1 Action Settlement and Release of Claims and conditionally grant certification of the proposed
2 Settlement Class solely for the purposes of settlement; (2) approve the proposed Notice to Class
3 Members and direct that the Notice be sent to Class Members in the manner set forth in the
4 Settlement Agreement; (3) preliminarily appoint Plaintiffs as the Class Representatives and
5 Plaintiff's Counsel as Class Counsel; 4) approve the appointment of ILYM Group, Inc. as
6 Settlement Administrator; and (5) schedule a hearing on final approval of the proposed
7 Settlement and Plaintiff's counsel's application for an award of attorney's fees and litigation
8 costs at which Class Members may be heard.

9
10 DATED: February 24, 2021

KINGSLEY & KINGSLEY, APC

11
12 By: 

Kelsey M. Szamet

Attorneys for Plaintiff and the Proposed Class
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(PROOF OF SERVICE)
[CCP 1013(a)(3)]
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On February 24, 2021, I served all interested parties in this action the following documents described as: **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Jeffrey P. Fuchsman
jfuchsman@brgslaw.com
Ballard, Rosenberg, Golper & Savitt, LLP
15760 Ventura Blvd., 18th Floor
Encino, CA 91436

☐ **(BY MAIL)** I am “readily familiar” with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage fully prepaid at Encino, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☒ **BY ELECTRONIC MAIL THROUGH CASE ANYWHERE:** On interested parties set forth on the attached service list.

☒ **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/271>) and service was completed by electronic means by transmittal of the documents referenced herein on the EF System.

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

Executed on February 24, 2021, at Woodland Hills, California.



Michelle A. Tanzer