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

HENRY NELSON and GEORGE
OBREGON, individually and on behalf of all
others similarly situated,

Plaintiffs,

vs.

CORT BUSINESS SERVICES
CORPORATION; and DOES 1 through 20,
inclusive,

Defendants.

Case No. 20STCV12143

*Assigned for all purposes to:
Hon. Yvette M. Palazuelos, Dept.: 9*

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: January 9, 2024
Time: 10:00 a.m.
Dept: 9

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1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court 3.769 (d) and (e), Plaintiffs Henry Nelson and George
3 Obregon (“Plaintiffs”) request that the Court grant preliminary approval of a class action settlement of
4 wage and hour claims, including a claim under the California Private Attorneys General Act of 2004,
5 codified at Lab. Code § 2698, *et seq.* (“PAGA”), against Defendant CORT Business Services
6 Corporation (“Defendant”) (collectively, Plaintiffs and Defendant referred to as the “Parties”). The
7 putative class consists of approximately 619 employees, and is defined as anyone who was employed
8 by Defendant in California as a non-exempt or hourly-paid employee (individually, “Class Member”;
9 collectively, “Class Members”) from March 26, 2016 through March 31, 2023 (the “Class Period”). The
10 basic terms of the Class Action and PAGA Settlement Agreement and Class Notice (“Settlement
11 Agreement” or “Settlement”)¹ provide for the following:

- 12 (1) A non-reversionary Gross Settlement Amount of \$1,300,000.00 allocated to
13 approximately 619 Class Members on a pro rata basis according to the number of
14 weeks each Class Member worked during the Class Period;
- 15 (2) An award of up to one-third of the Gross Settlement Amount (currently
16 \$433,333.34) and up to \$25,000.00 in reimbursement of costs to Plaintiffs’
17 Counsel for services rendered as counsel on this matter;
- 18 (3) Service Payments of up to \$20,000.00 (\$10,000.00 to each of the Named
19 Plaintiffs);
- 20 (4) Settlement Administration fees and costs of up to \$11,500.00; and
- 21 (5) Allocations of \$100,000 for resolution of civil penalties under PAGA. Seventy-
22 five percent (75%) of this payment will be paid to the California Labor and
23 Workforce Development Agency (“LWDA Payment”), and twenty-five percent
24

25
26 ¹ A true and correct copy of the fully-executed “Class Action and PAGA Settlement Agreement and
27 Class Notice” is attached as **Exhibit 1** to the Declaration of Jessica L. Campbell in Support of Plaintiffs’
28 Motion for Preliminary Approval of Class Action Settlement (“Campbell Decl.”), filed concurrently
herewith. Unless otherwise defined herein, all capitalized terms in this Motion will be used as such terms
are defined and used in the Settlement.

(25%) will be paid to Class Members who worked for Defendant during the PAGA Period.

With each Class Member allocated an average recovery of approximately \$1,000 from the Net Settlement Amount, the Settlement satisfies the criteria for preliminary approval and falls well within the range of reasonableness given the risks and costs of continued litigation. The Settlement was reached through informed, arm's-length bargaining at and after a mediation between experienced attorneys. As such, Plaintiffs request that the Court grant preliminary approval of the Settlement, conditionally certify the Class for settlement purposes only, appoint Plaintiffs as the Class Representatives, appoint Plaintiffs' Counsel as Class Counsel, appoint Phoenix Settlement Administrators, Inc. as the Settlement Administrator, authorize the Settlement Administrator to send notice of the Settlement, and set a final approval hearing date.

II. SUMMARY OF THE LITIGATION

On March 25, 2020, Plaintiff Henry Nelson's counsel provided written notice to the LWDA and Defendant regarding Defendant's alleged Labor Code violations, as required by Lab. Code § 2699.3(a). (Campbell Decl., ¶ 3, Ex. 3.) The LWDA did not respond to this notice, indicating it did not intend to investigate, thus allowing Plaintiff to bring a PAGA claim against Defendant. (*Id.*) On March 26, 2020, Plaintiff Henry Nelson filed a putative class action on behalf of Defendant's non-exempt employees alleging the following causes of action: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to permit rest breaks; (5) failure to provide accurate itemized wage statements; (6) failure to pay all wages due upon separation of employment; and (7) violation of Business and Professions Code § 17200, *et seq.* for the preceding claims. (*Id.*)

On November 2, 2020, Plaintiff Henry Nelson filed a Second Amended Complaint adding a cause of action for enforcement of Labor Code § 2698 *et seq.* ("PAGA"). (Campbell Decl., ¶ 4.) On February 1, 2022, Plaintiff Henry Nelson filed a Third Amended Complaint adding Plaintiff George Obregon to the Action. (Campbell Decl., ¶ 6.)

The Parties proceeded with formal discovery. Defendant produced its employee handbooks, policies, and a sampling of Class Members' timekeeping and pay records. (Campbell Decl., ¶ 5.)

On September 8, 2022, the Parties attended a mediation session with Lynn S. Frank, a respected

mediator. (Campbell Decl., ¶ 7.) After a full day of negotiating and subsequent negotiations in the months that followed the mediation, the Parties agreed to a settlement amount and executed a Memorandum of Understanding, with the material terms the Parties had agreed to, on June 9, 2023. (*Id.*) The Parties spent the next few months negotiating the full terms of the Settlement, which was finalized in July of 2023. (*Id.*) On August 7, 2023, Plaintiffs submitted the Settlement to the LWDA pursuant to Lab. Code § 2699(l)(2). (Campbell Decl., ¶ 8. Ex. 4.)

III. SUMMARY OF THE SETTLEMENT

A. Terms of Settlement

Plaintiffs and Defendant agreed to settle the class claims in exchange for a Gross Settlement Amount of \$1,300,000. (Settlement Agreement, § 3.1.) The Gross Settlement Amount will be used to make payments for the following: (1) Individual Settlement Payments to Participating Class Members; (2) attorneys’ fees to Class Counsel of up to one-third of the Gross Settlement Amount; (3) reimbursement of Class Counsel’s litigation costs of up to \$25,000; (4) a Service Payment to Plaintiffs of up to \$10,000 each; (5) Settlement Administration fees and costs of \$11,500; and (6) a payment to the LWDA of \$100,000 pursuant to PAGA. (*Id.* at §§ 3.2.1–3.2.5.) Class Members’ Individual Settlement Payments will be distributed after final approval of the Settlement and Defendant fully funds the Gross Settlement Amount. (*Id.* at §§ 4.3–4.4.) Individual Settlement Payments will be calculated by comparing the total Qualifying Workweeks for the Class to each individual Class Member’s Qualifying Workweeks. (*Id.* at § 3.2.4.) The Settlement Administrator will calculate the actual estimated recovery to include in the Notice of Class Action Settlement (“Class Notice”) and provide the estimated low and high range of possible recovery at final approval. (*Id.* at § 8.4.2 & Ex. A (Class Notice).) The Class Notice will be provided in English and Spanish. (*See* Settlement Agreement, § 1.11.) Once the Court grants final approval and enters judgment, the Settlement Administrator will post the Class Notice on its website. (Settlement Agreement, § 8.8.1.)

The Individual Settlement Payments will be allocated 20% to wages; 80% to interest and penalties for tax purposes. (*Id.* at § 3.2.4.1.) Defendant will pay the employer-side payroll taxes on the portion allocated to wages separately from, and in addition to, the Gross Settlement Amount. (*Id.* at § 3.1.) Funds from uncashed or undeliverable checks will be tendered by the Settlement Administrator to the

1 State Controller Unclaimed Property Fund in the Class Member's name for whom the funds are
2 designated. (*Id.* at § 4.4.3.) The Gross Settlement Amount will not revert to Defendant. (*Id.* at § 3.1.)

3 **B. Proposed Opt-Out and Objection Process**

4 Once the Court grants preliminary approval, Defendant will have fifteen days to deliver the Class
5 Data to the Settlement Administrator. (Settlement Agreement, § 4.2.) The Settlement Administrator will
6 then have fourteen days to send Class Notice by first-class mail after checking for updated addresses
7 through the National Change of Address database. (*Id.* at § 8.4.2.) The Class Notice provides information
8 regarding the nature of the lawsuit, a summary of the substance of the settlement terms, the formula for
9 calculating Individual Settlement Payments, the individual's estimated payout, a statement that Class
10 Members who take no action will release their claims and receive settlement checks, instructions
11 regarding how to dispute the calculations, instructions regarding how to request exclusion or object to
12 the Settlement, the date for the final approval hearing, the amounts sought for attorneys' fees and costs,
13 the Settlement Administration Costs, the Class Representative's Service Payment, and the PAGA
14 allocation. (*See* Settlement Agreement, Ex. A.)

15 The Class Notice provides instructions for Class Members who choose to exclude themselves
16 from the Settlement. (*See* Settlement Agreement, Ex. A.) To opt out, Class Members are instructed to
17 submit a Request for Exclusion to the Settlement Administrator by a specified date (60 days after the date
18 of mailing of the Class Notice). (*See* Settlement Agreement, § 8.5.1 & Ex. A.) Class Members do not
19 need to submit a claim form to participate in the Settlement. (*See* Settlement Agreement, Ex. A.) The
20 Class Notice informs Class Members of how they can object to the Settlement, and of the date, time, and
21 location of the final fairness and approval hearing so that they can appear at the hearing in person. (*Id.*)
22 The Class Notice also informs Class Members to check the Administrator's website or contact Class
23 Counsel to verify the date and time of the Final Approval Hearing. (*Id.*) Accordingly, the content of the
24 Class Notice complies with the requirements of Cal. R. Ct. 3.766, subd. (d).

25 If Class Notice packets are returned as undeliverable, the Settlement Administrator will perform a
26 skip-trace or other search, and re-mail the Class Notice with an extended deadline to opt out or object, of
27 14 days from the date of mailing or the original deadline, whichever is later. (Settlement Agreement, §§
28 8.4.3–8.4.4.) The initial 60-day notice period and extension process ensures the notice program provides

1 due process by giving Class Members enough time to determine whether they want to participate in the
2 Settlement. This means of notice is reasonably calculated to apprise Class Members of the pendency of
3 the action. (*See* Cal. R. Ct. 3.766, subds. (d)–(f).)

4 **C. Proposed Release**

5 The release to be given by Class Members is limited to Defendant and its current and former
6 parents, predecessors or successors, holding companies, affiliated companies or entities (including, but
7 not limited to, owners, shareholders, members, partners, officers, directors, managers, employees, and
8 agents) (the “Released Parties”). (Settlement Agreement, § 1.41.) Under the proposed release, Class
9 Members who do not exclude themselves from the Settlement will be deemed to have released the
10 following:

11 “any and all claims, known or unknown, contingent or accrued against Defendant or any of the
12 other Released Parties that have been, or could have been, asserted against Defendant or any of the
13 other Released Parties, and that arise from the facts, matters, transactions or occurrences alleged in
14 the Action.”

15 (*Id.* at § 6.2.)

16 PAGA Group Members (regardless of whether they exclude themselves from the Settlement) will
17 be deemed to have released the following:

18 “all claims for PAGA civil penalties alleged in Plaintiffs’ original and amended letters to the
19 LWDA and the Action during the PAGA Period.”

20 (*Id.* at § 6.3.)

21 Additionally, Plaintiffs will be deemed to have released all potential claims. (*Id.* at § 6.1.)

22 Plaintiffs also release all known or unknown claims under Civil Code § 1542. (*Id.* at § 6.1.1.)

23 **IV. LEGAL ARGUMENTS SUPPORTING PRELIMINARY APPROVAL**

24 **A. Provisional Certification of the Class is Appropriate**

25 Class certification is appropriate when there exists (1) an ascertainable and sufficiently numerous
26 class, (2) a well-defined community of interest among class members, and (3) when certification would
27 be a fair and efficient means of adjudicating the action, rendering class litigation superior to alternative
28 means. (*See Brinker Restaurant Corp. v. Super. Ct.* (2012) 53 Cal. 4th 1004, 1021 (*Brinker*).)

1 **1. The Proposed Class is Numerous and Ascertainable**

2 Whether a class is “ascertainable” is “determined by examining (1) the class definition, (2) the
3 size of the class, and (3) the means available for identifying class members.” (*Reyes v. Bd. of Supervisors*
4 (1987) 196 Cal. App. 3d 1263, 1271.) Here, the Class consists of anyone who was employed by
5 Defendant in California as a non-exempt or hourly-paid employee at any time from March 26, 2016 to
6 March 31, 2023. (Settlement Agreement, §§ 1.5 & 1.12.) Defendant’s records show the Class consists of
7 approximately 619 individuals, making joinder of all Class Members impracticable. (Campbell Decl., ¶
8 9.) Further, the Class is readily ascertainable from Defendant’s business records because all Class
9 Members are current or former employees of Defendant. (*Id.*)

10 **2. A Well-Defined Community of Interest Exists Among Class Members**

11 “[T]he ‘community of interest requirement embodies three factors: (1) predominant common
12 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3)
13 class representatives who can adequately represent the class.’” (*Fireside Bank v. Super. Ct.* (2007) 40
14 Cal. 4th 1069, 1089 (quoting *Richmond v. Dart Industries, Inc.* (1981) 29 Cal. 3d 462, 470.)

15 a. Common Questions Predominate

16 To assess whether common questions predominate, courts focus on whether the theories of
17 recovery advanced are likely to prove amenable to class treatment. (*See Sav-On Drug Stores, Inc. v.*
18 *Super. Ct.* (2004) 34 Cal. 4th 319, 327 (*Sav-On Drug Stores, Inc.*.) In other words, courts determine
19 whether the elements necessary to establish liability are susceptible of common proof, even if the class
20 members must individually prove their damages. (*Brinker, supra*, 53 Cal. 4th at 1021-1022, 1024.)

21 Plaintiffs alleged that Defendant maintained employment policies and/or practices that illegally
22 deprived Class Members of lawful wages, meal periods, rest breaks, accurate wage statements, payment
23 of all wages upon separation from employment, and waiting time pay. (Campbell Decl., ¶ 10.) Plaintiffs’
24 allegations present common legal and factual questions of, *inter alia*, whether Defendant applied the same
25 scheduling, timekeeping, minimum and overtime pay, meal period, and rest break policies to all Class
26 Members; whether these policies and practices resulted in Labor Code violations; whether Defendant’s
27 conduct was intentional; and whether Class Members are entitled to penalties. (*Id.*) These common
28 questions could be resolved using Class Members’ schedules, time punches, and payroll records,

1 Defendant's corporate representative's testimony, written communications between Defendant and Class
2 Members, and Class Member declarations. (*Id.*) Thus, the Court can and should exercise its discretion to
3 grant conditional class certification for settlement purposes.

4 *b. Plaintiffs' Claims are Typical of the Class Claims*

5 The typicality requirement is satisfied when the legal theories and facts supporting Plaintiffs'
6 claims are substantially similar to other class members. (*See Classen v. Weller* (1983) 145 Cal. App. 3d
7 27, 46.) Here, Plaintiffs allege that they and other Class Members were employed by Defendant and
8 injured by Defendant's common wage and hour policies and practices, including Defendant's
9 scheduling, timekeeping, minimum wage pay, overtime pay, meal period, and rest break practices and
10 policies. (Campbell Decl., ¶ 11.) Through documents and information exchanged in formal discovery,
11 including production of policy documents by Defendant, Plaintiffs confirmed that these common
12 policies and practices similarly affected Plaintiffs and the Class. (*Id.*) Thus, Plaintiffs' claims arise from
13 the same employment practices and are based on the same legal theories as those applicable to other
14 Class Members, as further explained in Plaintiffs' exposure analysis below.

15 *c. Plaintiffs and Plaintiffs' Counsel Will Adequately Represent the Class*

16 Certification requires adequacy of both the proposed class representative(s) and proposed class
17 counsel. With respect to the class representative, a plaintiff must adequately represent and protect the
18 interests of other members of the class and demonstrate that his or her claim is not inconsistent with the
19 claims of other members of the class. (*See Capitol People First v. State Dept. of Developmental Servs.*
20 (2007) 155 Cal. App. 4th 676, 696-697.) Here, Plaintiffs' interests are coextensive with the interests of
21 the Class. Plaintiffs demonstrated an ability to advocate for the interests of the Class by litigating this
22 action, gathering documents and information, being available on the day of mediation to answer
23 questions, meeting with their attorneys on several occasions to understand the claims and theories of
24 liability at issue, reviewing the proposed settlement agreement to understand its legal effect, and
25 obtaining a fair settlement on behalf of Class Members who stand to recover a substantial amount under
26 the Settlement. (Declaration of Henry Nelson ("Nelson Decl.") ¶¶ 4-8; Declaration of George Obregon
27 ("Obregon Decl.") ¶¶ 4-8; Campbell Decl., ¶ 22.)
28

1 Likewise, Aegis Law Firm, PC has expended considerable time and effort on this case and will
2 continue to do so through final approval. (*See generally*, Campbell Decl.) Accordingly, Plaintiffs should
3 be appointed Class Representatives, and Plaintiffs' Counsel should be appointed Class Counsel.

4 **3. A Class Action is Superior to a Multitude of Individual Lawsuits**

5 Class treatment is superior to other methods of adjudication when the probability is small that
6 each class member will come forward to prove his or her claim and when the class approach would deter
7 and redress the alleged wrongdoing. (*See Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 435, 446;
8 *Ghazaryan v. Diva Limousine, Ltd.*, (2008) 169 Cal. App. 4th 1524, 1537-1538.) Here, none of the other
9 619 Class Members had shown any interest in bearing the expense and burden of litigating their own
10 claims. (Campbell Decl., ¶ 22.) Thus, a class action is the superior method for seeking relief.

11 **B. The Settlement Meets the Standards for Preliminary Approval**

12 Preliminary approval is warranted if the settlement falls within a "reasonable range." (*See North*
13 *County Contractor's Ass'n., Inc. v. Touchstone Ins. Servs.*, (1994) 27 Cal. App. 4th 1085, 1089-90;
14 *Conte & Newberg, Newberg on Class Actions*, § 11.26 (4th ed. 2002).) In reviewing the fairness of a
15 class action settlement, due regard should be given to what is "otherwise a private consensual
16 agreement between the parties." (*Cellphone Termination Fee Cases*, (2010) 186 Cal. App. 4th 1380,
17 1389.) The inquiry "must be limited to the extent necessary to reach a reasoned judgment that the
18 agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties,
19 and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." (*Id.*)

20 Reasonableness and fairness are presumed where (1) the settlement is reached through "arm's-
21 length bargaining"; (2) investigation and discovery are "sufficient to allow counsel and the court to act
22 intelligently"; (3) counsel is "experienced in similar litigation"; and (4) the percentage of objectors "is
23 small." (*Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1802.) The Settlement satisfies the first
24 three factors. Plaintiffs will analyze the fourth factor at the final approval stage.

25 **1. The Settlement is Entitled to a Presumption of Fairness**

26 **a. The Settlement is the Result of Arm's-Length Negotiations**

27 Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless
28 evidence to the contrary is offered. Thus, there is a presumption that settlement negotiations are

1 conducted in good faith. Here, the Settlement was the product of extensive investigation and a full day
2 mediation session with a respected mediator after extensively reviewing discovery, as well as several
3 negotiations in the months the followed the mediation. (Campbell Decl., ¶¶ 5, 7.) The negotiations were
4 adversarial, conducted at arm's-length, and tempered by the efforts of both sides to serve the interests
5 of their clients. (*Id.* at ¶ 7.) The amounts of Plaintiffs' requested Service Awards were not negotiated
6 until after the Parties agreed to the Gross Settlement Amount and many other terms. (*Id.* at ¶ 22.)

7 *b. Plaintiffs' Counsel Conducted Sufficient Investigation and Discovery*

8 Plaintiffs' Counsel thoroughly investigated the class claims, applicable law, and potential
9 defenses. (*See generally*, Campbell Decl.) In particular, Plaintiffs' Counsel assessed the value of the
10 class claims using Defendant's data and documents produced through discovery. (Campbell Decl., ¶¶
11 11, 13–14.) Plaintiffs' counsel extensively reviewed policy documents and Class Members' time and
12 pay records to perform a thorough analysis. (*Id.* at ¶ 11.) Further, Plaintiffs' Counsel engaged an expert
13 to quantify the potential exposure using the time and payroll records, and then assessed the risks
14 associated with each of the claims meriting reductions in the likely recovery at trial. (*Id.*) Accordingly,
15 Plaintiffs' Counsel fully understood the strengths and weaknesses of the claims before the Parties
16 reached a settlement. (*Id.*)

17 *c. Plaintiffs' Counsel is Experienced in Similar Litigation*

18 Plaintiffs are represented by Aegis Law Firm, PC ("Class Counsel"). Class Counsel prosecute
19 wage and hour class actions on behalf of employees and others who have had their rights violated.
20 (Campbell Decl., ¶¶ 25–38.) The attorneys working on this case have been appointed class counsel in
21 many cases, through both contested motions and settlement approval motions. (*Id.*) Thus, Plaintiffs'
22 Counsel has extensive experience in similar litigation and should be appointed as Class Counsel.

23 **2. The Settlement is Reasonable Given the Strengths of Plaintiffs' Claims and**
24 **the Risks and Expense of Further Litigation**

25 Courts have discretion to approve class settlements by assessing several factors, including the
26 "strength of plaintiffs' case, risk, expense, complexity and likely duration of further litigation and risk
27 of maintaining the class action through trial." (*Munoz v. BCI Coca-Cola Bottling Co. of L.A.* (2010) 186
28 Cal. App. 4th 399, 407; *see also Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, 129.)

1 While Plaintiffs and their counsel believed and continue to believe this is a strong case for
2 certification, the significant risks and expenses associated with class certification and liability
3 proceedings were taken into account. (Campbell Decl., ¶ 13.) To determine if the amount negotiated was
4 reasonable, Plaintiffs' Counsel weighed that figure against many risk factors. (*Id.* at ¶ 14). If Plaintiffs
5 continued to prosecute the claims rather than accept a settlement, Plaintiffs would have faced deadlines
6 to file a motion for class certification, had to have engaged in more formal written discovery and taken
7 depositions, expended time and resources to resolve disputes, prepared and filed potential dispositive
8 motions and/or discovery motions, and engaged in extensive trial preparation. (*Id.* at ¶ 15.) An adverse
9 ruling at any one of these stages could have prevented the Class from obtaining any recovery. (*Id.*)

10 a. Exposure Analysis

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

14 Compromise is inherent and necessary in the settlement process . . . even if “the relief afforded
15 by the proposed settlement is substantially narrower than it would be if the suits were to be
16 successfully litigated,” this is no bar 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.”

17 (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 250 (citation omitted).) Here, Plaintiffs
18 contend that their claims are based on Defendant's common, class-wide policies and procedures, and
19 that liability could be determined on a class-wide basis without dependence on individual assessments
20 of liability. (Campbell Decl., ¶ 12.) Although the amount of Defendant's potential exposure—if
21 proven—is substantial, the legitimate and serious risks of succeeding at class certification and trial
22 compelled consideration of the benefit of a settlement. (*Id.* at ¶ 14.)

23 Unpaid Wage Claim: Plaintiffs' unpaid wage claim is mainly premised on the theory that
24 Defendant failed to compensate Class Members for the correct number of daily overtime hours worked
25 in overnight shifts. (Campbell Decl., ¶ 16.) Rather than pay overtime to employees who exceeded eight
26 hours of work on any given work day, Defendant allegedly paid overtime only when Class Members'
27 shifts exceeded eight hours of work, regardless of the date on which the shifts started and ended. (*Id.*)
28 For example, when an employee worked an overnight shift that began on one date, but concluded on

1 another, that employee's hours were attributed to the first date only, and subsequent shifts beginning on
2 the second date were not added to hours worked from the first shift that continued onto the same date.
3 (*Id.*) An expert retained by Plaintiffs' Counsel calculated a potential exposure of approximately
4 \$481,000. (*Id.*) However, Defendant argued its overtime calculation was correct under the law. (*Id.*)
5 Accordingly, Plaintiffs' counsel believed there was an 80% chance of success at class certification and
6 80% chance of success on the merits at trial, rendering the claim worth approximately \$308,000. (*Id.*)

7 Minimum Wage Claim: Plaintiffs' minimum wage claim was premised on the theory that class
8 members worked while clocked out for meals about once per month. (Campbell Decl., ¶ 17.) After
9 analyzing Defendant's employment data, Plaintiff's expert approximated that this claim would be
10 valued at around \$140,000. (*Id.*) However, Defendant could defeat this claim by showing it had legally
11 compliant meal policies, which would require class member testimony to prove this claim. (*Id.*) As such,
12 Plaintiff's counsel believed that there was a 20% chance of class certification and 20% chance of success
13 on the merits at trial, rendering the claim worth approximately \$5,600. (*Id.*)

14 Meal Period Claim: Plaintiffs' meal period claim was premised on the theory that although
15 Defendant paid meal premiums to Class Members for late or missed meal periods, Defendant failed to
16 adjust Class Members' regular rates of pay to include commissions and non-discretionary bonuses.
17 (Campbell Decl., ¶ 18.) Plaintiffs' expert analyzed the employment data received from Defendant, and
18 calculated that the meal period claim was potentially worth approximately \$1,100. (*Id.*) However,
19 Defendant argued that its meal premiums complied with the law because the bonuses it gave to
20 employees were discretionary, and, thus, did not need to be included. (*Id.*) As such, Plaintiffs' Counsel
21 believed there was a 50% chance at class certification and a 50% chance at trial on Plaintiffs' meal
22 period claim, resulting in a value of approximately \$278 for Plaintiffs' meal period claim. (*Id.*)

23 Rest Period Claim: Plaintiff's rest break claim was premised on the theory that class members
24 did not receive rest breaks on approximately 25% of their shifts. (Campbell Decl., ¶ 19.) The expert
25 retained by Plaintiff's counsel analyzed Defendant's data and estimated that the claim was worth
26 approximately \$1,400,000. (*Id.*) However, Defendant argued that its rest break policy complied with the
27 law, which would require class member testimony to prove this claim. (*Id.*) Accordingly, Plaintiff's
28

1 counsel estimated that there would be a 40% chance of class certification and a 30% chance of success
2 on the merits at trial, rendering the claim worth approximately \$168,000. (*Id.*)

3 Waiting Time and Wage Statement Penalties: Plaintiffs' Counsel considered the arguable presence
4 of various derivative penalties, and weighed the potential recoveries against probable defenses. (Campbell
5 Decl., ¶ 20.) Specifically, Defendant could argue that Plaintiffs could not prove the "willful" prong needed
6 to obtain waiting time penalties under Labor Code § 203; Plaintiffs could not show that Class Members
7 suffered an "injury" as a result of wage statement violations, as required by Labor Code § 226; or that the
8 wage statements correctly reflected the wages paid and owed. (*Id.*) Although the Class could have seen a
9 potential payout of approximately \$550,000 for waiting time penalties and approximately \$1,900,000 for
10 wage statement penalties, Plaintiffs would not recover any of these derivative penalties if they failed to
11 prove the underlying claims. (*Id.*) Thus, Plaintiffs discounted these claims assuming a 60% chance of class
12 certification and 50% chance at the merits for both claims, resulting in a realistic value of approximately
13 \$165,000 for the waiting time claim and around \$570,000 for the wage statement claim. (*Id.*)

14 PAGA Claim: The PAGA claim presented even higher hurdles. (Campbell Decl., ¶ 21.) Plaintiffs'
15 expert analyzed the employment data provided by Defendant and found that Defendant's exposure could
16 potentially reach approximately \$3,000,000 under Lab. Code § 2699(f), assuming the initial penalty rate
17 of \$100 for each pay period. (*Id.*) However, to recover that amount, Plaintiffs would have to prove a
18 violation in every pay period. (*Id.*) Most importantly, the Court would have discretion to reduce the
19 PAGA award based on whether the amount of the award would be "unjust, arbitrary and oppressive, or
20 confiscatory." Lab. Code § 2699(e)(2). In theory, the Court could reduce the award by 99% if it so
21 wished. Plaintiffs were doubtful they could recover any PAGA penalties, especially if a large class
22 judgment was entered for the same violations. Accordingly, Plaintiffs could not place a high value on
23 the PAGA penalties, and therefore allocated \$100,000 of the Gross Settlement Amount to settle these
24 claims. (*See Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) 2009 U.S. Dist. LEXIS 33900 at *24
25 (finding amount of PAGA penalties reasonable where the amounts are negotiated in good faith and
26 "there is no indication that [the] amount was the result of self-interest at the expense of other Class
27 Members"); *Nordstrom Comm'n Cases* (2010) 186 Cal.App.4th 576, 579 ("trial court did not abuse its
28 discretion in approving a settlement which does not allocate any damages to the PAGA claims").)

1 Thus, given the realistic exposure to Defendant, the settlement amount of \$1,300,000 is
2 reasonable, fair, and proper.

3 **C. The Requested Service Awards for Plaintiffs**

4 Plaintiffs seek Service Awards of up to \$10,000 each (\$20,000 total) for accepting the
5 responsibilities of representing the interests of the Class and assuming risks and potential costs that were
6 not borne by any other Class Members. (Settlement Agreement, § 3.2.1.) A named plaintiff is eligible
7 for payment that reasonably compensates him or her for undertaking and fulfilling a fiduciary duty to
8 represent absent class members. (*See Cellphone Termination Fee Cases, supra*, 186 Cal. App. 4th at
9 1393-94 (“The rationale for making enhancement or incentive awards to named plaintiffs is that they
10 should be compensated for the expense or risk they have incurred in conferring a benefit to other
11 members of the class”); *Bell v. Farmers Ins. Exch.* (2004) 115 Cal. App. 4th 715, 726.) In evaluating
12 the propriety of enhancement awards, courts consider the following relevant factors, including: (1) the
13 time and effort put into the litigation and the degree to which the class has benefitted from those actions,
14 (2) the duration of the litigation, (3) a comparison between the service awards range of monetary
15 recovery available to the class, (4) whether the litigation will further the public policy underling the
16 statutory scheme, and (5) risks to the class representatives in participating in the lawsuit, including
17 financial exposure, retaliation, and negative notoriety related to the lawsuit. (*See, e.g., Staton v. Boeing*
18 *Co.* (9th Cir. 2003) 327 F.3d 938, 977; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 301
19 F.Supp. 294, 299.)

20 Plaintiffs had the option to pursue their claims individually, but instead chose to pursue this class
21 action, delaying individual recovery until approval of a class action settlement. (Campbell Decl., ¶ 22.)
22 Throughout the case, Plaintiffs assisted counsel in gathering the evidence necessary to prosecute the
23 class claims, maintained regular contact with counsel, were available on the day of mediation and
24 communicated with their attorneys during the day of mediation to answer critical questions, reviewed
25 the Settlement to make sure it was fair to the Class, and otherwise assisted the action as needed since
26 this action was filed over three years ago. (*Id.*; Nelson Decl., ¶¶ 4–8.; Obregon Decl., ¶¶ 4–8.) No action
27 would likely have been taken by Class Members individually, and no compensation would have been
28 recovered for them, but for Plaintiffs’ services on the Class’s behalf. (Campbell Decl., ¶ 22.)

1 By actively pursuing this action, Plaintiffs also furthered the California public policy goal of
2 enforcing the State's wage and hour laws. (*See Sav-On Drug Stores, Inc., supra*, 34 Cal. 4th at 340.)
3 The requested Service Awards for Plaintiffs' service as the class representative and for a general release
4 of all employment claims is reasonable and should be preliminarily approved. At the final approval
5 stage, Plaintiffs will further support the request for the Service by declarations addressing the factors
6 for the award. (Campbell Decl., ¶ 24.)

7 **D. The Requested Attorneys' Fees and Costs**

8 The purpose of an attorneys' fee award in class action litigation is to reward counsel who invested
9 in a case despite the risk of non-payment and achieved a substantial positive result for the class.
10 Attorneys' fees are awarded as a matter of equity. California courts routinely award attorneys' fees
11 equaling one-third or more of the potential value of the common fund. (*See Chavez v. Netflix, Inc.* (2008)
12 162 Cal. App. 4th 43, 66, n.11 ("Empirical studies show that, regardless of whether the percentage
13 method or the lodestar method is used, fee awards in class actions average around one-third of the
14 recovery").)

15 Plaintiffs seek appointment of Aegis Law Firm, PC as Class Counsel. The attorneys performed
16 significant work and expended litigation costs in prosecuting the matter with no guarantee of any
17 payment. (Campbell Decl., ¶ 39.) Plaintiffs' Counsel seeks preliminary approval for \$433,333.34 in
18 attorneys' fees, which is up to one-third of the Gross Settlement Amount, and up to \$25,000.00 in
19 reimbursement of litigation costs. (Settlement Agreement § 3.2.2.) Given the work performed in this
20 matter, the extensive information exchange, and substantial recovery obtained on behalf of Plaintiffs
21 and the Class, Plaintiffs' Counsel achieved a settlement through efficient and diligent work. (*See*
22 *generally*, Campbell Decl.) At final approval, Plaintiffs' Counsel will fully brief the merits of its request
23 for the award of attorneys' fees and litigation costs. (*Id.* at ¶ 38.)

24 **V. CONCLUSION**

25 The Parties have negotiated a fair and reasonable Settlement of the class claims in light of the
26 risks present in this case. Plaintiffs have appropriately presented the materials and information necessary
27 for preliminary approval, and therefore, respectfully request that the Court preliminarily approve the
28 Settlement and schedule a date to conduct the final approval hearing.

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2 Dated: August 7, 2023

AEGIS LAW FIRM, PC

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4 By: /s/ Jessica L. Campbell
5 Jessica L. Campbell
6 Attorneys for Plaintiffs
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