

Samuel A. Wong (SBN 217104)
Kashif Haque (SBN 218672)
Jessica L. Campbell (SBN 280626)
Fawn F. Bekam (SBN 307312)
AEGIS LAW FIRM, PC
9811 Irvine Center Drive, Suite 100
Irvine, CA 92618
Telephone: 949.379.6250
Facsimile: 949.379.6251
swong@aegislawfirm.com
khaque@aegislawfirm.com
jcampbell@aegislawfirm.com
fbekam@aegislawfirm.com

Carolyn H. Cottrell (SBN 166977)
David C. Leimbach (SBN 265409)
Michelle S. Lim (SBN 315691)
**SCHNEIDER WALLACE
COTTRELL KONECKY LLP**
2000 Powell Street, Suite 1400
Emeryville, California 94608
Telephone: (415) 421-7100
Facsimile: (415) 421-7105
ccottrell@schneiderwallace.com
dleimbach@schneiderwallace.com
mlim@schneiderwallace.com

*Attorneys for Plaintiffs, the Putative Collective,
the Putative Class, Aggrieved Employees,
and on behalf of the State of California*

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA**

ANDREA SALONGA and DANIELA
MELGOZA, individually and on behalf of all
others similarly situated and the State of
California,

Plaintiffs,

v.

AEGIS SENIOR COMMUNITIES, LLC,
d/b/a AEGIS LIVING; and DOES 1 through
100, inclusive,

Defendants.

Case No.: 22CV007450

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

Date: January 25, 2024

Time: 3:00 p.m.

Dept: 514

Judge: Hon. Noël Wise

Reservation ID: 106613794847

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1 **I. INTRODUCTION**

2 Plaintiffs Andrea Martinez Salonga (“Salonga”) and Daniela Melgoza (“Melgoza”),
3 individually and on behalf of the putative class and collective members, the State of California, and
4 Aggrieved Employees (collectively “Plaintiffs”), request that this Court take the first step in the
5 settlement approval process and grant preliminary approval of their class, collective, and
6 representative settlement with Defendant Aegis Senior Communities, LLC d/b/a Aegis Living
7 (“Defendant”).¹

8 Through early intensive mediation and arm’s-length negotiations by the Parties with the
9 assistance of a respected wage and hour mediator, the Parties have resolved the claims of
10 approximately 4,209 current and former non-exempt hourly employees for a total, non-reversionary
11 Gross Settlement Amount of \$3,000,000. This Settlement will resolve the claims based on
12 Defendant’s alleged violations of California and federal wage and hour laws for its failure to: include
13 non-discretionary incentive bonuses in the regular rate of pay for sick wages and break premiums;
14 correctly calculate gross wages earned; to pay for all time spent in COVID screenings; relinquish
15 control over Class Members during meal and rest periods by requiring Class Members to monitor
16 walkie-talkies at all times; pay all meal period premiums owed when Defendant’s records showed
17 late, short, or missed meal periods; and reimburse Class Members for the use their personal cell
18 phones for business purposes.² Following significant investigation and informal discovery of the
19 facts and law related to the allegations in Plaintiffs’ four cases over the course of a year and a half,
20 and a private mediation, the parties arrived at the proposed Settlement.

21 Plaintiffs believe the Settlement provides excellent benefits to the Class and Collective and
22 an efficient outcome in the face of expanding litigation and risks. The Settlement easily falls within
23 the range of reasonableness required for preliminary approval, far beyond a comparable 2018
24 settlement with Defendant for a fraction of the Settlement here, and the proposed Class satisfies all
25 the criteria for class certifications under Cal. Code Civ. Proc. § 382. Accordingly, Plaintiffs
26

27 ¹ Unless otherwise defined herein, capitalized terms have the meaning given in the Class and
28 Collective Action Settlement Agreement and Release (“Settlement”), attached as **Exhibit A** to the
29 Declaration of Carolyn H. Cottrell in Support of Plaintiff’s Motion for Preliminary Approval of
Settlement (“Cottrell Decl.”), filed concurrently herewith.

30 ² The applicable statutes follow: FLSA, 29 U.S.C. § 201 *et seq.*, Cal. Lab. Code §§ 201, 202, 203,
31 204, 210, 225.5, 226, 226.2, 226.3, 226.7, 256, 510, 512, 558, 1174, 1174.5 1182.12, 1194, 1194.2,
32 1197, 1197.1, 1198, 2800, and 2802, as well as alleged violations of Industrial Welfare Commission
 (“IWC”) Wage Orders, and unlawful business practices in violation of Cal. Bus. & Prof. Code §
 17200 *et seq.* (Cottrell Decl., ¶ 13.)

1 respectfully request that the Court preliminarily approve the settlement, provisionally certify the
2 proposed Class and Collective for settlement purposes, authorize distribution of the proposed notice
3 of Settlement, approve the proposed schedule to administer the Settlement, and set a Final Approval
4 Hearing.

5 **II. BACKGROUND**

6 **A. Factual and Procedural History**

7 Defendant is a large national senior assisted living and memory care provider, operating
8 nationwide in California, Washington, and Nevada. Plaintiff Salonga worked for Defendant from
9 January 2021 to June 2021 as a wellness nurse at Defendant's Daly City, California facility.
10 (Declaration of Andrea Salonga ["Salonga Decl."], ¶ 3.) Plaintiff Melgoza worked for Defendant
11 from November 2021 to January 2022 as a caregiver at Defendant's Aptos, California facility.
12 (Declaration of Daniela Melgoza ["Melgoza Decl."], ¶ 3.)

13 Together, Plaintiffs allege that Defendant: (1) failed to include non-discretionary incentive
14 bonuses in the regular rate of pay for sick wages and break premiums; (2) failed to correctly calculate
15 gross wages earned; (3) failed to pay for all time spent in COVID screenings; (4) failed to relinquish
16 control over Class Members during meal and rest periods by requiring Class Members to monitor
17 walkie-talkies at all times; (5) failed to pay all meal period premiums owed when Defendant's
18 records showed late, short, or missed meal periods; and (6) required Class Members to use their
19 personal cell phones for business purposes without reimbursement. (See, *supra*, n. 2.)

20 On November 24, 2021, Plaintiff Salonga filed a putative class action against Defendant in
21 the Superior Court of California for the County of Alameda, Case No. 21CV003128, asserting wage
22 and hour claims under the California Labor Code and the California Business & Professions Code.
23 (Settlement, ¶ 2.1.) On January 26, 2022, pursuant to the Class Action Fairness Act, Defendant
24 removed the lawsuit to the United States District Court for the Northern District of California, Case
25 No. 3-22-cv-00525-LB. (*Id.*, ¶ 2.1.) On February 23, 2022, Plaintiff Salonga filed a PAGA action
26 against Defendant in this Court, asserting a single cause of action for civil penalties under PAGA.
27 (*Id.*, ¶ 2.2.)³

28 On March 18, 2022, Melgoza filed a putative class and collective action against Defendant in
29 the United States District Court for the Northern District of California, Case No. 3-22-cv-01756-LB,
30 asserting wage and hour claims under the California Labor Code, the California Business &
31

32 ³ Plaintiff Salonga submitted her PAGA Notice to the California Labor and Workforce Development
Agency ("LWDA") on November 24, 2021.

1 Professions Code, and the Fair Labor Standards Act (“FLSA”). (*Id.*, ¶ 2.3.) On May 5, 2022, Melgoza
2 filed a PAGA action against Defendant, in San Francisco Superior Court, Case No. CGC-22-599517,
3 asserting two causes of action for civil penalties under PAGA. (*Id.*, ¶ 2.4.)⁴

4 As part of the Settlement, the Parties agreed to consolidate the operative complaints in these
5 four actions for settlement purposes only and to avoid duplication of settlement approval
6 proceedings. (*Id.*, ¶ 2.9.) That consolidated complaint was filed in this Court pursuant to stipulated
7 order on September 20, 2023. (First Amended Class and Collective Action and PAGA Complaint
8 [“FAC”].)

9 **B. Discovery**

10 In anticipation of mediation, the Parties conducted extensive informal discovery. (Cottrell
11 Decl., ¶¶ 14-15.) Defendant provided a sampling of approximately 10% of time, pay, and identifying
12 records for all putative Class and Collective Members as defined in the complaints;⁵ arbitration
13 agreements; wage statements; time adjustment forms; employee handbooks for California and non-
14 California employees, including addenda for employees in California, Nevada, and Washington;
15 meal and rest break policies; job descriptions; and prior class action settlement documents in *Conlin*
16 *v. Aegis Senior Communities, LLC*, N.D. Cal. Case No. 5:17-cv-05534-LHK (releasing claims for
17 all persons who worked for Defendant as a non-exempt employee in California at any time between
18 August 18, 2013 and February 25, 2018). (*Id.*) Class Counsel then conducted dozens of interviews
19 with putative Class Members who worked in California, as well as putative Collective Members who
20 worked in Washington and Nevada. (*Id.*)

21 From Plaintiffs’ Counsel’s investigations, Plaintiffs’ Counsel determined and confirmed the
22 following data points: (1) there are approximately 4,129 Class Members who worked 270,813
23 Workweeks during the Class Period; (2) there are approximately 1,525 Aggrieved Employees who
24 worked 32,292 Pay Periods during the PAGA Period; (3) there are approximately 80 FLSA
25 Collective Members who worked 4,000 Workweeks affected by the Kronos breach during the
26 Collective Period; (4) the average time worked off-the-clock was three minutes per shift for Class
27

28 ⁴ On February 23, 2022, Plaintiff Melgoza submitted her PAGA Notice to the LWDA, and later
29 submitted her PAGA complaint to the LWDA on May 10, 2022. (Cottrell Decl., ¶ 9.)

30 ⁵ A total of 4,129 putative Class Members and 5,122 putative Collective Members were originally
31 sampled prior to the mediation; following mediation, however, the Parties agreed to settle only a
32 small portion of the putative Collective to only cover an estimated 4,000 workweeks affected by the
Kronos breach (as opposed to the estimated 241,716 total workweeks for the entire putative
Collective, as defined by the Complaint. (*Id.*, ¶ 16, n.1.) The sampling provided to Plaintiffs’ Counsel
also included “true-up” pay records for reconciled wage payments due to the Kronos breach. (*Id.*)

Members; and (5) the average regular rate of pay was \$17.18/hour for Class Members and \$19.82/hour for Collective Members. (*Id.*, ¶ 16.) Based on this information and Defendant’s data, Class Counsel’s expert, Berger Consulting Group, performed a damages analysis. (*Id.*, ¶ 17.)

C. Mediation and Settlement

On March 28, 2023, the Parties attended a full-day, global mediation covering all four actions before Steve Rottman, Esq., a reputable employment mediator. (*Id.*, ¶ 18.) The Parties did not reach a settlement at the mediation but continued to engage in arms’ length negotiations with the assistance of the mediator. (*Id.*) Subsequently on March 30, 2023, with the assistance of the mediator, the Parties reached a tentative settlement agreement. (*Id.*, ¶ 19.) The Parties thereafter spent months negotiating the specific terms of the Settlement, and have agreed to settle all pending litigation pursuant to the mediator’s proposal and as set forth in the Agreement. (*Id.*) The Parties and their Counsel fully executed the Settlement on August 29, 2023. (*Id.*, ¶ 20.) Plaintiffs’ Counsel intends to submit a copy of the Settlement to the LWDA contemporaneously with this Motion. (Settlement, ¶ 11.1; Cottrell Decl., ¶ 5.)

III. TERMS OF THE SETTLEMENT

A. Basic Terms of the Settlement

The Settlement provides for a non-reversionary Gross Settlement Amount of \$3,000,000, which includes any interest gained on the Gross Settlement Amount and any amounts paid pursuant to the Escalator Clause in the Settlement. (Settlement, ¶¶ 1.23, 7, 10.2.) The Escalator Clause provides a *pro rata* adjustment of the Gross Settlement Amount by \$10.55 per additional Workweek on any excess above 5% in the event the estimated number of workweeks in the Class Period actually exceeds 272,108 by more than 5%. (*Id.*, ¶ 7.) Defendant will further pay its share of federal, state, and local taxes separately. (*Id.*, ¶ 1.23.)

For purposes of the Settlement, the Class includes Plaintiffs and all individuals employed by Defendant in non-exempt positions in the State of California at any time during the time period from May 30, 2017, to and including May 28, 2023. (*Id.*, ¶¶ 1.8, 1.10.) Such Class Members subsume the Aggrieved Employees, who were employed during the period from November 24, 2020, through May 28, 2023. (*Id.*, ¶¶ 1.4, 1.31.) The FLSA Collective Members include all individuals who were employed by Defendant in non-exempt positions anywhere in the United States at any time during the time period from November 14, 2021, to May 14, 2022. (*Id.*, ¶¶ 1.12, 1.13.)

Plaintiffs’ Counsel will seek fees not to exceed 35% of the Gross Settlement Amount, or \$1,050,000, and actual costs up to \$35,000 (*Id.*, ¶¶ 1.5-1.6, 1.18.) The Settlement sets aside the actual

costs of settlement administration to Settlement Administrator, estimated not to exceed \$58,000; \$10,000 Service Awards to Plaintiff Salonga and Melgoza, each, for their service to the Class and Collective; and a PAGA Settlement Amount of \$75,000, of which \$18,750 (or 25%) will be distributed to Aggrieved Employees, and \$56,250 (or 75%) will be paid to the LWDA. (*Id.*, ¶ 1.3, 1.32.)

B. Scope of Releases

The releases contemplated by the proposed Settlement are dependent on whether the individual is a Participating Class Member, Opt-In Plaintiff, and/or Aggrieved Employee, and all such releases are effective as to the Released Parties, as of the Effective Date.⁶ Participating Class Members will release all claims based on or arising from factual predicates alleged, or reasonably could have been alleged, in the Operative Complaint, during the Class Period. (Settlement., ¶ 4.3.) Opt-In Plaintiffs will release all claims under the FLSA during the Collective Period, which are based on or arising from the factual predicates that were alleged, or reasonably could have been alleged, in the Operative Complaint. (*Id.*, ¶ 4.2.) Participating Class Members who are not Opt-In Plaintiffs and who cash their Settlement Award checks will also release the Released FLSA Claims against Released Parties. (*Id.*, ¶ 4.5.) Aggrieved Employees will release, on behalf of themselves and their representatives, claims for civil penalties under PAGA that were alleged, or reasonably could have been alleged, in the Action based on the facts stated in the Operative Complaint and ascertained in the course of the Action, during the PAGA Period. (*Id.*, ¶ 4.4.) The Plaintiffs Salonga and Melgoza further agree to waive and relinquish the provisions, rights, and benefits, if any, of California Civil Code. Procedure 542 (*Id.*, ¶ 4.1.)

The scope of the Released Claims is proper under California class action law. “In a class action settlement, a clause providing for the release of claims may refer to all claims, both potential and actual, that may have been raised in the pending action with respect to the matter in controversy. A court may release not only those claims alleged in the complaint and before the court, but also claims which could have been alleged by reason of or in connection with any matter or fact set forth or referred to in the complaint.” (*Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 537; see also *Uribe v. Crown Bldg. Maint. Co.* (2021) 70 Cal.App.5th 986, 1005; *Robinson v. Southern Counties Oil* (2020) 53 Cal.App.5th 476.)

⁶ See also the Settlement, ¶¶ 1.17, 1.38, 4.2-4.4, for definitions of Effective Date, Released Parties, Released FLSA Claims, Released Class Claims, and Released PAGA Claims, respectively.

1 **C. Allocations of Individual Settlement Awards**

2 The estimated Net Settlement Amount available to approximately 4,129 Class Members and
3 Aggrieved Employees, as well as approximately 80 Collective Members, is currently estimated to
4 be \$1,780,750. (See Settlement, ¶ 1.25; Cottrell Decl., ¶¶ 24-25.)⁷ This provides an estimated
5 average recovery of \$423 per Participating Individual (i.e., Participating Class Members, Opt-In
6 Plaintiffs, and Aggrieved Employees), assuming 100% participation in the Settlement. (Cottrell
7 Decl., ¶ 26; see Settlement, ¶ 1.34.)

8 The Net Settlement Amount is to be divided among all Participating Individuals on a *pro-rata*
9 basis. (Settlement, ¶ 10.3.5.3.) For each Workweek during the Class Period when a Participating
10 Class Member was employed by Defendant, and for each Workweek during the Collective Period
11 when a Collective Member was employed by Defendant, he or she shall be eligible to receive a *pro*
12 *rata* portion of the Net Settlement Amount. (*Id.*, ¶ 10.3.5.5.) Each Workweek during which the
13 individual was employed outside the State of California will be equal to one settlement share, and
14 workweeks during which the individual was employed in California will be equal to three settlement
15 shares to reflect the increased value of claims under California law. (*Id.*) The total number of
16 settlement shares for all Participating Class Members and Opt-In Plaintiffs will be added together
17 and the resulting sum will be divided into the Net Settlement Amount to reach a per share dollar
18 figure. (*Id.*, ¶ 10.3.5.6.) That figure will then be multiplied by each individual's number of settlement
19 shares to determine his or her *pro rata* portion of the Net Settlement Amount. (*Id.*)

20 Each Aggrieved Employee shall also receive a *pro rata* portion of the Net PAGA Amount
21 based on his or her PAGA Pay Periods during which he or she was employed by Defendant in non-
22 exempt positions in California during the PAGA Period. (*Id.*, ¶ 10.3.6.) The resulting Net PAGA
23 Amount per Aggrieved Employee, if any, will be added to that Aggrieved Employee's Settlement
24 Award. (*Id.*)

25 Any portion of each Settlement Award that is provided from the Net PAGA Amount shall be
26 allocated as penalties. (*Id.*, ¶ 10.6.) For the remainder of each Settlement Award, 20% of each
27 Settlement Award shall be allocated as wages, 75% of each Settlement Award shall be allocated as
28 penalties, and 5% of each Settlement Award shall be allocated as expense reimbursements. (*Id.*)

29
30 ⁷ The estimated Net Settlement Amount means the Gross Settlement Amount less the following
31 payments in the amounts approved by the Court: (a) the Service Awards; (b) the Fee Award; (c)
32 Class Counsels' Costs Award; (d) Administration Costs; (e) the PAGA Settlement Amount; and (f)
employers' share of any payroll taxes to be paid in connection with the Settlement. (Settlement, ¶
1.25.)

Individual Settlement Payment checks will be valid for 180 days after issuance. (*Id.*, ¶ 10.13.) If, at the conclusion of the 180-day check cashing period, any funds remain from checks returned as undeliverable or that are not negotiated, those monies shall be tendered to the State of California Controller’s Office, Unclaimed Property Fund, in the name of the Participating Individual until such time as he or she claims his or her property, as allowed by law, thereby leaving no “unpaid residue” subject to the requirements of California Code of Civil Procedure § 384(b). (*Id.*, ¶ 10.14.)

D. Settlement Administration, Notice, and Requests for Exclusions and Objections

The Parties agreed to retain Phoenix Settlement Administrators (“Phoenix”) as the Settlement Administrator and determined that its bid for administration is fair. (*Id.*, ¶¶ 1.2, 6.1; Cottrell Decl., ¶ 27.) Phoenix is a willing, qualified, and experienced Settlement Administrator with operative procedures in place to protect the security of Class Data and adequate insurance in the event of a data breach, defalcation of funds, or other misfeasance. (Declaration of Jodey Lawrence [“Lawrence Decl.”], ¶¶ 5-16.) Phoenix has no financial relationship with the Parties or their counsel. (Cottrell Decl., ¶ 28; Lawrence Decl., ¶ 4.)

Phoenix is responsible for preparing and distributing the Notice of Class Action Settlement and Notice of Collective Action Settlement (together, “Settlement Notice”) in English, Spanish, Tagalog, and Mandarin, following receipt of the Class List from Defendant; skip-tracing current addresses prior to and following the mailing of the Settlement Notice; providing completed Opt-In Consent Forms to Class Counsel for filing; calculating individual settlement awards, all applicable payroll taxes, withholdings, and deductions; preparing and issuing all payments to Participating Individuals, the LWDA, Class Counsel, and applicable state and federal tax authorities; and preparing reports and certifications regarding the mailing of the Settlement Notice and distributions of the settlement awards. (See Settlement, Exs. B-C; *id.*, ¶¶ 1.7, 1.9, 1.11, 6.4-6.13, 10.1, 10.3, 10.7, 10.11-10.14.) Phoenix will also create a Settlement website and call center. (*Id.*, ¶ 6.5.1.) The Settlement Notice will provide information to Class Members who wish to object or exclude themselves from the Settlement, or dispute their estimated workweeks, as well as instructions on how to do so. (See Settlement, Exs. B-C, ¶ 1.39.)

IV. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT

A. Class Action Settlement Approval Procedure

California law strongly favors settlements, particularly in the class action context. (*In re Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118 [noting that public policy favors “the compromise of complex class action litigation”]); see also *Ferguson v. Lieff, Cabraser,*

1 *Heimann & Bernstein* (2003) 30 Cal.4th 1037, 1054.). Before a class action can settle, however, a
2 court must approve the terms of the proposed settlement. (*Dunk v. Ford Motor Co.* (1996) 48
3 Cal.App.4th 1794, 180; Cal. Code Civ. Proc. § 1781(f); Cal. Rules of Court, Rule 3.769(a).)⁸ The
4 Court’s review and approval of a proposed class-action settlement involves a three-step process: (1)
5 preliminary approval of the proposed settlement after submission of a written motion for preliminary
6 approval, the proposed class action settlement, and the proposed Class Notice; (2) mailing of notice
7 of the settlement to all affected Members of the Settlement Class; and (3) a final settlement approval
8 hearing at which Members of the Settlement Class may be heard regarding the settlement, and at
9 which evidence and argument concerning the fairness, adequacy, and reasonableness of the
10 settlement is presented. (See Cal. Rules of Court, Rule 3.769.)

11 With this Motion, the Parties take the first step and ask the Court to grant preliminary
12 approval. The Settlement proposed herein is based on extensive arm’s-length negotiations that were
13 guided by an experienced and respected mediator, as well as Plaintiff’s Counsel’s investigation and
14 the evaluation of substantial informal discovery. The proposed Settlement provides substantial
15 monetary recovery for the Class, and it satisfies all the required due process protections. Thus, the
16 proposed Settlement is fair, reasonable, and adequate, and Plaintiff therefore request that the Court
17 preliminarily approve the Settlement.

18 **B. Preliminary Approval of the Class Portion of the Settlement is Appropriate**

19 The decision to approve or reject a proposed settlement is committed to a court’s broad
20 discretion. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35.) To grant
21 preliminary approval of a class action settlement, the court need find only that the settlement falls
22 within the range of possible final approval, also described as “the range of reasonableness.” (See,
23 e.g., *North County Contractor’s Assn., Inc. v. Touchstone Ins. Svcs.* (1994) 27 Cal.App.4th 1085,
24 1089-90; see also *Newberg on Class Actions*, § 11:25.) To make this determination, courts must
25 consider several relevant factors, including “the strength of [the] plaintiffs’ case, the risk, expense,
26 complexity and likely duration of further litigation, the risk of maintaining class action status through
27 trial, the amount offered in settlement, the extent of discovery completed and the stage of the
28 proceedings, [and] the experience and views of counsel.” (*Dunk v. Ford Motor Co.* (1996) 48
29 Cal.App.4th 1794, 1801.) “The list of factors is not exclusive, and the court is free to engage in a
30

31 ⁸ (See California Civil Code § 1781(f); California Rules of Court 3.769; see also Federal Rule of Civil
32 Procedure 23(e).) The California Supreme Court has authorized and urged California’s trial courts to
use Federal Rule of Civil Procedure Rule 23 and federal case law for guidance in considering class
action issues. (*Green v. Obledo* (Cal. 1981) 29 Cal.3d 126, 145-46.)

balancing and weighing of the factors depending on the circumstances of each case.” (*Wershba, supra*, 91 Cal.App.4th at p. 245.) Under the relevant factors, the Settlement warrants preliminary approval.

1. The Settlement Was Reached After Extensive Litigation, Discovery, and Analysis of the Class Claims

A presumption of fairness exists where, as here: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. (*Kullar, supra*, 168 Cal.App.4th at p. 1286.) Preliminary approval is warranted where the Court is provided sufficient information regarding the discovery process and the facts developed (see *id.* at pp. 129-31, so that the Court may form “an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.” (*Clark v. Am. Residential Servs. LLC* (2009) 175 Cal.App.4th 785, 801.)

The Parties engaged in extensive arm’s-length settlement negotiations and participated in a formal, full-day mediation session conducted by Steve Rottman, Esq., a well-respected and experienced mediator in wage and hour class actions. (Cottrell Decl., ¶¶ 18-21.) Only after the Parties and their counsel spent months negotiating, drafting, and finalizing the long-form Settlement, was the Settlement executed approximately 5 months later. (See *id.*) To facilitate settlement negotiations, Plaintiffs’ Counsel investigated the applicable law and the facts in this case and extensively analyzed the potential damages and penalties that could be recovered following the exchange of hundreds of pages of documents and information with Defendant. (*Id.*, ¶¶ 14-21, 30-36, 38-45.) Plaintiffs’ Counsel further interviewed dozens of putative Class Members to gather facts and identify potential witnesses. (*Id.*, ¶ 15.) Plaintiffs’ Counsel used this information to perform a careful and extensive analysis of the effects of Defendant’s compensation policies and practices on Class Members’ pay. (*Id.*, ¶¶ 16, 30.)

The Settlement is based on this large volume of investigation, evidence, and analysis, which is more than sufficient to allow counsel and the Court to act intelligently. (*Kullar, supra*, 168 Cal.App.4th at p. 128.) Plaintiffs’ Counsel are experienced and respected class action litigators. (Cottrell Decl., ¶¶ 6-8; Bekam Decl., ¶¶ 3-15.) Based on Plaintiffs’ Counsel’s knowledge and expertise in this area of law, Plaintiffs’ Counsel believe this Settlement will provide an excellent benefit to the Class Members. (Cottrell Decl., ¶¶ 22-23, 29, 37, 45.) Plaintiffs’ Counsel also believes the percentage of Class Members who will request exclusion from the Settlement will be small. (*Id.*,

¶ 23.) Accordingly, the *Kullar* factors are satisfied, and the Settlement is entitled to a presumption of fairness.

2. Strength of Plaintiffs’ Case, Amount Offered in Settlement, and Litigation Risks

“The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement.” (*Kullar, supra*, 168 Cal.App.4th at p. 130.) A preliminary review of the Settlement reveals the fairness of its terms. (Cottrell Decl., ¶ 22.) The Settlement provides an anticipated Net Settlement Amount of approximately \$1,780,750 to approximately 4,129 Class Members and 80 Collective Members. (*Id.*, ¶¶ 24-25.) This provides an excellent, estimated average recovery of \$423, assuming 100% participation in the Settlement. (*Id.*, ¶ 26.)

The Gross Settlement Amount of \$3,000,000 represents approximately 27% of the \$11,198,578 total estimated substantive exposure represented by the claims in this action. (*Id.*, ¶¶ 31-32.) For purposes of estimating these damages, Plaintiffs’ Counsel’s expert calculated the maximum potential exposure analysis of all Class, PAGA, and FLSA claims, which was subsequently revised to reflect various considerations. (*Id.*, ¶¶ 17, 30-32.) The estimation of the exposure was based on the following assumptions, which were based on Plaintiffs’ Counsel substantial investigation: that Plaintiffs will fully prevail on all causes of action, can prove 3 minutes of off-the-clock work per Class Member and Collective Member, can prove that approximately 35% of rest breaks were noncompliant without corresponding premiums paid. (*Id.*, ¶¶ 33.)

This damages analysis further reflects the effect of the prior *Conlin v. Aegis Senior Living Communities LLC* settlement of \$410,000. (See *id.*, ¶ 34.) In *Conlin*, the settlement was reached on behalf of 3,620 non-exempt employees who worked for Aegis in California between August 18, 2013 and February 25, 2018, for a total of \$410,00, of which \$102,500 was approved for reasonable attorneys’ fees. (*Conlin v. Aegis Senior Living Communities LLC*, Case No. 17-CV-05534-LHK (N.D. Cal. Nov. 29, 2018), ECF Nos. 52 [final approval order], 32-3 [settlement].) The *Conlin* settlement represented over 100% of “unpaid wages,” but an unknown percentage of total potential exposure, which would include statutory penalties. (*Id.*, ECF No. 42-1, at pp. 5-6.) By comparison, *Conlin* provided an average estimated recovery of \$113 for Class Members.

The Settlement represents an excellent result. The Settlement and the recovery it represents, including the amount allocated as PAGA damages, is easily within the range of settlements case law establishes as reasonable. After all, “[i]t is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not *per se* render the settlement inadequate or unfair.”

(*In Re Mego Fin. Corp. Sec. Litig.* (9th Cir. 2000) 213 F.3d 454, 459 [internal quotations and citations omitted].) Indeed, courts routinely approve settlements that provide a fraction of the maximum potential recovery.⁹

It is equally well-settled that a proposed settlement is not to be measured against a hypothetical ideal result that might have been achieved. (See, e.g., *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1150.) “[I]t is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators.” (*Ibid.* [quoting *Linney v. Cellular Alaska P’ship* (9th Cir. 1998) 151 F.3d 1234, 1242].) The excellent result here easily satisfies these standards.

3. Litigation of this Action Not Only Would Delay Recovery, But Would Be Expensive, Time-Consuming, and Would Involve Substantial Risk

The amount offered in the Settlement is particularly reasonable in light of the risks, costs, and likely duration of further litigation, including the risk of not obtaining class certification and not surviving decertification. Absent this Settlement, it is estimated Plaintiffs’ Counsel’s fees and costs would far exceed \$3,000,000 to pursue these claims on behalf of Class Members. (Cottrell

⁹ (See, e.g., *Officers for Justice v. Civil Serv. Com.* (9th Cir. 1982) 688 F.2d 615, 628; *Viceral v. Mistras Grp., Inc.* (N.D. Cal. 2016) 2016 U.S. Dist. LEXIS 140759, at *7 [approving wage and hour settlement of approximately 8% of total verdict value]; *Hurtado v. Esperer Holdings* (Los Angeles Cty. 2021) 2021 Cal. Super. LEXIS 137529, *6 [noting that “typical PAGA settlement[s]” “include[e] those that provide for less than the one percent allocation to PAGA penalties”]; *Thames v. Cent. Transp. LLC* (Sac. Cty. 2021) 2021 Cal. Super. LEXIS 33424, *12 [approving PAGA allocation of \$25,000.00 in \$601,037.52 gross settlement]; *Balderas v. Massage Envy Franchising, LLP* (N.D. Cal. 2014) 2014 WL 3610945, at *5 [approving settlement totaling 8% of maximum recovery]; *In re Omnivision Techs. Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036, 1042 [6-8% of estimated damages]; *In re Uber FCRA Litig.* (N.D. Cal. June 29, 2017) No. 14-cv-05200-EMC, 2017 U.S. Dist. LEXIS 101552, at *23-24 [7.5% or less of total possible verdict]; *Cruz v. Sky Chefs, Inc.* (N.D. Cal. Dec. 19, 2014) No. 12-cv-02705-DMR, 2014 WL 7247065, at *5 [8.6% of maximum potential recovery].)

Additionally, the Settlement’s amount to the PAGA component is fair to those affected. *Moniz v. Adecco U.S., Inc.* (2021) 72 Cal.App.5th 56 at 77. The \$75,000 PAGA Payment represents 2.5% of the Gross Settlement Amount, well within PAGA settlements previously approved by California courts, and is a fair, reasonable, and adequate compromise for the Aggrieved Employees, who are encompassed by the Class and will also receive compensation as Class Members unless they request exclusion. (See, e.g., *Johnson v. Dispensaries* (Super. Ct. L.A. Cnty. Nov. 1, 2022) No. 21SMCV00156, 2022 Cal. Super. LEXIS 76537, at *4, 20 [approving PAGA allocation of \$40,000, with \$10,000 going to the Aggrieved Employees]; *Schiller v. David’s Bridal, Inc.* (E.D. Cal. 2012) 2012 U.S. Dist. LEXIS 80776, at *35-36 [approving PAGA settlement of \$7,500 or 0.14% of the total settlement].) Indeed, the LWDA has stated it “is not aware of any existing case law establishing a specific benchmark for PAGA settlements, either on their own terms or in relation to the recovery on other claims in the action.” (*Ramirez v. Benito Valley Farms, LLC* (N.D. Cal. Aug. 25, 2017) No. 16-CV-04708-LHK, 2017 U.S. Dist. LEXIS 137272, at *3 [quoting from the LWDA response in *O’Connor v. Uber Techs. Inc.*, 201 F.Supp.3d 1110 (N.D. Cal. 2016)].)

Decl., ¶ 38.) Here, the certain benefits of the Settlement must be considered in conjunction with the risks of continuing litigation, which Class Counsel carefully assessed. Litigating the Class claims in this action would require substantial additional preparation and discovery, involving the depositions of Class Members and experts, presentation of witnesses at trial, and the analysis, preparation, and presentation of voluminous documentary evidence. (*Id.*) Such efforts would likely take many more months, if not years, and would necessitate expert witness testimony and significant additional litigation, including potential appellate litigation. (*Id.*)

Additionally, Plaintiff’s derivative claims regarding waiting time penalties, accurate wage statements, and PAGA penalties rise and fall with Plaintiff’s other wage payment claims. (*Id.*, ¶ 39.) For example, Plaintiff would recover nothing under Cal. Lab. Code § 203 if they were unable to prove the underlying claims or defeat a “good faith” dispute defense. *See* Cal. Code Regs. Tit. 8, § 13520. While Plaintiff believes that she would prevail on these issues and others, Plaintiff recognizes the risk that a fact finder may find for Defendants on one or more of these issues and may find damages to be significantly less than what Plaintiffs claim.

Furthermore, as it has maintained throughout settlement negotiations and mediation, Defendant, represented by experienced employment lawyers, believes that this case is not suitable for class treatment and that it fully complied with its wage obligations with respect to Plaintiff, the Class Members, and the Aggrieved Employees. (Settlement, ¶ 2.9.) Specifically, Defendant may argue that some or all of the off-the-clock work is *de minimis* and not compensable under the relevant wage and hour laws at issue. (Cottrell Decl., ¶ 41.) Defendant may also assert that it maintains compliant policies to compensate Class Members for all work during the Class Period. (*Id.*) With respect to Plaintiffs’ meal and rest period claims, Defendant may assert that it maintains strong policies regarding meal and rest periods, provides Class Members with a “Time Adjustment Form” to report missed/waived meal breaks, and that it does not require Class Members to respond to or even carry communication devices during breaks. (*Id.*, ¶ 42; *see also, id.*, ¶ 39.) With respect to Plaintiffs’ expense reimbursement claim, Defendant may assert that Class Members were not required to use their cell phones to access their work email or wage statements. (*Id.*, ¶ 43.)

While Plaintiffs believe they would have prevailed on these issues and others, they also recognize the risk that a fact finder could have found for Defendant on one or more of these issues and/or found damages to be significantly less than what Plaintiffs claim. (*Id.*, ¶ 44.) Given the broad scope and magnitude of risks, Plaintiffs’ Counsel concluded that the Settlement here, which provides

1 a material percentage of the damages estimate, is a beneficial and just result for the Class and
2 Collective. (*Id.*, ¶ 45.)

3 **4. The Proposed Individual Service Awards are Reasonable**

4 Service awards “are intended to compensate class representatives for work done on behalf of
5 the class, to make up for financial or reputational risk undertaken in bringing the action, and,
6 sometimes, to recognize their willingness to act as a private attorney general.” *Cellphone*
7 *Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1393–94.

8 Here, the Plaintiffs have substantially contributed their time and efforts over a period of a year
9 and a half in pursuing the Class, FLSA, and PAGA claims, and Plaintiffs’ roles were crucial in this
10 case. As demonstrated in Plaintiffs’ Declarations, Plaintiffs had numerous discussions with Class
11 Counsel, worked with Class Counsel to review facts and answer questions, assisted Class Counsel
12 in their mediation efforts, and remained apprised of the case since electing to become Class
13 Representatives. (Salonga Decl., ¶¶ 4-6, 10-15; Melgoza Decl., ¶¶ 4-6, 10-15; Cottrell Decl., ¶¶ 46-
14 49.) Moreover, Plaintiffs took the significant risk of coming forward to represent the interests of
15 their fellow employees. (Salonga Decl., ¶¶ 7-8, 15; Melgoza Decl., ¶¶ 7-8, 15.) They stepped into
16 this matter so that the claims could proceed, out of a sincere desire to see through the adjudication
17 of Defendant’s treatment of its employees. (Salonga Decl., ¶¶ 4, 9-10, 15; Melgoza Decl., ¶¶ 4, 9-
18 10, 15.) As a result of their service, they subjected themselves to considerable risks with regards to
19 having their names in the public forum. (Salonga Decl., ¶¶ 7-8, 15; Melgoza Decl., ¶ 7-8, 15.)
20 Plaintiffs further have agreed to a broader release than those of the Class and the Collective.
21 (Settlement, ¶ 4.1.) Plaintiffs’ service awards of \$10,000 each are reasonable considering the efforts
22 they made and the risks they took in prosecuting this Action to obtain the Settlement.

23 **5. The Proposed Attorneys’ Fees and Costs are Reasonable**

24 Plaintiffs will seek reasonable attorneys’ fees and costs from the Gross Settlement Amount.
25 Under the terms of the Settlement, Class Counsel may seek fees not to exceed 35% of the Gross
26 Settlement Amount, or \$1,050,000, and actual costs up to \$35,000. (Settlement, ¶¶ 1.5, 1.6, 1.18.)
27 SWCK and Aegis have entered a fee-splitting agreement, which Plaintiffs approved in writing.
28 (Cottrell Decl., ¶ 52.) Plaintiffs’ Counsel’s lodestar amount, which will be provided with the fee
29 motion in advance of final approval, supports this request and will only increase with preparation
30 and attendance at the preliminary and final approval hearings, further communications with Class
31 Members, and Settlement administration and oversight. (*Id.*, ¶ 50; Bekam Decl., ¶ 17.)
32

1 In this case, there was no guarantee of compensation or reimbursement. (Cottrell Decl., ¶ 53;
2 Bekam Decl., ¶ 16.) Rather, Class Counsel has undertaken all the risks of this litigation on a
3 completely contingent fee basis. (Cottrell Decl., ¶ 53.) The inherent risk of proving liability and
4 damages on a class-wide basis and Defendant’s representation by skillful counsel confronted
5 Plaintiffs’ Counsel with the prospect of recovering nothing or close to nothing for their commitment
6 to and investment in the case. (*Id.*) Nevertheless, Plaintiffs and Class Counsel have committed
7 themselves to developing and pressing Plaintiffs’ legal claims to enforce the employees’ rights and
8 maximize the Class and Collective recovery. (*Id.*)

9 This commitment and the risks involved are precisely the reasons for multipliers in
10 contingency fee cases. (*Id.*, ¶ 54.) As Class and Collective Members will receive a significant
11 payment if the Settlement is approved, Plaintiffs’ Counsel seeks a reasonable fee award for their
12 efforts and the risk they have assumed. (*Id.*) Attorneys who litigate on a wholly or partially
13 contingent basis expect to receive significantly higher effective hourly rates in cases where
14 compensation is contingent on success, particularly in hard-fought cases where, like in the case at
15 bar, the result is uncertain. (*Id.*) This does not result in any windfall or undue bonus. (*Id.*) In the
16 legal marketplace, a lawyer who assumes a significant financial risk on behalf of a client rightfully
17 expects that his or her compensation will be significantly greater than if no risk was involved (i.e.,
18 if the client paid the bill monthly), and that the greater the risk, the greater the “enhancement.” (*Id.*)
19 Adjusting court-awarded fees upward in contingent fee cases to reflect the risk of recovering no
20 compensation whatsoever for hundreds of hours of labor simply makes those fee awards consistent
21 with the legal marketplace, and in so doing, helps to ensure that meritorious cases will be brought to
22 enforce important public interest policies and that clients who have meritorious claims will be better
23 able to obtain qualified counsel. (*Id.*)

24 Plaintiffs’ Counsel’s fee request of 35% of the Gross Settlement Amount is well within the
25 range customarily approved by California and Federal courts in comparable class and collective
26 actions. (See, e.g., *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal. 5th 480, 506 [“33 1/3 percent of the
27 common fund is consistent with, and in the range of, awards in other class action lawsuits”].) See
28 also *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11; Eisenberg & Miller, *Attorney Fees*
29 *in Class Action Settlements: An Empirical Study*, J. OF EMPIRICAL LEGAL STUDIES, Vol. 1, Issue 1,
30 27-78, March 2004, at 35 [independent studies of class action litigation nationwide conclude that
31 fees representing one-third of the total recovery is consistent with market rates]; *Ochoa v.*
32 *Haralambos Beverage Co.* (Los Angeles Super. Ct., Feb. 1, 2007) No. BC319588 [approving 33.3%

1 fee award with no mention of lodestar crosscheck]; *Jones v. Alliance Imaging, Inc.* (Alameda Super.
2 Ct., Nov. 27, 2006) No. RG05210418 [approving 33% fee award with no mention of lodestar
3 crosscheck]; *Garcia v. Save Mart Supermarkets* (Stanislaus Super. Ct., Aug. 3, 2004) No. 312026
4 [approving 33% fee award with no mention of lodestar crosscheck]; *Terrell v. Ocean's 11 Casino,*
5 *Inc.* (San Diego Super. Ct., Feb. 10, 2004) No. GIC795732 [approving 33% fee award with no
6 mention of lodestar crosscheck]; *Vorise v. 24 Hour Fitness USA, Inc.*, (Contra Costa Super. Ct.)
7 Case No. C 15-02051 [33.33% fee awarded on a PAGA case]; *Garcia v. Pep Boys, Orange County*
8 *Superior Court*, Case No. 30-2014-00720574-CU-OE-CJC (33.33% fee awarded on a PAGA-only
9 case); *Perez v. Staffmark Investment, LLC*, (Riverside Super. Ct.) Case No. MCC1401137 [33.33%
10 fee awarded on a \$650,000.00 settlement of a PAGA only case].)

11 Further, reasonable litigation expenses are ordinarily included with an award of attorneys'
12 fees pursuant to California wage and hour law. (See *Serrano v. Priest* (1977) 20 Cal.3d 25, 35; *Rider*
13 *v. County of San Diego* (1992) 11 Cal.App.4th 1410, 1424.) Here, Class Counsel's expenses are
14 reasonable, were necessary to the prosecution, and are customarily billed to fee-paying clients.
15 (Cottrell Decl., ¶ 55; see also, Bekam Decl., ¶ 17.) Thus, the requested attorneys' fees and costs are
16 reasonable compensation for the excellent recovery achieved and should be preliminarily approved.

17 **V. THE COURT SHOULD CERTIFY THE PROPOSED CLASS FOR**
18 **SETTLEMENT PURPOSES**

19 This Court should certify the proposed Class pursuant to Cal. Code Civ. Proc. § 382 for
20 purposes of the Settlement.¹⁰ California has a strong public policy in favor of broad enforcement of
21 wage and hour laws for the benefit of workers and in favor of using the class action device. (*Sav-on*
22 *Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 340.) The party seeking certification has
23 the burden to establish the existence of both an ascertainable class and a well-defined community of
24 interest among class members. (*Id.* at p. 326 [citations omitted].) The 'community of interest'
25 requirement embodies three factors: (1) predominant common questions of law or fact; (2) class
26 representatives with claims or defenses typical of the class; and (3) class representatives who can
27 adequately represent the class." (*Id.*) The benefits and efficiencies of this proposed Settlement, when
28 compared to continued litigation of this case on either a class basis or through hundreds if not
29 thousands of individual suits, justifies certification of the proposed Class.

30
31
32 ¹⁰ For purposes of the Settlement only, the parties have stipulated that the requisites for establishing
class certification pursuant to Cal. Code Civ. Proc. § 382 are met. (Settlement, ¶ 2.12.)

1 **A. The Class is Sufficiently Ascertainable and Numerous**

2 In determining whether a class is “ascertainable,” courts “examine the class definition, the
3 size of the class, and the means of identifying the class members.” (*Reyes v. Bd. of Supervisors*
4 (1987) 196 Cal.App.3d 1263, 1274-75.) Here, the parties have agreed to define the Class according
5 to clear, objective criteria. (Settlement, ¶¶ 1.8, 1.10.) The Class Members are thus easily identifiable
6 and can be easily located from Defendant’s records. (See Cottrell Decl., ¶ 57.) Likewise, potential
7 Class Members will easily be able to identify themselves as members of the Class based upon the
8 parties’ agreed-upon Class definition. Moreover, the Class consists of approximately 4,129 putative
9 Class Members, making joinder impracticable. The putative Class is therefore both ascertainable and
10 numerous.

11 **B. The Class Members Share a Well-Defined Community of Interest**

12 The “community of interest” requirement embodies three factors: (1) predominant common
13 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and
14 (3) class representatives who can adequately represent the class.” (*Sav-On, supra*, 34 Cal.4th at p./
15 326.) The requirement “does not mandate that class members have uniform or identical claims.”
16 (*Capitol People First v. Dep’t of Developmental Servs.* (2007) 155 Cal.App.4th 676, 692 [italics
17 removed].)

18 “[T]he focus in a certification dispute is on what type of questions – common or individual –
19 are likely to arise in the action[.]” (*Sav-On, supra*, 34 Cal.4th at p. 427.) Predominance does not
20 require that all questions of law and fact be uniform for all members of the class. (*Id.* at 338.) Here,
21 Plaintiffs contend that Defendant’s class-wide policies and procedures raise common issues of law
22 and fact that are applicable to the claims of Plaintiffs and Class Members. (Cottrell Decl., ¶ 58.) At
23 issue are Defendant’s policies and procedures applied uniformly to Class Members, including
24 Defendant’s policies and procedures for compensating employees for off-the-clock work and
25 overtime work, Defendant’s policies and procedures for meal and rest periods, Defendant’s policies
26 and procedures for expense reimbursements, and Defendant’s maintenance of working conditions
27 resulting in employees spending unrecorded and uncompensated time working. (*Id.*, ¶¶ 59-60.)

28 Where, as in this case, uniform policies and procedures apply on a class-wide basis, “the legal
29 question to be resolved is not an individual one. To the contrary, the common legal question remains
30 the overall impact of [Defendant’s] policies” on its employees. (*Jaimez v. Daiohs USA, Inc.* (2010)
31 181 Cal.App.4th 1286, 1299.) Plaintiff can rely on common proof (*e.g.*, Defendant’s time and payroll
32

1 records) to show these common violations. The Court should therefore find that common questions
2 predominate over any individualized differences among the Class Members in this case.

3 **C. Typicality Is Satisfied**

4 A representative plaintiff's claims are "typical" if they arise from the same event, practice, or
5 course of conduct that gives rise to the claims of the other class members and if their claims are
6 based on the same legal theory. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46-47; *Linder v.*
7 *Thrifty Oil Co* (2000) 23 Cal.4th 429, 435.) The typicality requirement is not onerous and does not
8 require the claims to be identical. (*Classen, supra*, 145 Cal.App.3d at p. 46.)

9 Here, Plaintiffs contend that they, like other Class Members, were subject to Defendant's
10 policies and procedures described above, and suffered damages from the alleged wage and hour
11 violations that emanated as a result. (Cottrell Decl., ¶ 60.) Further, Plaintiffs assert that the Class
12 Members were subjected to the same illegal practices and policies to which Plaintiffs were subjected
13 and the Class claims are based on the same legal theory as Plaintiffs' individual claims. (*Id.*)
14 Accordingly, Plaintiffs are members of the Class they seek to represent, and their claims are "typical"
15 of those asserted by other Class Members.

16 **D. Adequacy Is Satisfied**

17 A plaintiff is an adequate class representative if his or her claims are not inconsistent with or
18 antagonistic to the claims of the class members. (See *Johnson v. GlaxoSmithKline, Inc.* (2008) 166
19 Cal.App.4th 1497, 1509.) Here, Plaintiffs' interests are exactly in line with those of the Class,
20 Plaintiffs have agreed to prosecute this case as Class Representatives with the interests of the Class
21 in mind and understand their responsibilities, and there are no conflicts between Plaintiffs and the
22 proposed Class. (See Salonga Decl., ¶¶ 3, 15; Melgoza Decl., ¶¶ 3, 15.) Furthermore, Plaintiffs are
23 represented by Class Counsel with extensive experience in class action and employment litigation,
24 including wage and hour class actions, and who do not have any conflict with the Class or the
25 Settlement Administrator. (Cottrell Decl., ¶¶ 6-8; Bekam Decl., ¶¶ 3-15.) For these reasons, Plaintiffs
26 are adequate class representatives, and Schneider Wallace Cottrell Konecky LLP and Aegis Law
27 Firm PC are appropriate Class Counsel.

28 **VI. THE COURT SHOULD CERTIFY THE PROPOSED FLSA COLLECTIVE FOR** 29 **SETTLEMENT PURPOSES**

30 This Court should certify the proposed Collective pursuant to 29 U.S.C. § 216(b) for purposes
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32

1 of the Settlement.¹¹ Most courts in the Ninth Circuit first consider whether the named plaintiffs are
2 “similarly situated” to the putative collective members, and then evaluate the settlement under the
3 standard established by the Eleventh Circuit. (See *Lynn’s Food Stores, Inc. v. United States* (11th Cir.
4 1982) 679 F.2d 1350, 1355.) This standard requires the settlement to constitute a “fair and reasonable
5 resolution of a bona fide dispute over FLSA provisions.” (*Otey v. CrowdFlower, Inc.* (N.D. Cal.
6 2015) 2015 WL 6091741 at *4.) “If a settlement in an employee FLSA suit does reflect a reasonable
7 compromise over issues . . . that are actually in dispute,” the court may “approve the settlement in
8 order to promote the policy of encouraging settlement in litigation.” (*Lynn’s, supra*, 679 F.2d at p.
9 1354; *Otey, supra*, 2015 WL 6091741 at *4.)

10 Plaintiffs made substantial factual allegations showing collective members are similarly
11 situated because they are subject to a common practice or policy in violation of the FLSA. (Cottrell
12 Decl., ¶ 61.) Defendant maintains various common policies and practices as to what work it
13 compensates and what work it does not compensate and applies these policies and practices to the
14 Collective members. (*Id.*, ¶ 59-61.) This is all that is needed to show that the Collective Members are
15 similarly situated under the FLSA. (See 29 U.S.C. § 216(b).)¹² Therefore, the Court should find that
16 Plaintiffs and the Collective Members are similarly situated, and that the Settlement is a “fair and
17 reasonable resolution” for the same reasons discussed above.

18 **VII. THE COURT SHOULD APPROVE THE SETTLEMENT NOTICE**

19 “Adequate notice is critical to court approval of a class settlement.” (*Hanlon v. Chrysler*
20 *Corp.* (9th Cir. 1998) 150 F.3d 1011, 1025.) A class action settlement notice “is satisfactory if it
21 generally describes the terms of the settlement in sufficient detail to alert those with adverse
22 viewpoints to investigate and to come forward and be heard.” (*Churchill Village LLC v. General*
23 *Electric* (9th Cir. 2004) 361 F.3d 566, 575.) All that is required is that the proposed notice be
24 reasonably calculated to notify interested parties of the pendency of the action and their right to
25 present their objections. (*Ryan v. Cal. Interscholastic Fed’n* (2001) 94 Cal.App.4th 1048, 1072.)
26 Indeed, courts have approved class notices even when they provide only general information about
27

28
29 ¹¹ For purposes of the Settlement only, the parties have stipulated that the requisites for establishing
30 collective action certification under the FLSA pursuant to 29 USC § 216(b) are met. (Settlement, ¶
31 2.12.)

32 ¹² (*Lewis v. Wells Fargo & Co.* (N.D. Cal. 2009) 669 F.Supp.2d 1124, 1127 [“All that need be shown
by the plaintiff is that some identifiable factual or legal nexus binds together the various claims of the
class members in a way that hearing the claims together promotes judicial efficiency and comports
with the broad remedial policies underlying the FLSA.”].)

1 a settlement. (See, e.g., *Mendoza v. United States* (9th Cir. 1980), 623 F.2d 1338, 1351, disapproved
2 on other grounds by *Evans v. Jeff D.* (1986) 475 U.S. 717, 725, n. 10.)

3 Here, the manner of providing the Settlement Notice easily satisfies these standards. The
4 Settlement Notice will be mailed to each Class Member at his or her last-known address, following
5 an updated review of the National Change of Address Registry by Phoenix. (Settlement, ¶¶ 6.4-6.5.)
6 Any returned envelopes from this mailing with forwarding addresses will be utilized by Phoenix to
7 forward the Notices to the individuals. (*Id.*) In addition, Phoenix will create a website for the
8 Settlement, which will allow Class Members to view papers regarding the Settlement, and will also
9 create a toll-free call center to field telephone inquiries from Class Members during the notice and
10 settlement administration periods. (*Id.*, ¶ 6.5.1.)

11 The proposed Class Notice and Collective Notice are clear and straightforward, and provide
12 information on the case, the meaning and nature of the proposed Settlement, its terms and provisions,
13 and the rights of the Class and Collective Members to participate, opt out, and object. (See
14 Settlement, Exs. B-C.) They describe the monetary awards that the Settlement will provide to Class
15 and Collective Members, how the awards were calculated, and the releases. They also provide the
16 date, time, and location of the Final Approval Hearing, and the identity and contact information for
17 Class Counsel and all other information required by Cal. Rules of Court, Rule 3.766(d). The
18 proposed Class Notice and Collective Notice fulfill the requirement of neutrality in class notices.
19 (See *Newberg on Class Actions* at §§ 8:21 and 8:39, *Manual for Complex Litig.* at §§ 21:311 and
20 21:312.) Accordingly, the Settlement Notice complies with the standards of fairness, completeness,
21 and neutrality required of a settlement notice authorized for dissemination by the Court.

22 **VIII. CONCLUSION**

23 For the foregoing reasons, Plaintiffs respectfully request that the Court grant this Motion for
24 Preliminary Approval and enter an order consistent with the [Proposed] Order submitted herewith.

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26 Dated: October 30, 2023

Respectfully Submitted,

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28
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30 _____
31 Samuel A. Wong
32 Kashif Haque
Jessica L. Campbell
Fawn F. Bekam
AEGIS LAW FIRM, PC

Carolyn H. Cottrell
David C. Leimbach
Michelle S. Lim
SCHNEIDER WALLACE
COTTRELL KONECKY LLP

*Attorneys for Plaintiffs, the Putative Collective,
the Putative Class, Aggrieved Employees, and on
behalf of the State of California*