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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **FOR THE COUNTY OF LOS ANGELES**

15 DULCE ZUAZO, individually and on behalf
16 of all others similarly situated,

17 Plaintiff,

18 vs.

19 TEDDYS INVESTMENTS INC; TEDDYS
20 ATTITUDE OF GRATITUDE
21 INVESTMENTS; TEDDYS RED TACOS
22 LAX INC; THE ORIGINAL TEDDY'S
23 RED TACOS VENICE LLC; and DOES 1
24 through 20, inclusive,

25 Defendants.

Case No. 22STCV00296

Assigned for All Purposes to:
Hon. David S. Cunningham III
Dept. SS11

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

Date: June 6, 2023

Time: 9:30 am

Dept: 11

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1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court 3.769 (d) and (e), Plaintiff Dulce Zuazo (“Plaintiff”)
3 requests that the Court grant preliminary approval of a class action settlement of wage and hour claims,
4 including claims under the California Private Attorneys General Act of 2004, codified at Lab. Code §
5 2698, *et seq.* (“PAGA”), against Defendants Teddys Investments Inc; Teddys Attitude of Gratitude
6 Investments; Teddys Red Tacos LAX Inc; the Original Teddy’s Red Tacos Venice LLC; and DOES 1
7 through 20, inclusive (“Defendants”) (collectively, Plaintiff and Defendants are hereafter referred to as,
8 the “Parties”). The putative class consists of approximately 180 non-exempt employees who worked for
9 Defendants in California (individually, “Class Member”; collectively, the “Class”) from from July 10,
10 2017, through January 11, 2023 (“Class Period”), The basic terms of the Settlement Agreement¹ provide
11 for the following:

- 12 (1) A non-reversionary Gross Settlement Amount of \$395,000.00 allocated to
13 approximately 180 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 \$131,666.66) and up to \$25,000 in reimbursement of costs to Plaintiff’s Counsel
17 for services rendered as counsel on this matter;
18 (3) Incentive Award of up to \$7,500.00 to Plaintiff Dulce Zuazo;
19 (4) Settlement Administration fees and costs of up to \$15,000.00; and
20 (5) Payment to the California Labor and Workforce Development Agency (“LWDA”)
21 of \$30,000 for civil penalties pursuant to PAGA. Seventy-five percent (75%) of this
22 payment will be paid to the California Labor and Workforce Development Agency
23 (“LWDA Payment”), and twenty-five percent (25%) will be paid to the Net
24 Settlement Amount for distribution to Class Members.

25
26 ¹ A true and correct copy of the fully-executed “Stipulation and Settlement of Class Action Claims” is
27 attached as **Exhibit 3** to the Declaration of Steven A. McNicholl in Support of Plaintiff’s Motion for
28 Preliminary Approval of Class Action Settlement (“McNicholl 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 With each Class Member allocated an average recovery of approximately \$1100.00 from the Net
2 Settlement Amount, the Settlement satisfies the criteria for preliminary approval and falls well within
3 the range of reasonableness given the risks and costs of continued litigation. The Settlement was reached
4 through informed, arms-length bargaining at and after mediation between experienced attorneys. As
5 such, Plaintiff requests that the Court grant preliminary approval of the Settlement, conditionally certify
6 the Class for settlement purposes only, appoint Plaintiff as the Class Representative, appoint Plaintiff's
7 Counsel as Class Counsel, appoint selected ILYM Group, Inc. Settlement Administrators as the
8 Settlement Administrator, authorize the Settlement Administrator to send notice of the Settlement, and
9 set a final approval hearing date.

10 **II. SUMMARY OF THE LITIGATION**

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

22 Through two sets of formal discovery, Plaintiff requested certain information and documents
23 related to, *inter alia*, class information, policy documents, time records, and pay records. Defendants
24 produced a significant amount of documents and information, including Plaintiff's personnel file, policy
25 documents, and employment dates, and the time and pay records for all non-exempt employees that
26 worked at the Defendants' locations during the class period. *Id.* at ¶ 5. After Defendants responded to the
27 first set of formal discovery and engaging in numerous discussions between the Parties' attorneys, the
28 Parties agreed to attend a private mediation session. *Id.*

On January 12, 2023, the Parties attended a mediation session with Ann Kotlarski, a respected mediator, and reached a settlement. *Id.* at ¶ 6. After a full day of negotiating, the parties were able to agree on the material terms pending Defendants’ confirmation of the number of class members and work weeks during the class period. On March 7, 2023, the Parties executed a Memorandum of Understanding with the material terms the parties had agreed to. *Id.* The Parties spent the next month negotiating the terms of the Settlement, which was finalized in March of 2023. *Id.* Plaintiff submitted this Motion and the Settlement Agreement to the LWDA pursuant to Lab. Code § 2699(1)(2). *Id.* at ¶ 7, Ex. 2 (Confirmation of Submission of Settlement to LWDA).

III. SUMMARY OF THE SETTLEMENT

A. Terms of Settlement

Plaintiff and Defendants agreed to settle the class claims in exchange for a Gross Settlement Amount of \$395,000.00. Settlement Agreement, § 3.06. However, should the number of class members exceed 180 by more than 5% (i.e., 190 employees or more) or the number of work weeks exceed 4,000 by more than 5% (i.e., 4,201 work weeks or more) as of the end of the Class Period, there will be a pro rata adjustment to the Gross Settlement Amount per additional employee equal to \$2,194.44 or per additional work week equal to \$98.75, whichever is greater. *Id.* at § 3.04(e). 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 thirty five percent of the Gross Settlement Amount; (3) reimbursement of Class Counsel’s litigation costs of up to \$25,000; (4) an Incentive Award to Plaintiff of up to \$7,500.00; (5) Settlement Administration fees and costs of \$15,000; and (6) a payment to the LWDA of \$30,000 pursuant to PAGA. *Id.* at § 3.06(a-e). Class Members’ Individual Settlement Payments will be distributed after final approval of the Settlement and Defendants fund the Gross Settlement Amount. *Id.* at § 3.06(f). Individual Settlement Payments will be calculated by comparing the total Qualifying Workweeks for the Class to each individual Class Member’s Qualifying Workweeks. *Id.* With approximately 180 Class Members, the Net Settlement Amount allocates an average of approximately \$1,000.00 per Class Member. The Settlement Administrator will calculate the actual estimated recovery to include in the Class Notice and provide

1 the estimated low and high range of possible recovery at final approval. *Id.*; Settlement Agreement, Ex.
2 A (Notice of Class Action Settlement).

3 The Individual Settlement Payments to Class Members will be allocated for tax purposes as
4 follows: 40% to wages; 60% to penalties and interest. Settlement Agreement, § 3.06(f). The employer-
5 side payroll taxes on the portion allocated to wages will be paid by Defendants separately from, and in
6 addition to the Gross Settlement Amount. *Id.* No portion of the Gross Settlement Amount will revert to
7 Defendant. *Id.* at § I. Funds from uncashed or undeliverable checks will be tendered by the Settlement
8 Administrator to the State Controller Unclaimed Property Fund in the name of the Class Member for
9 whom the funds are designated. *Id.* at § 3.06(f).

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

11 The Settlement Administrator will send Class Members the Notice of Class Action Settlement
12 (“Class Notice”) by first-class mail, after checking for updated addresses through the National Change of
13 Address database. *Id.* at § 3.03. The Class Notice provides information regarding the nature of the
14 lawsuit, a summary of the substance of the settlement terms, the formula for calculating Individual
15 Settlement Payments, the individual’s estimated payout, a statement that Class Members who take no
16 action will release their claims and receive settlement checks, instructions regarding how to dispute the
17 calculations, instructions regarding how to request exclusion or object to the Settlement, the date for the
18 final approval hearing, the amounts sought for attorneys’ fees and costs, the Settlement Administration
19 Costs, the Class Representative’s Incentive Award, and the PAGA allocation. *See* Settlement
20 Agreement, Ex. A (Class Notice).

21 The Class Notice provides instructions for Class Members who choose to exclude themselves
22 from the Settlement. *Id.* To opt out, Class Members are instructed to submit a written and signed letter
23 requesting exclusion by a specified date (45 days after the date of mailing of the Class Notice). *Id.* *See*
24 *also* Settlement Agreement § 3.03. Class Members do not need to submit a claim form to participate in
25 the Settlement. *See* Settlement Agreement, Ex. A (Class Notice). Class Members are informed of how
26 they can object to the Settlement, and the Class Notice informs Class Members of the date, time, and
27 location of the final fairness and approval hearing so that they can appear in person. *Id.* Accordingly, the
28 content of the Class Notice complies with the requirements of Cal. R. Ct. 3.766(d).

1 If Class Notice packets are returned as undeliverable, the Settlement Administrator will perform a
2 skip-trace or other search, and re-mail the Class Notice with an extended deadline, to opt out or object, of
3 an additional 15 calendar days from the re-mailing, or 45 calendar days from the date of the initial mailing,
4 whichever is later, in which to postmark objections or requests for exclusion. Settlement Agreement, §
5 3.03. The initial 45-day notice period and extension process ensures the notice program provides due
6 process by giving Class Members enough time to determine whether they want to participate in the
7 Settlement. This means of notice is reasonably calculated to apprise Class Members of the pendency of
8 the action. *See* Cal. R. Ct. 3.766 (d)-(f).

9 **C. Proposed Release**

10 The release to be given by Class Members is limited to the Defendants and each of its former and
11 present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors,
12 assigns, subsidiaries, and affiliates (“Released Parties”). Settlement Agreement, § I. Under the proposed
13 release, Class Members who do not exclude themselves from the Settlement will be deemed to have
14 released or waived the following “Released Claims” against the Released Parties during the period of July
15 10, 2017 through January 11, 2023:

16 “...any and all claims alleged based on the facts alleged in the operative complaint under LASC
17 case number 22STCV00296, which includes, but is not limited to any actually disputed minimum
18 wages, overtime wages, meal and rest break premiums, waiting time penalties, inaccurate wage
statement penalties, any and all other statutory penalties and PAGA penalties, which arose during
the Class Period.”

19 *Id* at § 5.01.

20 PAGA Group Members will release Defendants from all claims exhausted in Plaintiff’s notice
21 sent to the LWDA and alleged in the operative complaint, which arose during the PAGA Period,
22 regardless of whether PAGA Group Members opt out of the Class Settlement. Settlement Agreement, §
23 5.02.

24 Only Plaintiff will agree to a general release of any and all claims, whether known or unknown,
25 which exist or may exist on Plaintiff’s behalf as of the date of the Settlement, and a waiver of Civ. Code
26 § 1542. Settlement Agreement, § 5.03.

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

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

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

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

8 Whether a class is “ascertainable” is “determined by examining (1) the class definition, (2) the
9 size of the class, and (3) the means available for identifying class members.” *Reyes v. Bd. of Supervisors*,
10 196 Cal. App. 3d 1263, 1271 (1987). Here, the Class consists of all current and former non-exempt
11 employees who are and/or were employed by Defendants in California at any time from July 10, 2017
12 through January 11, 2023. Settlement Agreement, § I. Defendant’s records show the Class consists of
13 approximately 180 individuals, making joinder of all Class Members impracticable. McNicholl Decl.,
14 ¶ 8. Further, the Class is readily ascertainable from Defendant’s business records because all Class
15 Members are current or former employees of Defendant. *Id.*

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

17 “[T]he ‘community of interest requirement embodies three factors: (1) predominant common
18 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3)
19 class representatives who can adequately represent the class.’” *Fireside Bank v. Superior Court*, 40 Cal.
20 4th 1069, 1089 (2007) (quoting *Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 470 (1981)).

21 **a. Common Questions Predominate**

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

27 Plaintiff alleged that Defendants maintained uniform employment policies and/or practices that
28 illegally deprived Class Members of lawful wages, meal periods, rest breaks, accurate wage statements,

1 and waiting time pay. McNicholl Decl., ¶ 9. Plaintiff's allegations present common legal and factual
2 questions of, *inter alia*, whether Defendants applied the same scheduling, timekeeping, minimum and
3 overtime pay, meal period, and rest break policies to all Class Members; whether these policies and
4 practices resulted in Labor Code violations; whether Defendant's conduct was intentional; and whether
5 Class Members are entitled to penalties. *Id.* These common questions could be resolved using Class
6 Members' schedules, time punches, and payroll records, Defendant's corporate representative's
7 testimony, written communications between Defendants and Class Members, and Class Member
8 declarations. *Id.* Thus, the Court can and should exercise its discretion to grant conditional class
9 certification for settlement purposes.

10 *b. Plaintiff's Claims are Typical of the Class Claims*

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

21 *c. Plaintiff and Plaintiff's Counsel Will Adequately Represent the Interests of*
22 *the Proposed Class*

23 Certification requires adequacy of both the proposed class representative(s) and proposed class
24 counsel. With respect to the class representative, a plaintiff must adequately represent and protect the
25 interests of other members of the class and demonstrate that his or her claim is not inconsistent with the
26 claims of other members of the class. *See Capitol People First v. State Dep't of Developmental Servs.*,
27 155 Cal. App. 4th 676, 696-697 (2007). Here, Plaintiff's interests are coextensive with the interests of
28 the Class. Plaintiff demonstrated an ability to advocate for the interests of the Class by initiating this

1 litigation, gathering documents and information, being available on the day of mediation to answer
2 questions, meeting with her attorneys on several occasions to understand the claims and theories of
3 liability at issue, assisting attorneys in preparing for mediation, reviewing the proposed settlement
4 agreement to understand its legal effect, and obtaining a fair settlement on behalf of Class Members
5 who stand to recover a substantial amount under the Settlement. McNicholl Decl., ¶ 20.

6 Likewise, Aegis Law Firm, PC has expended considerable time and effort on this case and will
7 continue to do so through final approval. *See generally*, McNicholl Decl. Accordingly, Plaintiff should
8 be appointed Class Representative, and Plaintiff’s Counsel should be appointed Class Counsel.

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

10 Class treatment is superior to other methods of adjudication when the probability is small that
11 each class member will come forward to prove his or her claim and when the class approach would deter
12 and redress the alleged wrongdoing. *See Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 435, 446 (2000);
13 *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524, 1537-1538 (2008). Here, none of the other
14 180 Class Members had shown any interest in bearing the expense and burden of litigating their own
15 claims. McNicholl Decl. ¶ 12. Thus, a class action is the superior method for seeking relief.

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

17 Preliminary approval is warranted if the settlement falls within a “reasonable range.” *See North*
18 *County Contractor’s Ass’n., Inc. v. Touchstone Ins. Servs.*, 27 Cal. App. 4th 1085, 1089-90 (1994);
19 Conte & Newberg, *Newberg on Class Actions*, § 11.26 (4th ed. 2002). In reviewing the fairness of a
20 class action settlement, due regard should be given to what is “‘otherwise a private consensual
21 agreement between the parties.’” *Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380, 1389
22 (2010). The inquiry “must be limited to the extent necessary to reach a reasoned judgment that the
23 agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties,
24 and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Id.*

25 Reasonableness and fairness are presumed where (1) the settlement is reached through “arms-
26 length bargaining”; (2) investigation and discovery are “sufficient to allow counsel and the court to act
27 intelligently”; (3) counsel is “experienced in similar litigation”; and (4) the percentage of objectors “is
28

1 small.” *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802 (1996). The Settlement satisfies the first
2 three factors. Plaintiff will analyze the fourth factor at the final approval stage.

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

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

5 Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless
6 evidence to the contrary is offered. Thus, there is a presumption that settlement negotiations are
7 conducted in good faith. Here, the Settlement was the product of extensive investigation and a full day
8 mediation session with a respected mediator after formal discovery. McNicholl Decl. ¶¶ 5-6. The
9 negotiations were adversarial, conducted at arm’s length and tempered by the efforts of both sides to
10 serve the interests of their clients. *Id.* at ¶ 6. The amount of Plaintiff’s requested Incentive Award was
11 not negotiated until after the Parties agreed to the Gross Settlement Amount and many other terms. *Id.*
12 at ¶ 24.

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

14 Plaintiff’s Counsel thoroughly investigated the class claims, applicable law, and potential
15 defenses. *See generally*, McNicholl Decl. In particular, Plaintiff’s Counsel assessed the value of the
16 class claims using Defendant’s data and documents produced through formal discovery. *Id.* Plaintiff’s
17 Counsel personally reviewed policy documents, timekeeping records, and wage statements to identify
18 potential violations. *Id.* at ¶¶ 10-19. Accordingly, Plaintiff’s Counsel fully understood the strengths and
19 weaknesses of the claims before the Parties reached a settlement. *Id.* at ¶ 10.

20 *c. Plaintiff’s Counsel is Experienced in Similar Litigation*

21 Plaintiff is represented by Aegis Law Firm, PC (“Class Counsel”). Class Counsel prosecute wage
22 and hour class actions on behalf of employees and others who have had their rights violated. McNicholl
23 Decl. ¶¶ 23-34. The attorneys working on this case have been appointed class counsel in many cases,
24 through both contested motions and settlement approval motions. *Id.* Thus, Plaintiff’s Counsel has
25 extensive experience in similar litigation and should be appointed as Class Counsel.

26 ///

27 ///

28 ///

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

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

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

17 a. Exposure Analysis

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

21 Compromise is inherent and necessary in the settlement process . . . even if “the relief afforded
22 by the proposed settlement is substantially narrower than it would be if the suits were to be
23 successfully litigated,” this is no bar to a class settlement because “the public interest may indeed
24 be served by a voluntary settlement in which each side gives ground in the interest of avoiding
25 litigation.”
26 *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 250 (2001) (citation omitted). Here, Plaintiff
27 contends that her claims are based on Defendant’s common, class-wide policies and procedures, and
28 that liability could be determined on a class-wide basis without dependence on individual assessments
of liability. McNicholl Decl., ¶ 10-11. Although the amount of Defendant’s potential exposure – if

1 proven – is substantial, the legitimate and serious risks of succeeding at class certification and trial
2 compelled a serious consideration of the benefit of a settlement. *Id.* at ¶ 14.

3 Unpaid Wages Claims: Plaintiff argued that Class Members received phone calls and text
4 messages from supervisors regarding work related issues after clocking out and Plaintiff's expert
5 estimated the total value of such damages for unpaid overtime for off-the-clock work to be
6 approximately \$35,263.00 assuming 5 minutes of off-the-clock work per shift per employee. McNicholl
7 Decl., ¶ 16. However, this claim would be dependant on class testimony to establish supervisors were
8 regularly contacting employees with Defendant's knowledge. *Id.* Defendants denied knowledge that
9 employees were contacted after they had clocked out. The difficulty of proving Defendant's knowledge
10 serves as an example of one of the serious risks that compelled a considerable discount for settlement.
11 *Id.* Plaintiff estimated an 50% chance of class certification on Plaintiff's overtime claims, and a 25%
12 chance at trial, making this claim worth around \$17,500 for settlement purposes. *Id.*

13 Unreimbursed Business Expenses Claims: Plaintiff argued that Class Members were not
14 reimbursed for expenses related to cleaning uniforms. Plaintiff's expert calculated unreimbursed
15 business expenses to be valued at \$27,582.00 assuming \$4 of unreimbursed business expenses per work
16 week per class member. McNicholl Decl., ¶ 17. However, Defendants argued that it was not required
17 to reimburse these costs. Further, if Defendants were required to reimburse these expenses, there is no
18 source of common proof as to who incurred expenses and whether they sought reimbursement, making
19 the claim difficult to prove at trial. *Id.* As such, Plaintiff estimated a 40% chance at class certification
20 and 20% chance at trial, resulting in a settlement value of \$5,000. *Id.*

21 Meal Period Claims: Plaintiff's meal period claim was potentially worth a maximum of about
22 \$263,089, in light of the violations shown in the records. McNicholl Decl., ¶ 18. Plaintiff argued Class
23 Members' daily time-punch data evidenced frequently missed, late, short, and interrupted meal periods.
24 However, Defendants argued that it maintained compliant written policies. *Id.* Plaintiff discounted the
25 value of the meal claim based on Defendants' argument that they maintained facially compliant meal
26 period policies within its employee handbooks and other policies. *Id.* Defendants argued that, in light
27 of its compliant meal period policy, Plaintiff's meal period claims could not be jointly adjudicated due
28 to the prevalence of individualized inquiries, including whether employees choose to skip or take a late

1 break. In an analogous context, the California Court of Appeal denied certification of a meal break
2 class despite data demonstrating that just over 10% of the putative class had taken timely meal breaks,
3 because individualized issues predominated and the claims could not be proven efficiently as a class.
4 *Lampe v. Queen of the Valley Medical Center*, 19 Cal. App. 5th 832 (2018). Thus, Plaintiff discounted
5 this claim for the risk that the damages could at least be reduced, and that the claim would be hard to
6 certify with a compliant policy. However, Plaintiff estimated a 60% chance of certifying her meal period
7 claims and a 40% chance of success at trial. Thus, Plaintiff valued her meal period claim at around
8 \$105,000 for settlement purposes. *Id.*

9 Rest Break Claim: Plaintiff alleged that Defendants failed to provide all uninterrupted rest breaks.
10 McNicholl Decl., ¶ 19. Plaintiff's expert valued her rest break claim at \$326,888. *Id.* Plaintiff's expert
11 found the unique rest break violation are to be 87.5% based on the time records produced by Defendant.
12 *Id.* Defendants maintained that they had a compliant rest break policy and provided all rest breaks. *Id.*
13 Certification of the rest break claim likely would have required depositions of Class Members who
14 provided declarations, and Defendants would likely have obtained opposing declarations stating rest
15 breaks were taken, significantly decreasing the likelihood of certification. *Rai v. CVS Caremark Corp.*,
16 2013 U.S. Dist. LEXIS 177730 (C.D. Cal. Oct. 11, 2013) (denying certification of rest break claims
17 where competing testimony regarding actual practice meant adjudication would involve predominantly
18 individual issues). Plaintiff estimated a 40% chance of class certification and a 25% chance at trial,
19 making this claim worth around \$81,722 for settlement purposes. *Id.*

20 Wage Statement Penalties: Plaintiff's Counsel investigated and evaluated direct and derivative
21 claims for failure to accurate itemized wage statements. McNicholl Decl., ¶ 20. Defendants argued that
22 the facial deficiencies were not present in any wage statements. *Id.* Additionally, Defendants argued
23 that Plaintiff could not show that Class Members suffered an "injury" as a result of "knowing and
24 intentional" wage statement violations as required by Cal. Lab. Code § 226. Defendants also argued that
25 Plaintiff's wage statement claim would fail if the wage statements contained all required information;
26 that the wage statements accurately reflected gross and net wages paid by the employer and the rates at
27 which those wage were paid (*see Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1336
28 (2018)). *Id.* Using the start and end dates of employment and capping the penalties at \$4,000 per person,

1 Plaintiff calculated a maximum of \$272,850. *Id.* In light of the above, Plaintiff estimated an 80% chance
2 at class certification and a 50% chance at trial, valuing the wage statement claim at roughly \$135,000.
3 *Id.*

4 Derivative Waiting Time: Plaintiff investigated and evaluated the claim for waiting time penalties.
5 McNicholl Decl., ¶ 21. Plaintiff did discover evidence of direct waiting time violations in the time and
6 pay records provided by Defendants. *Id.* In addition, waiting time penalties would be derivative of, and
7 rise or fall, with Plaintiff's other claims. *Id.* While Plaintiff is confident that it can establish the existence
8 of unpaid wages, Defendants could argue that Plaintiff could not prove the "willful" prong needed to
9 obtain waiting time penalties, and that there is a good faith dispute that any unpaid wages are due.
10 Moreover, Plaintiff would have to overcome damaging precedent to prove the Class deserved the
11 penalties. *See, e.g., Howard v. CVS Caremark Corp.*, 2014 U.S. Dist. LEXIS 172406 (C.D. Cal. Dec. 9,
12 2014) (denying class certification for the same penalty claims); *Alonzo v. Maximus, Inc.*, 832 F. Supp. 2d
13 1122, 1134-1137 (C.D. Cal. 2011) (finding insufficient evidence of bad faith or actual injury). *Id.* Based
14 on the documents and data produced by Defendants, Plaintiff's expert calculated \$330,324 in waiting time
15 penalties. *Id.* Plaintiff estimated an 80% chance at class certification and a 50% chance at trial, making
16 this claim worth about \$165,000. *Id.*

17 PAGA Claim: The PAGA claim presented even higher hurdles. Although Plaintiff's Counsel
18 found Defendant's exposure could potentially reach \$1,071,800 under Lab. Code § 2699(f), assuming
19 the initial penalty rate of \$100 for each pay period, Plaintiff would have to prove a violation in every
20 pay period. McNicholl Decl., ¶ 22. Most importantly, the Court would have discretion to reduce the
21 PAGA award based on whether the amount of the award would be "unjust, arbitrary and oppressive, or
22 confiscatory." Lab. Code § 2699(e)(2). *Id.* In theory, the Court could reduce the award by 99% if it so
23 wished. *Id.* Plaintiff was doubtful she could recover all PAGA penalties, especially if a large class
24 judgment was entered for the same violations. *Id.* Accordingly, Plaintiff could not place a high value on
25 the PAGA penalties, and therefore allocated \$30,000 of the Gross Settlement Amount to settle these
26 claims. *Id.*

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1 **C. The Requested Incentive Award for Plaintiff**

2 Plaintiff seeks an Incentive Award of up to \$7,500 for accepting the responsibilities of
3 representing the interests of the Class and assuming risks and potential costs that were not borne by any
4 other Class Members. Settlement Agreement, § 3.06(d). A named plaintiff is eligible for payment that
5 reasonably compensates him or her for undertaking and fulfilling a fiduciary duty to represent absent
6 class members. *See Cellphone Termination Fee Cases, supra*, 186 Cal. App. 4th at 1393; *Bell v. Farmers*
7 *Ins. Exch.*, 115 Cal. App. 4th 715, 726 (2004).

8 Here, Plaintiff had the option to pursue her claims individually, but instead chose to pursue this
9 class action, delaying individual recovery until approval of a class action settlement. McNicholl Decl.,
10 ¶ 23. Throughout the case, Plaintiff assisted counsel in gathering the evidence necessary to prosecute
11 the class claims, maintained regular contact with counsel, was available on the day of mediation to
12 answer critical questions, and reviewed the Settlement to make sure it was fair to the Class. *Id.* No action
13 would likely have been taken by Class Members individually, and no compensation would have been
14 recovered for them, but for Plaintiff’s services on behalf of the Class. *Id.*

15 By actively pursuing this action, Plaintiff furthered the California public policy goal of enforcing
16 the State’s wage and hour laws. *See Sav-On Drug Stores, Inc., supra*, 34 Cal. 4th at 340. The requested
17 Incentive Award for Plaintiff’s service as the class representative and for a general release of all
18 employment claims is reasonable and should be preliminarily approved. At the final approval stage,
19 Plaintiff will further support the request for an Incentive Award by declaration addressing the factors
20 for the award. McNicholl Decl., ¶ 25.

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

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

1 Plaintiff seeks appointment of Aegis Law Firm, PC as Class Counsel. The attorneys performed
2 significant work and expended litigation costs in prosecuting the matter with no guarantee of any
3 payment. McNicholl Decl., ¶ 39. Plaintiff's Counsel seeks preliminary approval for attorney's fees in
4 the amount of thirty three percent of the Gross Settlement Amount, which is currently estimated to be
5 \$131,666.66, and up to \$25,000 in reimbursement of litigation costs. Given the work performed in this
6 matter, the extensive information exchange, and substantial recovery obtained on behalf of Plaintiff and
7 the Class, Plaintiff's Counsel achieved a settlement through efficient and diligent work. *See generally*,
8 McNicholl Decl. At final approval, Plaintiff's Counsel will fully brief the merits of its request for the
9 award of attorneys' fees and litigation costs. *Id.* at ¶ 40.

10 **V. CONCLUSION**

11 The Parties have negotiated a fair and reasonable Settlement of the class claims in light of the
12 risks present in this case. Plaintiff has appropriately presented the materials and information necessary
13 for preliminarily approval, and therefore, respectfully requests that the Court preliminarily approve the
14 Settlement and schedule a date to conduct the final approval hearing.

15
16 Dated: March 24, 2023

AEGIS LAW FIRM, PC

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18 By: Steven McNicholl
19 Steven A. McNicholl
20 Attorneys for Plaintiff
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