

AEGIS LAW FIRM, PC

SAMUEL A. WONG, State Bar No. 217104

KASHIF HAQUE, State Bar No. 218672

JESSICA L. CAMPBELL, State Bar No. 280626

ALEX J. VALLE, State Bar No. 334263

avalle@aegislawfirm.com

9811 Irvine Center Drive, Suite 100

Irvine, California 92618

Telephone: (949) 379-6250

Facsimile: (949) 379-6251

Attorneys for Plaintiff Sergio J. Nevarez, individually,
and on behalf of all others similarly situated.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

SERGIO J. NEVAREZ, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

CG INDUSTRIES, INC.; HARTUNG
GLASS INDUSTRIES, INC.; and DOES 1
through 20, inclusive,

Defendants.

Case No. 22CV007198

Assigned for all purposes to:

Hon. Brad Seligman

Dept. 23

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

Date: August 22, 2023

Time: 3:00 p.m.

Dept: 23

Res. ID: 257283420862

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1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court 3.769 (d) and (e), Plaintiff Sergio J. Nevarez (“Plaintiff”)
3 requests that the Court grant preliminary approval of a class action settlement of wage and hour claims,
4 including a claim under the California Private Attorneys General Act of 2004, codified at Lab. Code §
5 2698, *et seq.* (“PAGA”), against Defendants CG Industries, Inc. and Hartung Glass Industries, Inc.
6 (“Defendants”) (collectively, Plaintiff and Defendants referred to as the “Parties”). The putative class
7 consists of approximately 75 non-exempt employees who worked for Defendants in California
8 (individually, “Class Member”; collectively, “Class Members”) from February 17, 2018 through the date
9 of Preliminary Approval (the “Class Period”). The basic terms of the Revised Class Action and PAGA
10 Settlement Agreement and Class Notice (“Settlement Agreement” or “Settlement”)¹ provide for the
11 following:

- 12 (1) A non-reversionary Gross Settlement Amount of \$225,000.00 allocated to
13 approximately 75 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 \$75,000)
16 and up to \$20,000.00 in reimbursement of costs to Plaintiff’s Counsel for services
17 rendered as counsel on this matter;
18 (3) Service Payment of up to \$10,000.00 to the Named Plaintiff;
19 (4) Settlement Administration fees and costs of up to \$6,000.00; and
20 (5) Allocations of \$12,000 for resolution of civil penalties under PAGA. Seventy-five
21 percent (75%) of this payment will be paid to the California Labor and Workforce
22 Development Agency (“LWDA Payment”), and twenty-five percent (25%) will be
23 paid to Class Members who worked for Defendants during the PAGA Period.

24 With each Class Member allocated an average recovery of approximately \$1,000 from the Net
25

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

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

9 **II. SUMMARY OF THE LITIGATION**

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

19 On May 23, 2022, Plaintiff filed a First Amended Complaint adding a cause of action for
20 enforcement of Labor Code § 2698 *et seq.* ("PAGA"). (Campbell Decl., ¶ 4.)

21 The Parties proceeded with informal discovery. Defendants informally produced its employee
22 handbooks, policies, the total number of Class Members, Pay Periods, and Workweeks, and a thirty-five
23 percent sampling of Class Members' timekeeping and pay records. (Campbell Decl., ¶ 5.)

24 On March 8, 2023, the Parties attended a mediation session with Jill Sperber, Esq., a respected
25 mediator. (Campbell Decl., ¶ 6.) After a full day of negotiating, the Parties agreed to a settlement amount
26 and executed a Memorandum of Understanding, with the material terms to which the Parties had agreed.
27 (*Id.*) The Parties spent the next few months negotiating the full terms of the Settlement, which was
28 finalized in June of 2023. (*Id.*) On July 24, 2023, Plaintiff submitted the Settlement to the LWDA

pursuant to Lab. Code § 2699(l)(2). (Campbell Decl., ¶ 7. Ex. 4.)

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 \$225,000. (Settlement Agreement, § 3.1.) The Gross Settlement Amount will be used to make payments for the following: (1) Individual Settlement Payments to Participating Class Members; (2) attorneys' fees to Class Counsel of up to one-third of the Gross Settlement Amount; (3) reimbursement of Class Counsel's litigation costs of up to \$20,000; (4) a Service Payment to Plaintiff of up to \$10,000; (5) Settlement Administration fees and costs of \$5,250; and (6) a payment to the LWDA of \$9,000 pursuant to PAGA. (*Id.* at §§ 3.2.1–3.2.5.) Class Members' Individual Settlement Payments will be distributed after final approval of the Settlement and Defendants fully funds the Gross Settlement Amount. (*Id.* at §§ 4.3–4.4.) Individual Settlement Payments will be calculated by comparing the total Qualifying Workweeks for the Class to each individual Class Member's Qualifying Workweeks. (*Id.* at § 3.2.4.) The Settlement Administrator will calculate the actual estimated recovery to include in the Notice of Class Action Settlement ("Class Notice") and provide the estimated low and high range of possible recovery at final approval. (*Id.* at § 7.4.2 & Ex. A (Class Notice).) The Parties agreed that an English Class Notice with Spanish translation will be sufficient to provide notice to Class Members. (*See* Settlement Agreement, § 1.11.) Once the Court grants final approval and enters judgment, the Settlement Administrator will post the Class Notice on its website. (Settlement Agreement, § 7.8.1.)

The Individual Settlement Payments will be allocated 20% to wages; 80% to interest and penalties for tax purposes. (*Id.* at § 3.2.4.1.) Defendants will pay the employer-side payroll taxes on the portion allocated to wages separately from, and in addition to, the Gross Settlement Amount. (*Id.* at § 3.1.) Funds from uncashed or undeliverable checks will be tendered by the Settlement Administrator to the state's unclaimed property fund. (*Id.* at § 4.4.3.) The Gross Settlement Amount will not revert to Defendants. (*Id.* at § 3.1.)

B. Proposed Opt-Out and Objection Process

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

1 then have fourteen days to send Class Notice by first-class mail after checking for updated addresses
2 through the National Change of Address database. (*Id.* at § 7.4.2.) The Class Notice provides information
3 regarding the nature of the lawsuit, a summary of the substance of the settlement terms, the formula for
4 calculating Individual Settlement Payments, the individual's estimated payout, a statement that Class
5 Members who take no action will release their claims and receive settlement checks, instructions
6 regarding how to dispute the calculations, instructions regarding how to request exclusion or object to
7 the Settlement, the date for the final approval hearing, the amounts sought for attorneys' fees and costs,
8 the Settlement Administration Costs, the Class Representative's Service Payment, and the PAGA
9 allocation. (*See* Settlement Agreement, Ex. A.)

10 The Class Notice provides instructions for Class Members who choose to exclude themselves
11 from the Settlement. (*See* Settlement Agreement, Ex. A.) To opt out, Class Members are instructed to
12 submit a Request for Exclusion to the Settlement Administrator by a specified date (60 days after the date
13 of mailing of the Class Notice). (*See* Settlement Agreement, § 7.5.1 & Ex. A.) Class Members do not
14 need to submit a claim form to participate in the Settlement. (*See* Settlement Agreement, Ex. A.) The
15 Class Notice informs Class Members of how they can object to the Settlement, and of the date, time, and
16 location of the final fairness and approval hearing so that they can appear at the hearing in person. (*Id.*)
17 The Class Notice also informs Class Members to check the Administrator's website or contact Class
18 Counsel to verify the date and time of the Final Approval Hearing. (*Id.*) Accordingly, the content of the
19 Class Notice complies with the requirements of Cal. R. Ct. 3.766, subd. (d).

20 If Class Notice packets are returned as undeliverable, the Settlement Administrator will perform a
21 skip-trace or other search, and re-mail the Class Notice with an extended deadline to opt out or object, of
22 14 days from the date of mailing or the original deadline, whichever is later. (Settlement Agreement, §§
23 7.4.3–7.4.4.) The initial 60-day notice period and extension process ensures the notice program provides
24 due process by giving Class Members enough time to determine whether they want to participate in the
25 Settlement. This means of notice is reasonably calculated to apprise Class Members of the pendency of
26 the action. (*See* Cal. R. Ct. 3.766, subds. (d)–(f).)

27 **C. Proposed Release**
28

1 The release to be given by Class Members is limited to Defendants and each of its former and
2 present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors,
3 assigns, subsidiaries, and affiliates (the “Released Parties”). (Settlement Agreement, § 1.41.) Under the
4 proposed release, Class Members who do not exclude themselves from the Settlement will be deemed
5 to have released the following:

6 “all claims alleged, or could have been alleged based on the facts alleged in the Operative
7 Complaint, which arose during the Class Period.”

8 (*Id.* at § 5.2.)

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

11 “all claims for PAGA penalties that were alleged, or could have been alleged, based on the facts
12 alleged in the Operative Complaint, which arose during the Class Period or PAGA Period.”

13 (*Id.* at § 5.3.)

14 Additionally, Plaintiff will be deemed to have released all potential claims against the Released
15 Parties. (*Id.* at § 5.1.) Plaintiff also releases all known or unknown claims under Civil Code § 1542.

16 (*Id.* at § 5.1.1.)

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

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

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

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

24 Whether a class is “ascertainable” is “determined by examining (1) the class definition, (2) the
25 size of the class, and (3) the means available for identifying class members.” (*Reyes v. Bd. of Supervisors*
26 (1987) 196 Cal. App. 3d 1263, 1271.) Here, the Class consists of all non-exempt employees employed
27 by Defendants in California at any time between February 17, 2018 through the date of Preliminary
28 Approval. (Settlement Agreement, §§ 1.5 & 1.12.) Defendants’ records show the Class consists of

1 approximately 75 individuals, making joinder of all Class Members impracticable. (Campbell Decl., ¶
2 8.) Further, the Class is readily ascertainable from Defendants’ business records because all Class
3 Members are current or former employees of Defendants. (*Id.*)

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

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

9 a. Common Questions Predominate

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

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

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

27 The typicality requirement is satisfied when the legal theories and facts supporting Plaintiff’s
28 claims are substantially similar to other class members. (*See Classen v. Weller* (1983) 145 Cal. App. 3d

27, 46.) Here, Plaintiff alleges that he and other Class Members were employed by Defendants and injured by Defendants' common wage and hour policies and practices, including Defendants' scheduling, timekeeping, minimum wage pay, overtime pay, meal period, and rest break practices and policies. (Campbell Decl., ¶ 10; Declaration of Sergio J. Nevarez ("Nevarez Decl.") ¶ 6.) Through documents and information exchanged in informal discovery, including production of policy documents by Defendants, Plaintiff confirmed that these common policies and practices similarly affected Plaintiff and the Class. (*Id.*) Thus, Plaintiff's claims arise from the same employment practices and are based on the same legal theories as those applicable to other Class Members, as further explained in Plaintiff's exposure analysis below.

c. Plaintiff and Plaintiff's Counsel Will Adequately Represent the Class

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

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

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

Class treatment is superior to other methods of adjudication when the probability is small that each class member will come forward to prove his or her claim and when the class approach would deter and redress the alleged wrongdoing. (*See Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 435, 446;

1 *Ghazaryan v. Diva Limousine, Ltd.*, (2008) 169 Cal. App. 4th 1524, 1537-1538.) Here, none of the other
2 75 Class Members had shown any interest in bearing the expense and burden of litigating their own
3 claims. (Campbell Decl., ¶ 21.) Thus, a class action is the superior method for seeking relief.

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

5 Preliminary approval is warranted if the settlement falls within a “reasonable range.” (*See North*
6 *County Contractor’s Ass’n., Inc. v. Touchstone Ins. Servs.*, (1994) 27 Cal. App. 4th 1085, 1089-90;
7 Conte & Newberg, *Newberg on Class Actions*, § 11.26 (4th ed. 2002).) In reviewing the fairness of a
8 class action settlement, due regard should be given to what is ““otherwise a private consensual
9 agreement between the parties.”” (*Cellphone Termination Fee Cases*, (2010) 186 Cal. App. 4th 1380,
10 1389.) The inquiry “must be limited to the extent necessary to reach a reasoned judgment that the
11 agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties,
12 and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” (*Id.*)

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

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

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

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

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

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

10 c. *Plaintiff's Counsel is Experienced in Similar Litigation*

11 Plaintiff is represented by Aegis Law Firm, PC ("Class Counsel"). Class Counsel prosecute wage
12 and hour class actions on behalf of employees and others who have had their rights violated. (Campbell
13 Decl., ¶¶ 24–37.) The attorneys working on this case have been appointed class counsel in many cases,
14 through both contested motions and settlement approval motions. (*Id.*) Thus, Plaintiff's Counsel has
15 extensive experience in similar litigation and should be appointed as Class Counsel.

16 **2. The Settlement is Reasonable Given the Strengths of Plaintiff's Claims and**
17 **the Risks and Expense of Further Litigation**

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

22 While Plaintiff and his counsel believed and continue to believe this is a strong case for
23 certification, the significant risks and expenses associated with class certification and liability
24 proceedings were taken into account. (Campbell Decl., ¶ 12.) To determine if the amount negotiated was
25 reasonable, Plaintiff's Counsel weighed that figure against many risk factors. (*Id.* at ¶ 13). If Plaintiff
26 continued to prosecute the claims rather than accept a settlement, Plaintiff would have faced deadlines
27 to file a motion for class certification, had to have engaged in more formal written discovery and taken
28 depositions, expended time and resources to resolve disputes, prepared and filed potential dispositive

1 motions and/or discovery motions, and engaged in extensive trial preparation. (*Id.* at ¶ 14.) An adverse
2 ruling at any one of these stages could have prevented the Class from obtaining any recovery. (*Id.*)

3 a. Exposure Analysis

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

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

10 (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 250 (citation omitted).) Here, Plaintiff
11 contends that his claims are based on Defendants’ common, class-wide policies and procedures, and
12 that liability could be determined on a class-wide basis without dependence on individual assessments
13 of liability. (Campbell Decl., ¶ 11.) Prior to the mediation, Plaintiff reviewed employee handbooks,
14 policies, the total number of Class Members, Pay Periods, and Workweeks, and a thirty-five percent
15 sampling of Class Members’ timekeeping and pay records. (*Id.* at ¶ 10.) Although the amount of
16 Defendants’ potential exposure—if proven—is substantial, the legitimate and serious risks of
17 succeeding at class certification and trial compelled consideration of the benefit of a settlement. (*Id.* at
18 ¶ 13.)

19 Minimum Wage and Overtime Claims: Plaintiff’s minimum wage and overtime claims are
20 premised on the following theories: (1) Defendants engaged in time rounding for Class Members’ start
21 and end times during work days, thereby consistently underpaying Class Members for several minutes
22 of work each shift; and (2) Defendants failed to recalculate Class Members’ overtime rates of pay to
23 include shift differentials and bonuses. (Campbell Decl., ¶ 15.) An expert retained by Plaintiff’s Counsel
24 calculated a potential exposure of approximately \$380,000. (*Id.*)

25 However, Defendants argued that the rounding policies were neutral. (*Id.*) Accordingly,
26 Plaintiff’s counsel believed there was a 50% chance of success at class certification and 40% chance of
27 success on the merits at trial, rendering the claim worth approximately \$76,000. (*Id.*)

1 Meal Period Claims: Plaintiff's meal period claim was premised on the theories that (1)
2 Defendants interrupted Class Members' meal breaks by forcing them to work through their meal period
3 to complete their work, (2) Defendants' time records automatically deducted a meal period from Class
4 Members' time punches without actually allowing Class Members to take a meal break, and (3)
5 Defendants failed to provide for meal premiums. (Campbell Decl., ¶ 16.) Plaintiff's expert calculated
6 that the meal period claim was potentially worth approximately \$475,000, based on the expert's finding
7 of an 88.4% violation rate in the records. (*Id.*)

8 However, Defendants argued they had facially compliant meal period policies and class members
9 actually received automatically deducted meal periods. (*Id.*) As such, Plaintiff's Counsel believed there
10 was a 40% chance at class certification and a 25% chance at trial on Plaintiff's meal period claim,
11 resulting in a realistic value of approximately \$47,500. (*Id.*)

12 Rest Period Claims: For Plaintiff's rest period claims, Plaintiff alleges that (1) Defendants failed
13 to relinquish control over Class Members during their rest breaks by discouraging Class Members from
14 leaving Defendants' premises, (2) Defendants failed to provide for rest break premiums, and (3)
15 Defendants even dissuaded Class Members from taking rest breaks. (Campbell Decl., ¶ 17.) Assuming
16 Plaintiff could prove a 100% violation rate for each shift over 3.5 hours, Plaintiff's expert calculated
17 that damages could potentially reach up to approximately \$525,000. (*Id.*)

18 However, Defendants argued they had facially compliant rest period policies and class members
19 were provided ample opportunities to take rest breaks off company premises. (*Id.*) Moreover, whether
20 Class Members were relieved of all duty for rest breaks would have required depositions of Class
21 Members, and Defendants likely would have obtained opposing declarations stating rest breaks were
22 adequately taken or voluntarily waived, significantly decreasing the likelihood of class certification.
23 (*Id.*; see also, e.g., *Rai v. CVS Caremark Corp.* (C.D. Cal. Oct. 11, 2013) 2013 U.S. Dist. LEXIS 177730
24 (denying certification of rest break claims where competing testimony regarding actual practice meant
25 adjudication would involve predominantly individual issues); *Gonzalez v. OfficeMax North Am.* (C.D.
26 Cal. Nov. 5, 2012) 2012 U.S. Dist. LEXIS 163853, at *9–12 (denying certification on predominance
27 grounds where plaintiff offered no evidence that a uniform rest break policy was implemented
28 uniformly)). As such, Plaintiff's counsel estimated that there would be a 25% chance of succeeding at

1 class certification and a 15% chance at trial on Plaintiff's rest break claim, resulting in a value of around
2 \$19,000. (*Id.*)

3 Reimbursement for Business Expenses Claims: Plaintiff's claim for reimbursement of business
4 expenses was premised on Defendants requiring Class Members to use their personal cell phones to
5 communicate with Defendants throughout the work day and on days when they were not scheduled to
6 work, and to communicate with Defendants regarding assignments and job duties. (Campbell Decl., ¶
7 18.) After analyzing employment data, Plaintiff's expert calculated a potential recovery of
8 approximately \$70,000 in unreimbursed business expenses, calculated at a rate of \$25 owed per pay
9 period worked by class members. (*Id.*) However, Defendant argued cell phone use was not required to
10 perform class members' job duties in a manufacturing facility. As such, Plaintiff's counsel believed
11 there was a 40% chance succeeding at class certification and a 25% chance at trial, resulting in a value
12 of around \$7,000. (*Id.*)

13 Waiting Time and Wage Statement Penalties: Plaintiff's Counsel considered the arguable presence
14 of various derivative penalties, and weighed the potential recoveries against probable defenses. (Campbell
15 Decl., ¶ 19.) Specifically, Defendants could argue that Plaintiff could not prove the "willful" prong needed
16 to obtain waiting time penalties under Labor Code § 203; Plaintiff could not show that Class Members
17 suffered an "injury" as a result of wage statement violations, as required by Labor Code § 226; or that the
18 wage statements correctly reflected the wages paid and owed. (*Id.*) Although the Class could have seen a
19 potential payout of approximately \$270,000 for waiting time penalties and approximately \$100,000 for
20 wage statement penalties, Plaintiff would not recover any of these derivative penalties if he failed to prove
21 the underlying claims. (*Id.*) Thus, Plaintiff discounted these claims assuming a 50% chance of class
22 certification and 40% chance at the merits for both claims, resulting in a realistic value of approximately
23 \$54,000 for the waiting time claim and around \$20,000 for the wage statement claim. (*Id.*)

24 PAGA Claim: The PAGA claim presented even higher hurdles. (Campbell Decl., ¶ 20.) Plaintiff's
25 expert analyzed the employment data provided by Defendants and found that Defendants' exposure
26 could potentially reach approximately \$102,500 under Lab. Code § 2699(f), assuming the initial penalty
27 rate of \$100 for each pay period. (*Id.*) However, to recover that amount, Plaintiff would have to prove
28 a violation in every pay period. (*Id.*) Most importantly, the Court would have discretion to reduce the

1 PAGA award based on whether the amount of the award would be “unjust, arbitrary and oppressive, or
2 confiscatory.” Lab. Code § 2699(e)(2). In theory, the Court could reduce the award by 99% if it so
3 wished. Plaintiff was doubtful he could recover any PAGA penalties, especially if a large class judgment
4 was entered for the same violations. Accordingly, Plaintiff could not place a high value on the PAGA
5 penalties, and therefore allocated \$12,000 of the Gross Settlement Amount to settle these claims. (*See*
6 *Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) 2009 U.S. Dist. LEXIS 33900 at *24 (finding
7 amount of PAGA penalties reasonable where the amounts are negotiated in good faith and “there is no
8 indication that [the] amount was the result of self-interest at the expense of other Class Members”);
9 *Nordstrom Comm’n Cases* (2010) 186 Cal.App.4th 576, 579 (“trial court did not abuse its discretion in
10 approving a settlement which does not allocate any damages to the PAGA claims”).)

11 Thus, given the realistic exposure to Defendants, the settlement amount of \$225,000 is
12 reasonable, fair, and proper.

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

14 Plaintiff seeks a Service Award of up to \$10,000 for accepting the responsibilities of representing
15 the interests of the Class and assuming risks and potential costs that were not borne by any other Class
16 Members. (Settlement Agreement, § 3.2.1.) A named plaintiff is eligible for payment that reasonably
17 compensates him or her for undertaking and fulfilling a fiduciary duty to represent absent class
18 members. (*See Cellphone Termination Fee Cases, supra*, 186 Cal. App. 4th at 1393-94 (“The rationale
19 for making enhancement or incentive awards to named plaintiffs is that they should be compensated for
20 the expense or risk they have incurred in conferring a benefit to other members of the class”); *Bell v.*
21 *Farmers Ins. Exch.* (2004) 115 Cal. App. 4th 715, 726.) In evaluating the propriety of enhancement
22 awards, courts consider the following relevant factors, including: (1) the time and effort put into the
23 litigation and the degree to which the class has benefitted from those actions, (2) the duration of the
24 litigation, (3) a comparison between the service awards range of monetary recovery available to the
25 class, (4) whether the litigation will further the public policy underling the statutory scheme, and (5)
26 risks to the class representatives in participating in the lawsuit, including financial exposure, retaliation,
27 and negative notoriety related to the lawsuit. (*See, e.g., Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d
28 938, 977; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 301 F.Supp. 294, 299.)

1 Plaintiff had the option to pursue his claims individually, but instead chose to pursue this class
2 action, delaying individual recovery until approval of a class action settlement. (Campbell Decl., ¶ 21.)
3 Throughout the case, Plaintiff assisted counsel in gathering the evidence necessary to prosecute the class
4 claims, maintained regular contact with counsel, was available on the day of mediation and
5 communicated with his attorneys during the day of mediation to answer critical questions, reviewed the
6 Settlement to make sure it was fair to the Class, and otherwise assisted the action as needed since this
7 action was filed approximately sixteen months ago (February 2022). (*Id.*; Nevarez Decl., ¶¶ 4–8.) No
8 action would likely have been taken by Class Members individually, and no compensation would have
9 been recovered for them, but for Plaintiff’s services on the Class’s behalf. (Campbell Decl., ¶ 21.)

10 By actively pursuing this action, Plaintiff also furthered the California public policy goal of
11 enforcing the State’s wage and hour laws. (*See Sav-On Drug Stores, Inc., supra*, 34 Cal. 4th at 340.)
12 The requested Service Award for Plaintiff’s service as the class representative and for a general release
13 of all employment claims is reasonable and should be preliminarily approved. At the final approval
14 stage, Plaintiff will further support the request for the Service by declarations addressing the factors for
15 the award. (Campbell Decl., ¶ 23.)

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

17 The purpose of an attorneys’ fee award in class action litigation is to reward counsel who invested
18 in a case despite the risk of non-payment and achieved a substantial positive result for the class.
19 Attorneys’ fees are awarded as a matter of equity. California courts routinely award attorneys’ fees
20 equaling one-third or more of the potential value of the common fund. (*See Chavez v. Netflix, Inc.* (2008)
21 162 Cal. App. 4th 43, 66, n.11 (“Empirical studies show that, regardless of whether the percentage
22 method or the lodestar method is used, fee awards in class actions average around one-third of the
23 recovery”).)

24 Plaintiff seeks appointment of Aegis Law Firm, PC as Class Counsel. The attorneys performed
25 significant work and expended litigation costs in prosecuting the matter with no guarantee of any
26 payment. (Campbell Decl., ¶ 38.) Plaintiff’s Counsel seeks preliminary approval for \$75,000 in
27 attorneys’ fees, which is up to one-third of the Gross Settlement Amount, and up to \$20,000.00 in
28 reimbursement of litigation costs. (Settlement Agreement § 3.2.2.) Given the work performed in this

1 matter, the extensive information exchange, and substantial recovery obtained on behalf of Plaintiff and
2 the Class, Plaintiff's Counsel achieved a settlement through efficient and diligent work. (*See generally*,
3 Campbell Decl.) At final approval, Plaintiff's Counsel will fully brief the merits of its request for the
4 award of attorneys' fees and litigation costs. (*Id.* at ¶ 39.)

5 **V. CONCLUSION**

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

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13 Dated: July 31, 2023

AEGIS LAW FIRM, PC

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15 By: /s/ Jessica L. Campbell
16 Jessica L. Campbell
17 Attorneys for Plaintiff
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