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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

NOREEN MENDOZA, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

PROPERTYRATE, LLC; and DOES 1
through 20, inclusive,

Defendants.

Case No. 30-2021-01233226-CU-OE-CXC

Assigned for all purposes to:

Hon. William D. Claster

Dept.: CX101

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

Date: December 29, 2023

Time: 9:00 a.m.

Dept: CX101

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	SUMMARY OF THE LITIGATION.....	2
III.	SUMMARY OF THE SETTLEMENT	3
A.	Terms of Settlement.....	3
B.	Proposed Opt-Out and Objection Process	3
C.	Proposed Release.....	5
IV.	LEGAL ARGUMENTS SUPPORTING PRELIMINARY APPROVAL.....	5
A.	Provisional Certification of the Class is Appropriate.....	5
1.	The Proposed Class is Numerous and Ascertainable	5
2.	A Well-Defined Community of Interest Exists Among Class Members	6
3.	A Class Action is Superior to a Multitude of Individual Lawsuits.....	7
B.	The Settlement Meets the Standards for Preliminary Approval	8
1.	The Settlement is Entitled to a Presumption of Fairness	8
2.	The Settlement is Reasonable Given the Strengths of Plaintiff's Claims	
	and the Risks and Expense of Further Litigation.....	9
C.	The Requested Service Award for Plaintiff	15
D.	The Requested Attorneys' Fees and Costs	16
V.	CONCLUSION	17

TABLE OF AUTHORITIES

Page(s)

Cases

<i>Bell v. Farmers Ins. Exch.</i> , (2004) 115 Cal. App. 4th 715	15
<i>Brinker Restaurant Corp. v. Super. Ct.</i> , (2012) 53 Cal. 4th 1004	5, 6
<i>Capitol People First v. State Dep't of Developmental Servs.</i> , (2007) 155 Cal. App. 4th 676	7
<i>Cellphone Termination Fee Cases</i> (2010) 186 Cal. App. 4th 1380, 1389	8, 15
<i>Chavez v. Netflix, Inc.</i> , (2008) 162 Cal. App. 4th 43	16
<i>Classen v. Weller</i> , (1983) 145 Cal. App. 3d 27	6
<i>Dunk v. Ford Motor Co.</i> , (1996) 48 Cal. App. 4th 1794	8
<i>Duran v. U.S. Bank National Assn.</i> (2014) 59 Cal.4th 1	11
<i>Fireside Bank v. Super. Ct.</i> , (2007) 40 Cal. 4th 1069	6
<i>Ghazaryan v. Diva Limousine, Ltd.</i> , (2008) 169 Cal. App. 4th 1524	7
<i>Hopson v. Hanesbrands Inc.</i> (N.D. Cal. Apr. 3, 2009) 2009 U.S. Dist. LEXIS 33900 at *24	14
<i>Kullar v. Foot Locker Retail, Inc.</i> , (2008) 168 Cal. App. 4th 116	9
<i>Linder v. Thrifty Oil Co.</i> , (2000) 23 Cal. 4th 429	7
<i>Munoz v. BCI Coca-Cola Bottling Co. of L.A.</i> , (2010) 186 Cal. App. 4th 399	9
<i>Nordstrom Comm'n Cases</i> , (2010) 186 Cal. App. 4th 576, 579	14

1	<i>North County Contractor's Ass'n., Inc. v. Touchstone Ins. Servs.,</i>	
2	(1994) 27 Cal. App. 4th 1085	8
3	<i>Rebney v. Wells Fargo Bank,</i>	
4	(1991) 220 Cal. App. 3d 1117.....	11
5	<i>Reyes v. Bd. of Supervisors,</i>	
6	(1987) 196 Cal. App. 3d 1263	5
7	<i>Sav-On Drug Stores, Inc. v. Super. Ct.,</i>	
8	(2004) 34 Cal. 4th 319.....	6, 16
9	<i>Staton v. Boeing Co.</i>	
10	(9th Cir. 2003) 327 F.3d 938, 977	15
11	<i>Van Vranken v. Atlantic Richfield Co.</i>	
12	(N.D. Cal. 1995) 301 F.Supp. 294, 299.....	15
13	<i>Wershba v. Apple Computer, Inc.,</i>	
14	(2001) 91 Cal. App. 4th 224	11
15	Statutes	
16	Business and Professions Code § 17200, <i>et seq.</i>	2
17	Lab. Code § 203	13
18	Lab. Code § 226	13
19	Lab. Code § 2698, <i>et seq.</i>	
20	(California Private Attorneys General Act of 2004-PAGA).....	1, 2
21	Lab. Code § 2699(e)(2)	14
22	Lab. Code § 2699(f)	14
23	Lab. Code § 2699(l)(2).....	2
24	Lab. Code § 2699.3(a).....	2
25	Other Authorities	
26	Cal. R. Ct. 3.766, subd. (d).....	4
27	Cal. R. Ct. 3.766, subds. (d)-(f).....	4
28	Treatises	
	Conte & Newberg, <i>Newberg on Class Actions</i> , § 11.26 (4th ed. 2002)	8

1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court 3.769 (d) and (e), Plaintiff Noreen Mendoza (“Plaintiff”)
3 request that the Court grant preliminary approval of a class action settlement of wage and hour claims,
4 including a claim under the California Private Attorneys General Act of 2004, codified at Lab. Code §
5 2698, *et seq.* (“PAGA”), against Defendant PROPERTYRATE LLC (“Defendant”) (collectively,
6 Plaintiff and Defendant referred to as the “Parties”). The putative class consists of approximately 200
7 employees, and is defined as all non-exempt employees employed by Defendant in California
8 (individually, “Class Member”; collectively, “Class Members”) between November 23, 2017 and May
9 1, 2023 (the “Class Period”). The basic terms of the Class Action and PAGA Settlement Agreement and
10 Class Notice (“Settlement Agreement” or “Settlement”)¹ provide for the following:

- 11 (1) A non-reversionary Gross Settlement Amount of \$400,000.00 allocated to
12 approximately 201 Class Members on a pro rata basis according to the number of
13 weeks each Class Member worked during the Class Period;
14 (2) An award of up to one-third of the Gross Settlement Amount (currently
15 \$133,333.33) and up to \$25,000.00 in reimbursement of costs to Plaintiff’s
16 Counsel for services rendered as counsel on this matter;
17 (3) Service Payment of up to \$10,000.00;
18 (4) Settlement Administration fees and costs of up to \$4,700.00; and
19 (5) Allocations of \$30,000 for resolution of civil penalties under PAGA. Seventy-five
20 percent (75%) of this payment will be paid to the California Labor and Workforce
21 Development Agency (“LWDA Payment”), and twenty-five percent (25%) will be
22 paid to Class Members who worked for Defendant during the PAGA Period of
23 November 23, 2020 to May 1, 2023.

24 With each Class Member allocated an average recovery of approximately \$1,000 from the Net

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 Plaintiff’s
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.

1 Settlement Amount, the Settlement satisfies the criteria for preliminary approval and falls well within
2 the range of reasonableness given the risks and costs of continued litigation. The Settlement was reached
3 through informed, arm's-length bargaining at and after a mediation between experienced attorneys. As
4 such, Plaintiff requests that the Court grant preliminary approval of the Settlement, conditionally certify
5 the Class for settlement purposes only, appoint Plaintiff as the Class Representative, appoint Plaintiff's
6 Counsel as Class Counsel, appoint ILYM Group, Inc. as the Settlement Administrator, authorize the
7 Settlement Administrator to send notice of the Settlement, and set a final approval hearing date.

8 **II. SUMMARY OF THE LITIGATION**

9 On November 23, 2021, Plaintiff's counsel provided written notice to the LWDA and Defendant
10 regarding Defendant's alleged Labor Code violations, as required by Lab. Code § 2699.3(a). (Campbell
11 Decl., ¶ 3, Ex. 2.) The LWDA did not respond to this notice, indicating it did not intend to investigate,
12 thus allowing Plaintiff to bring a PAGA claim against Defendant. (*Id.*) On November 23, 2021, Plaintiff
13 filed a putative class action on behalf of Defendant's non-exempt employees alleging the following causes
14 of action: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal
15 periods; (4) failure to permit rest breaks; (5) failure to reimburse business expenses; (6) failure to provide
16 accurate itemized wage statements; (7) failure to pay all wages due upon separation of employment; and
17 (8) violation of Business and Professions Code § 17200, *et seq.* for the preceding claims. (*Id.*) On February
18 14, 2022, Plaintiff filed a First Amended Complaint adding a cause of action for enforcement of Labor
19 Code § 2698 *et seq.* ("PAGA"). (Campbell Decl., ¶ 4.)

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

22 On May 1, 2023, the Parties attended a mediation session with David Rotman, a respected mediator.
23 (Campbell Decl., ¶ 6.) After a full day of negotiating, the Parties agreed to a settlement amount and
24 executed a Memorandum of Understanding, with the material terms the Parties had agreed to, on May 2,
25 2023. (*Id.*) The Parties spent the next few months negotiating the full terms of the Settlement, which was
26 finalized in September of 2023. (*Id.*) On November 13, 2023, Plaintiff submitted the Settlement to the
27 LWDA pursuant to Lab. Code § 2699(l)(2). (Campbell Decl., ¶ 7. Ex. 3.)

28 //

1 **III. SUMMARY OF THE SETTLEMENT**

2 **A. Terms of Settlement**

3 Plaintiff and Defendant agreed to settle the class claims in exchange for a Gross Settlement
4 Amount of \$400,000. (Settlement Agreement, § 3.1.) The Gross Settlement Amount will be used to
5 make payments for the following: (1) Individual Settlement Payments to Participating Class Members;
6 (2) attorneys' fees to Class Counsel of up to one-third of the Gross Settlement Amount; (3)
7 reimbursement of Class Counsel's litigation costs of up to \$25,000; (4) a Service Payment to Plaintiff
8 of up to \$10,000; (5) Settlement Administration fees and costs of \$4,700; and (6) a payment to the
9 LWDA of \$22,500 pursuant to PAGA. (*Id.* at §§ 3.2.1–3.2.5.) Class Members' Individual Settlement
10 Payments will be distributed after final approval of the Settlement and Defendant fully funds the Gross
11 Settlement Amount. (*Id.* at §§ 4.3–4.4.) Individual Settlement Payments will be calculated by comparing
12 the total Qualifying Workweeks for the Class to each individual Class Member's Qualifying
13 Workweeks. (*Id.* at § 3.2.4.) The Settlement Administrator will calculate the actual estimated recovery
14 to include in the Notice of Class Action Settlement ("Class Notice") and provide the estimated low and
15 high range of possible recovery at final approval. (*Id.* at § 8.4.2 & Ex. A (Class Notice).) The Class
16 Notice will be provided in English since the Class Members speak and understand English. (*See*
17 Settlement Agreement, § 1.11; Declaration of Dexter Go ¶ 3.) Once the Court grants final approval and
18 enters judgment, the Settlement Administrator will post the Class Notice on its website. (Settlement
19 Agreement, § 8.8.1.)

20 The Individual Settlement Payments will be allocated 20% to wages; 80% to interest and penalties
21 for tax purposes. (*Id.* at § 3.2.4.1.) Defendant will pay the employer-side payroll taxes on the portion
22 allocated to wages separately from, and in addition to, the Gross Settlement Amount. (*Id.* at § 3.1.)
23 Funds from uncashed or undeliverable checks will be tendered by the Settlement Administrator to the
24 State Controller Unclaimed Property Fund in the Class Member's name for whom the funds are
25 designated. (*Id.* at § 4.4.3.) None of the Gross Settlement Amount will revert to Defendant. (*Id.* at § 3.1.)

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

27 Once the Court grants preliminary approval, Defendant will have fifteen business days to deliver
28 the Class Data to the Settlement Administrator. (Settlement Agreement, § 4.2.) The Settlement

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

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

20 If Class Notice packets are returned as undeliverable, the Settlement Administrator will perform a
21 skip-trace or other search, and re-mail the Class Notice with an extended deadline to opt out or object, of
22 14 days from the date of mailing or the original deadline, whichever is later. (Settlement Agreement, §§
23 8.4.3–8.4.4.) The initial 60-day notice period and extension process ensures the notice program provides
24 due process by giving Class Members enough time to determine whether they want to participate in the
25 Settlement. This means of notice is reasonably calculated to apprise Class Members of the pendency of
26 the action. (*See* Cal. R. Ct. 3.766, subds. (d)–(f).)

27 //

28 //

1 **C. Proposed Release**

2 The release to be given by Class Members is limited to Defendant and each of its former and
3 present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors,
4 successors, assigns, subsidiaries, and affiliates (the “Released Parties”). (Settlement Agreement, § 1.41.)
5 Under the proposed release, Class Members who do not exclude themselves from the Settlement will
6 be deemed to have released the following: “all claims that were alleged or could have been alleged, based
7 on the facts alleged in the Operative Complaint, which arose during the Class Period.” (*Id.* at § 6.2.)

8 PAGA Group Members (regardless of whether they exclude themselves from the Settlement) will
9 be deemed to have released the following: “all claims for PAGA penalties that were alleged, or could
10 have been alleged, based on the facts alleged in the Operative Complaint, and/or the PAGA Notice.”
11 (*Id.* at § 6.3.)

12 Additionally, Plaintiff will be deemed to have released all potential claims. (*Id.* at § 6.1.) Plaintiff
13 also releases all known or unknown claims under Civil Code § 1542. (*Id.* at § 6.1.1.)

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

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

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

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

21 Whether a class is “ascertainable” is “determined by examining (1) the class definition, (2) the
22 size of the class, and (3) the means available for identifying class members.” (*Reyes v. Bd. of Supervisors*
23 (1987) 196 Cal. App. 3d 1263, 1271.) Here, the Class consists of all non-exempt employees employed
24 by Defendant in California at any time between November 23, 2017 and May 1, 2023. (Settlement
25 Agreement, §§ 1.5 & 1.12.) Defendant’s records show the Class consists of approximately 200
26 individuals, making joinder of all Class Members impracticable. (Campbell Decl., ¶ 8.) Further, the
27 Class is readily ascertainable from Defendant’s business records because all Class Members are current
28 or former employees of Defendant. (*Id.*)

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

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

a. Common Questions Predominate

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

Plaintiff alleged that Defendant maintained employment policies and/or practices that illegally deprived Class Members of lawful wages, meal periods, rest breaks, accurate wage statements, payment of all wages upon separation from employment, and waiting time pay. (Campbell Decl., ¶ 9.) Plaintiff’s allegations present common legal and factual questions of, *inter alia*, whether Defendant applied the same scheduling, timekeeping, minimum and overtime pay, meal period, and rest break policies to all Class Members; whether these policies and practices resulted in Labor Code violations; whether Defendant’s conduct was intentional; and whether Class Members are entitled to penalties. (*Id.*) These common questions could be resolved using Class Members’ schedules, time punches, and payroll records, Defendant’s corporate representative’s testimony, written communications between Defendant and Class Members, and Class Member declarations. (*Id.*) Thus, the Court can and should exercise its discretion to grant conditional class certification for settlement purposes.

b. Plaintiff’s Claims are Typical of the Class Claims

The typicality requirement is satisfied when the legal theories and facts supporting Plaintiff’s claims are substantially similar to other class members. (*See Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46.) Here, Plaintiff alleges that she and other Class Members were employed by Defendant and injured by Defendant’s common wage and hour policies and practices, including Defendant’s scheduling, timekeeping, minimum wage pay, overtime pay, meal period, and rest break practices and

1 policies. (Campbell Decl., ¶ 10.) Through documents and information exchanged in formal discovery,
2 including production of policy documents by Defendant, Plaintiff confirmed that these common policies
3 and practices similarly affected Plaintiff and the Class. (*Id.*) Thus, Plaintiff’s claims arise from the same
4 employment practices and are based on the same legal theories as those applicable to other Class
5 Members, as further explained in Plaintiff’s exposure analysis below.

6 c. Plaintiff and Plaintiff’s Counsel Will Adequately Represent the Class

7 Certification requires adequacy of both the proposed class representative(s) and proposed class
8 counsel. With respect to the class representative, a plaintiff must adequately represent and protect the
9 interests of other members of the class and demonstrate that his or her claim is not inconsistent with the
10 claims of other members of the class. (*See Capitol People First v. State Dept. of Developmental Servs.*
11 (2007) 155 Cal. App. 4th 676, 696-697.) Here, Plaintiff’s interests are coextensive with the interests of
12 the Class. Plaintiff demonstrated an ability to advocate for the interests of the Class by litigating this
13 action, gathering documents and information, being available on the day of mediation to answer
14 questions, meeting with their attorneys on several occasions to understand the claims and theories of
15 liability at issue, reviewing the proposed settlement agreement to understand its legal effect, and
16 obtaining a fair settlement on behalf of Class Members who stand to recover a substantial amount under
17 the Settlement. (Declaration of Noreen Mendoza (“Mendoza Decl.”) ¶¶ 4–8; Campbell Decl., ¶ 27.)

18 Likewise, Aegis Law Firm, PC has expended considerable time and effort on this case and will
19 continue to do so through final approval. (*See generally*, Campbell Decl.) Accordingly, Plaintiff should
20 be appointed Class Representatives, and Plaintiff’s Counsel should be appointed Class Counsel.

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

22 Class treatment is superior to other methods of adjudication when the probability is small that
23 each class member will come forward to prove his or her claim and when the class approach would deter
24 and redress the alleged wrongdoing. (*See Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 435, 446;
25 *Ghazaryan v. Diva Limousine, Ltd.*, (2008) 169 Cal. App. 4th 1524, 1537-1538.) Here, none of the other
26 200 Class Members had shown any interest in bearing the expense and burden of litigating their own
27 claims. (Campbell Decl., ¶ 23.) Thus, a class action is the superior method for seeking relief.

28 //

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

2 Preliminary approval is warranted if the settlement falls within a “reasonable range.” (*See North*
3 *County Contractor’s Ass’n., Inc. v. Touchstone Ins. Servs.*, (1994) 27 Cal. App. 4th 1085, 1089-90;
4 *Conte & Newberg, Newberg on Class Actions*, § 11.26 (4th ed. 2002).) In reviewing the fairness of a
5 class action settlement, due regard should be given to what is “‘otherwise a private consensual
6 agreement between the parties.’” (*Cellphone Termination Fee Cases*, (2010) 186 Cal. App. 4th 1380,
7 1389.) The inquiry “must be limited to the extent necessary to reach a reasoned judgment that the
8 agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties,
9 and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” (*Id.*)

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

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

16 a. *The Settlement is the Result of Arm’s-Length Negotiations*

17 Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless
18 evidence to the contrary is offered. Thus, there is a presumption that settlement negotiations are
19 conducted in good faith. Here, the Settlement was the product of extensive investigation and a full day
20 mediation session with a respected mediator after extensively reviewing discovery. (Campbell Decl., ¶¶
21 5–6.) The negotiations were adversarial, conducted at arm’s-length, and tempered by the efforts of both
22 sides to serve the interests of their clients. (*Id.* at ¶ 6.) The amounts of Plaintiff’s requested Service
23 Awards were not negotiated until after the Parties agreed to the Gross Settlement Amount and many
24 other terms. (*Id.* at ¶ 22.)

25 b. *Plaintiff’s Counsel Conducted Sufficient Investigation and Discovery*

26 Plaintiff’s Counsel thoroughly investigated the class claims, applicable law, and potential
27 defenses. (*See generally*, Campbell Decl.) In particular, Plaintiff’s Counsel assessed the value of the
28 class claims using Defendant’s data and documents produced through discovery. (Campbell Decl., ¶¶

1 10, 12–13.) Plaintiff’s counsel extensively reviewed policy documents and Class Members’ time and
2 pay records to perform a thorough analysis. (*Id.* at ¶ 10.) Further, Plaintiff’s Counsel engaged an expert
3 to quantify the potential exposure using the time and payroll records, and then assessed the risks
4 associated with each of the claims meriting reductions in the likely recovery at trial. (*Id.*) Accordingly,
5 Plaintiff’s Counsel fully understood the strengths and weaknesses of the claims before the Parties
6 reached a settlement. (*Id.*)

7 c. Plaintiff’s Counsel is Experienced in Similar Litigation

8 Plaintiff is represented by Aegis Law Firm, PC (“Class Counsel”). Class Counsel prosecute wage
9 and hour class actions on behalf of employees and others who have had their rights violated. (Campbell
10 Decl., ¶¶ 26–39.) The attorneys working on this case have been appointed class counsel in many cases,
11 through both contested motions and settlement approval motions. (*Id.*) Thus, Plaintiff’s Counsel has
12 extensive experience in similar litigation and should be appointed as Class Counsel.

13 **2. The Settlement is Reasonable Given the Strengths of Plaintiff’s Claims and**
14 **the Risks and Expense of Further Litigation**

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

19 While Plaintiff and her counsel believed and continue to believe this is a strong case for
20 certification, the significant risks and expenses associated with class certification and liability
21 proceedings were taken into account. (Campbell Decl., ¶ 12.) To determine if the amount negotiated was
22 reasonable, Plaintiff’s Counsel weighed that figure against many risk factors. (*Id.* at ¶ 13). If Plaintiff
23 continued to prosecute the claims rather than accept a settlement, Plaintiff would have faced deadlines
24 to file a motion for class certification, had to have engaged in more formal written discovery and taken
25 depositions, expended time and resources to resolve disputes, prepared and filed potential dispositive
26 motions and/or discovery motions, and engaged in extensive trial preparation. (*Id.* at ¶ 14.) An adverse
27 ruling at any one of these stages could have prevented the Class from obtaining any recovery. (*Id.*)

28 //

1 a. Plaintiff's Sample Size Was Statistically Reliable

2 The Parties agreed that in lieu of providing the data of all Class Members in discovery, Defendant
3 would provide Plaintiff's data and a sampling of the Class Members' data, using methods that ensured
4 the sampling would adequately represent the claims and damages of the class. (Campbell Decl., ¶ 23.)
5 Through this sampling of data, Plaintiff received a statistically reliable portrait of the Class Members'
6 hours and potential damages. (*Id.*) In total, Defendant produced an approximate 18.5% data sampling
7 of the Class Members within the Class Period (37 Class Members out of 200). (*Id.*)

8 Plaintiff and Defendant agreed to use a randomized sampling method to analyze the Class
9 Members' employment data. (*Id.* at ¶ 24.) The data collection was determined by Defendant providing
10 anonymous employee identification numbers of all Class Members and Plaintiff using a random number
11 generator to select the sample. (*Id.*) No Class Members were excluded from the list generated to create
12 the sample, and selection was determined by a repeatable pattern ensuring that each class member had
13 an equal probability of being selected for inclusion. (*Id.*) Furthermore, Plaintiff's employment data was
14 requested separately from the rest of the Class Members, so as not to create a biased sample. (*Id.*)

15 Using Defendant's 18.5% sampling size resulted in a confidence level of over 95% in the
16 accuracy of the sample's data, and contained an approximate margin of error of less than 15%. (*Id.* at ¶
17 25.) The 95% confidence level and 15% margin of error are based on a sample size calculator by Survey
18 Monkey (<http://surveymonkey.com/mp/sample-size-calculator/>). The sample size calculator uses a
19 formula that advises the survey conductor of how large a sample size is needed to achieve a specified
20 confidence level in their sample size (between 80 – 99%) and a margin of error of 15%. (*Id.*) Survey
21 Monkey is a feedback platform that is owned and operated by Momentive Global Inc., who has a Better
22 Business Bureau rating of A+, posted revenue of \$118.8 million in the first quarter of 2023, and is on
23 the NASDAQ securities market, according to their First Quarter Financial Results Press Release. (*Id.*)

24 Prior to mediation, Plaintiff retained an expert to analyze Defendant's sample data, and calculate
25 damages that were relied upon for mediation and included in Plaintiff's Motion for Preliminary
26 Approval of Class and Representative Action Settlement. (*Id.* at ¶ 26.) For example, the expert analyzed
27 10,589 of the Class Members' shifts. Of the shifts analyzed, approximately 82.1% were at least six hours
28 in length. (*Id.*) The lack of variation in shift length between the sampling of Class Members reinforces

1 Survey Monkey’s analysis that the sample had a low variability and margin of error, which is statistically
2 reliable and significant. (See *Duran v. U.S. Bank National Assn.* (2014) 59 Cal.4th 1, 42–44 (finding an
3 analysis to determine if a sample size is statistically appropriate may include ensuring that the data
4 sample is randomly selected, evaluating the extent of variability within the sample, removing any
5 selection bias, and analyzing the margin of error).) Requiring Defendant to produce all of the Class
6 Members’ time and pay records would not provide a more reliable data set than the sample analyzed by
7 Plaintiff. (Campbell Decl. at ¶ 26.)

8 *b. Exposure Analysis*

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

12 Compromise is inherent and necessary in the settlement process . . . even if “the relief afforded
13 by the proposed settlement is substantially narrower than it would be if the suits were to be
14 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.”

15 (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 250 (citation omitted).) Here, Plaintiff
16 contend that their claims are based on Defendant’s common, class-wide policies and procedures, and
17 that liability could be determined on a class-wide basis without dependence on individual assessments
18 of liability. (Campbell Decl., ¶ 11.) Although the amount of Defendant’s potential exposure—if
19 proven—is substantial, the legitimate and serious risks of succeeding at class certification and trial
20 compelled consideration of the benefit of a settlement. (*Id.* at ¶ 13.)

21 Overtime Wages Claim: Plaintiff’s overtime claim is mainly premised on the theory that although
22 Defendant paid Class Members overtime, it failed to adjust overtime rates to include Class Members’
23 commissions and bonuses. (Campbell Decl., ¶ 15.) An expert retained by Plaintiff’s Counsel calculated
24 a potential exposure of approximately \$11,000 by calculating the underpayment of overtime for each
25 bonus shown in the pay records. (*Id.*) However, Defendant argued that the bonuses were discretionary,
26 and even if it did not adjust Class Members’ regular rates of pay to take into account commissions, its
27 failure to do so was infrequent. (*Id.*) Accordingly, Plaintiff’s counsel believed there was an 60% chance
28

1 of success at class certification and 50% chance of success on the merits at trial, rendering the claim
2 worth approximately \$3,300. (*Id.*)

3 Minimum Wages Claim: Plaintiff's unpaid wage claim is mainly premised on the theory that
4 Defendant improperly rounded Class Members' time. (Campbell Decl., ¶ 16.) An expert retained by
5 Plaintiff's Counsel analyzed the rounding data, resulting in a potential exposure of approximately
6 \$1,060.00 for this claim. (*Id.*) However, Defendant could defeat this claim by showing that the rounding
7 policies were neutral, many Class Members were overpaid because of rounding, and only 40% of shifts
8 were underpaid because of rounding. (*Id.*) Accordingly, Plaintiff's counsel believed there was an 60%
9 chance of success at class certification and 50% chance of success on the merits at trial, rendering the
10 claim worth approximately \$318.00. (*Id.*)

11 Meal Period Claim: Plaintiff's meal period claim is premised on the theory that Class Member
12 records showed multiple meal period violations and Defendant failed to pay meal period premiums for
13 the interruptions. (Campbell Decl., ¶ 17.) Finding a 40% violation rate, Plaintiff's expert estimated that
14 this claim was worth approximately \$447,000. (*Id.*) However, Defendant argued that Class Members
15 often worked remotely and were not required to work through their meal periods. (*Id.*) Defendant also
16 argued that its meal period policies were facially compliant. (*Id.*) As a result, Plaintiff's counsel
17 estimated that this claim had a 50% chance at certification and a 40% chance at trial, resulting in a
18 realistic evaluation of \$89,400. (*Id.*)

19 Rest Period Claim: Plaintiff's rest period claim is premised on the theory that Defendant only
20 provided rest breaks for every four hours worked, rather than four hours worked or major fraction
21 thereof, as required by law. (Campbell Decl., ¶ 18.) Plaintiff's expert found that there were
22 approximately 1,741 total shifts where rest breaks had been affected because of Defendant's policy,
23 which denied rest breaks to Class Members who had worked shifts greater than six hours, but less than
24 eight hours in duration, and greater than ten hours, but less than twelve hours in duration. Plaintiff
25 estimated that this claim was worth approximately \$29,475. (*Id.*) However, Defendant argued that Class
26 Members often worked remotely and were able to take rest periods. (*Id.*) Moreover, whether Class
27 Members were able to take rest breaks for every major fraction of four hours worked as opposed to
28 every four hours worked would have required depositions of Class Members, and Defendant likely

1 would have obtained opposing declarations stating rest breaks were adequately taken or voluntarily
2 waived, significantly decreasing the likelihood of class certification. (*Id.*; see also, e.g., *Rai v. CVS*
3 *Caremark Corp.* (C.D. Cal. Oct. 11, 2013) 2013 U.S. Dist. LEXIS 177730 (denying certification of rest
4 break claims where competing testimony regarding actual practice meant adjudication would involve
5 predominantly individual issues); *Gonzalez v. OfficeMax North Am.* (C.D. Cal. Nov. 5, 2012) 2012 U.S.
6 Dist. LEXIS 163853, at *9–12 (denying certification on predominance grounds where plaintiff offered
7 no evidence that a uniform rest break policy was implemented uniformly)). As such, Plaintiff’s counsel
8 estimated that the rest break claim had 30% chance at certification and a 20% chance at trial, resulting
9 in a realistic evaluation of \$1,768. (Campbell Decl., ¶ 18.)

10 Expense Reimbursement Claim: Plaintiff’s claim for failure to reimburse business expenses was
11 premised on the theory that Class Members used their home internet to carry out job duties, but were
12 not reimbursed for this expense. (Campbell Decl., ¶ 19.) Assuming that each Class Member would be
13 entitled to a reimbursement amount of \$30.00 per month, the expert retained by Plaintiff’s counsel
14 estimated that the claim was worth approximately \$115,000. (*Id.*) However, Defendant could defeat
15 these claims by showing that it was not required to reimburse these costs. (*Id.*) Further, if Defendant was
16 required to reimburse these expenses, there was no source of common proof as to who incurred which
17 expenses (e.g. home computer, home internet, electricity, home work station) and whether they sought
18 reimbursement, making the claim difficult to prove at trial. (*Id.*) Accordingly, Plaintiff’s counsel
19 estimated that there would be a 50% chance of class certification and a 50% chance of success on the
20 merits at trial, rendering the claim worth approximately \$28,750. (*Id.*)

21 Waiting Time and Wage Statement Penalties: Plaintiff’s Counsel considered the arguable presence
22 of various derivative penalties, and weighed the potential recoveries against probable defenses. (Campbell
23 Decl., ¶ 20.) Specifically, Defendant could argue that Plaintiff could not prove the “willful” prong needed
24 to obtain waiting time penalties under Labor Code § 203; Plaintiff could not show that Class Members
25 suffered an “injury” as a result of wage statement violations, as required by Labor Code § 226; or that the
26 wage statements correctly reflected the wages paid and owed. (*Id.*) Although the Class could have seen a
27 potential payout of approximately \$586,000 for waiting time penalties and approximately \$384,000 for
28 wage statement penalties, Plaintiff would not recover any of these derivative penalties if she failed to

1 prove the underlying claims. (*Id.*) Thus, Plaintiff discounted these claims assuming a 60% chance of class
2 certification and 50% chance at the merits for both claims, resulting in a realistic value of approximately
3 \$175,800 for the waiting time claim and around \$115,200 for the wage statement claim. (*Id.*)

4 PAGA Claim: The PAGA claim presented even higher hurdles. (Campbell Decl., ¶ 21.) Plaintiff's
5 expert analyzed the employment data provided by Defendant and found that Defendant's exposure could
6 potentially reach approximately \$396,500 under Lab. Code § 2699(f), assuming the initial penalty rate
7 of \$100 for each pay period. (*Id.*) However, to recover that amount, Plaintiff would have to prove a
8 violation in every pay period. (*Id.*) Furthermore, the Court would have discretion to reduce the PAGA
9 award based on whether the amount of the award would be "unjust, arbitrary and oppressive, or
10 confiscatory." Lab. Code § 2699(e)(2). In theory, the Court could reduce the award by 99% if it so
11 wished. Plaintiff was doubtful she could recover a large sum PAGA penalties, especially if the court
12 considered Defendant's financial hardships and if a large class judgment was entered for the same
13 violations, as explained below. Accordingly, Plaintiff could not place a high value on the PAGA
14 penalties, and therefore allocated \$30,000 of the Gross Settlement Amount to settle these claims. (*See*
15 *Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) 2009 U.S. Dist. LEXIS 33900 at *24 (finding
16 amount of PAGA penalties reasonable where the amounts are negotiated in good faith and "there is no
17 indication that [the] amount was the result of self-interest at the expense of other Class Members");
18 *Nordstrom Comm'n Cases* (2010) 186 Cal.App.4th 576, 579 ("trial court did not abuse its discretion in
19 approving a settlement which does not allocate any damages to the PAGA claims").)²

20 Defendant's Financial Constraints: Defendant's financial status also increased the risks of further
21 litigation and would not have guaranteed that Plaintiff or the Class Members would have recovered any
22 amount greater than the Settlement. (Campbell Decl., ¶ 22.) During the Parties' mediation, Defendant
23 maintained that it had limited available funds from which to pay any settlement or judgment, and thus
24 could not pay any amount in excess of the Settlement. (*Id.*) In support of its position, Defendant provided
25 Plaintiff's Counsel with its corporate tax returns and financial documents. (*Id.*) Plaintiff's Counsel

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27 ² Plaintiff did not attribute any independent value to her Business and Professions §§ 17200 *et seq.*
28 claim. Instead, she used it to extend the statute of limitations to obtain recovery for a longer period of
violations.

1 reviewed Defendant's documents, which supported its financial concerns. (*Id.*) Based on review of
2 Defendant's finances, Plaintiff's Counsel discounted the valuations of Plaintiff's claims by
3 approximately 10%, resulting in a realistic value of approximately \$3,256 for both unpaid wages claims,
4 \$80,460 for the meal period claim, \$1,591 for the rest break claim, \$25,875 for the expense
5 reimbursement claim, \$158,220 for the waiting time claim, and \$103,680 for the wage statement claim.
6 (*Id.*)

7 Thus, given the realistic exposure to Defendant and the likelihood of recovery, the settlement
8 amount of \$400,000 is reasonable, fair, and proper.

9 **C. The Requested Service Award for Plaintiff**

10 Plaintiff seeks a Service Award of up to \$10,000 for accepting the responsibilities of representing
11 the interests of the Class and assuming risks and potential costs that were not borne by any other Class
12 Members. (Settlement Agreement, § 3.2.1.) A named plaintiff is eligible for payment that reasonably
13 compensates him or her for undertaking and fulfilling a fiduciary duty to represent absent class
14 members. (*See Cellphone Termination Fee Cases, supra*, 186 Cal. App. 4th at 1393-94 ("The rationale
15 for making enhancement or incentive awards to named plaintiffs is that they should be compensated for
16 the expense or risk they have incurred in conferring a benefit to other members of the class"); *Bell v.*
17 *Farmers Ins. Exch.* (2004) 115 Cal. App. 4th 715, 726.) In evaluating the propriety of enhancement
18 awards, courts consider the following relevant factors, including: (1) the time and effort put into the
19 litigation and the degree to which the class has benefitted from those actions, (2) the duration of the
20 litigation, (3) a comparison between the service awards range of monetary recovery available to the
21 class, (4) whether the litigation will further the public policy underling the statutory scheme, and (5)
22 risks to the class representatives in participating in the lawsuit, including financial exposure, retaliation,
23 and negative notoriety related to the lawsuit. (*See, e.g., Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d
24 938, 977; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 301 F.Supp. 294, 299.)

25 Plaintiff had the option to pursue their claims individually, but instead chose to pursue this class
26 action, delaying individual recovery until approval of a class action settlement. (Campbell Decl., ¶ 27.)
27 Throughout the case, Plaintiff assisted counsel in gathering the evidence necessary to prosecute the class
28 claims, maintained regular contact with counsel, was available on the day of mediation and

1 communicated with her attorneys during the day of mediation to answer critical questions, reviewed the
2 Settlement to make sure it was fair to the Class, and otherwise assisted the action as needed since this
3 action was filed nearly two years ago. (*Id.*; Mendoza Decl., ¶¶ 4–8.) No action would likely have been
4 taken by Class Members individually, and no compensation would have been recovered for them, but
5 for Plaintiff’s services on the Class’s behalf. (Campbell Decl., ¶ 27.)

6 By actively pursuing this action, Plaintiff also furthered the California public policy goal of
7 enforcing the State’s wage and hour laws. (*See Sav-On Drug Stores, Inc., supra*, 34 Cal. 4th at 340.)
8 The requested Service Awards for Plaintiff’s service as the class representative and for a general release
9 of all employment claims is reasonable and should be preliminarily approved. At the final approval
10 stage, Plaintiff will further support the request for the Service by declarations addressing the factors for
11 the award. (Campbell Decl., ¶ 29.)

12 **D. The Requested Attorneys’ Fees and Costs**

13 The purpose of an attorneys’ fee award in class action litigation is to reward counsel who invested
14 in a case despite the risk of non-payment and achieved a substantial positive result for the class.
15 Attorneys’ fees are awarded as a matter of equity. California courts routinely award attorneys’ fees
16 equaling one-third or more of the potential value of the common fund. (*See Chavez v. Netflix, Inc.* (2008)
17 162 Cal. App. 4th 43, 66, n.11 (“Empirical studies show that, regardless of whether the percentage
18 method or the lodestar method is used, fee awards in class actions average around one-third of the
19 recovery”).)

20 Plaintiff seeks appointment of Aegis Law Firm, PC as Class Counsel. The attorneys performed
21 significant work and expended litigation costs in prosecuting the matter with no guarantee of any
22 payment. (Campbell Decl., ¶ 44.) Plaintiff’s Counsel seeks preliminary approval for \$133,333.34 in
23 attorneys’ fees, which is up to one-third of the Gross Settlement Amount, and up to \$25,000.00 in
24 reimbursement of litigation costs. (Settlement Agreement § 3.2.2.) Given the work performed in this
25 matter, the extensive information exchange, and substantial recovery obtained on behalf of Plaintiff and
26 the Class, Plaintiff’s Counsel achieved a settlement through efficient and diligent work. (*See generally*,
27 Campbell Decl.) At final approval, Plaintiff’s Counsel will fully brief the merits of its request for the
28 award of attorneys’ fees and litigation costs. (*Id.* at ¶ 45.)

1 **V. CONCLUSION**

2 The Parties have negotiated a fair and reasonable Settlement of the class claims in light of the
3 risks present in this case. Plaintiff has appropriately presented the materials and information necessary
4 for preliminary approval, and therefore, respectfully request that the Court preliminarily approve the
5 Settlement and schedule a date to conduct the final approval hearing.

6 Dated: November 13, 2023

AEGIS LAW FIRM, PC

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8 By: /s/ Jessica L. Campbell
9 Jessica L. Campbell
10 Attorneys for Plaintiff
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