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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

DARIN MILLER and ELIZABETH ALBERTA PRICE, individually, and on behalf of other members of the general public similarly situated, Plaintiff, vs. MP NEXLEVEL, LLC, a Minnesota limited liability company; MP TECHNOLOGIES, LLC, an unknown business entity; MP NEXLEVEL OF CALIFORNIA, INC., a Minnesota corporation; and DOES 1 through 100, inclusive, Defendants.	Case No. 34-2022-00324598 *Assigned for All Purposes to:* *Hon. Judge Jill Talley, Department 23* **PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** Date: March 28, 2025 Time: 9:00 a.m. Dept: 23

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I. INTRODUCTION

Pursuant to California Rules of Court 3.769 (d) and (e), Plaintiffs Elizabeth Alberta Price and Darin Miller ("Plaintiffs") request that the Court grant preliminary approval of a class action settlement of wage and hour claims, including claims under the California Private Attorneys General Act of 2004, codified at Lab. Code § 2698, *et seq.* ("PAGA"), entered into with Defendants MP NexLevel, LLC, MP Technologies, LLC, and MP NexLevel of California, Inc. ("Defendants"). The Class is defined as all persons currently or formerly employed by MP NexLevel of California, Inc. as a non-exempt employee in the State of California at any time from August 2, 2018 through May 15, 2024 (the "Class Period"). The basic terms of the Class Action and PAGA Settlement Agreement ("Settlement Agreement" or "Settlement")[1] provide for the following:

(1) A non-reversionary Gross Settlement Amount of $1,085,000.00 allocated to approximately 338 Class Members on a pro rata basis according to the number of weeks each Class Member worked during the Class Period;

(2) An award of up to one-third of the Gross Settlement Amount (currently $361,666.67) and up to $50,000.00 in reimbursement of costs to Plaintiff's Counsel for services rendered as counsel on this matter;

(3) Incentive Award of up to $7,500.00 for Plaintiff Elizabeth Alberta Price and $15,000.00 for Plaintiff Darin Miller;

(4) Settlement Administration fees and costs of up to $9,250.00; and

(5) Allocation of $100,000.00 for settlement of claims for civil penalties under PAGA. Seventy-five percent (75%) of this payment will be paid to the California Labor and Workforce Development Agency ("LWDA Payment"), and twenty-five percent (25%) will be paid to the Class Members who worked for Defendants during the PAGA Period (the "Aggrieved Employees").

[1] A true and correct copy of the fully-executed "Class Action and PAGA Settlement Agreement" is attached as **Exhibit 1** to the Declaration of Kristy R. Connolly in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Connolly 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.

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

II. SUMMARY OF THE LITIGATION

Price Action

On March 17, 2021, Plaintiff Price filed a class action on behalf of Defendant's non-exempt employees in the Superior Court of California, County of San Mateo, Case No. 22-CIV-01186, and alleged the following claims: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to permit rest breaks; (5) failure to provide accurate wage statements; (6) failure to pay all wages timely and upon separation of employment; and (7) violation of Business and Professions Code § 17200, *et seq*., based on the preceding claims (the "Price Action"). Connolly Decl., ¶ 4.

On March 17, 2021, before adding a claim for Enforcement of Labor Code § 2698 et seq. ("PAGA"), Plaintiff Price provided written notice to the LWDA and Defendants regarding Defendants' alleged Labor Code violations, as required by Lab. Code § 2699.3(a). Connolly Decl., ¶ 5, Ex. 2. The LWDA did not respond to this notice, indicating it did not intend to investigate, thus allowing Plaintiff to bring a PAGA claim against Defendants. *Id.* As such, on May 25, 2022, Plaintiff Price filed her First Amended Complaint to add a claim for PAGA. *Id.* However, after Defendants provided Plaintiff with an arbitration agreement purportedly signed by her, Plaintiff agreed to dismiss her individual and class claims. *Id.* On July 7, 2022, Plaintiff Price filed a Second Amended Complaint which contains a single cause of action under PAGA. *Id.*

Plaintiff Price then proceeded with formal discovery. Connolly Decl., ¶ 6. In response to Plaintiff's written discovery requests, Defendants produced Plaintiff's personnel file, relevant policy documents, including their Employee Handbook, and information regarding the class data and the relationships between the named Defendants. *Id.*

<u>Miller Action</u>

On August 2, 2022, Plaintiff Miller filed this above-captioned case, alleging causes of action against Defendants MP Nexlevel, LLC, MP Technologies, LLC and MP NexLevel of California, Inc. for (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to permit rest breaks; (5) failure to provide accurate itemized wage statements; (6) failure to pay all wages during employment; (7) failure to pay all wages due upon separation of employment; (8) failure to keep requisite payroll records; failure to reimburse business expenses; and (9) violation of Business and Professions Code §§ 17200, et seq. ("the Miller Class Action"). On August 5, 2022, Plaintiff Miller filed a separate action alleging only a claim under PAGA in the Superior Court of California, County of San Mateo, Case No. 34-2022-00324823 ("the Miller PAGA Action"). A copy of his Plaintiff Miller's PAGA notice is attached to the declaration of Yasmin Hosseini as Exhibit 2.

<u>Settlement</u>

After initial discovery and preliminary discussions about the claims, the Parties agreed to attend private mediation. Connolly Decl., ¶ 7. To this end, Defendants informally produced a 25% sample of employees' time and payroll records. *Id.* On January 31, 2024, the Parties attended a mediation session with Tripper Ortman, a respected mediator. *Id.* Although the action did not settle at mediation, the Parties continued to work with the mediator and eventually accepted a mediator's proposal. *Id.* The Parties spent the next several months negotiating the terms of the Settlement, which was finalized and executed in December of 2024. *Id.* The negotiations were adversarial, conducted at arm's length and tempered by the efforts of both sides to serve the interests of their clients. *Id.*

On November 21, 2024, Plaintiff Miller filed a First Amended Complaint to add Elizabeth Alberta Price as a second named plaintiff and class representative and also added a PAGA claim in order to effectively consolidate the Miller Class Action, Miller PAGA Action, and Price Action. Connolly Decl., ¶ 8. Additionally, on December 10, 2024, Plaintiffs submitted an amended PAGA notice to the LWDA to add additional factual allegations in support of the alleged Labor Code violations. *Id.*, Ex. 3. On December 17, 2024, Plaintiff Price dismissed the Price Action. *Id.* at ¶ 9. Plaintiffs now seek approval of the

Settlement in this action.

On March 4, 2025, Plaintiffs submitted the Settlement and this Motion to the LWDA pursuant to Labor Code section 2699(l)(2). Connolly Decl., ¶ 10, Ex. 3 (Confirmation of Submission).

III. SUMMARY OF THE SETTLEMENT

A. Terms of Settlement

Plaintiffs and Defendants agreed to settle the class claims in exchange for a Gross Settlement Amount of $1,085,000.00. 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 $50,000.00; (4) an Incentive Award of not more than $7,500.00 for Plaintiff Elizabeth Alberta Price and $15,000.00 for Plaintiff Darin Miller; (5) Settlement Administration fees and costs of $9,250; and (6) a payment to the LWDA of $100,000.00 pursuant to PAGA. *Id.* at § 3.2.1 – 3.2.5. The Net Settlement Amount is estimated to be $541,583.33.

Once the Court grants final approval, Defendants will have 30 days to fund the Gross Settlement Amount, assuming there are no objections. Settlement Agreement, § 4.3. Class Members' Individual Settlement Payments will then be distributed within 14 days of receipt. *Id.* at § 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. With approximately 340 Class Members, the Net Settlement Amount allocates an average of $1,592 per Class Member. The Settlement Administrator will calculate the actual estimated recovery to include in the Class Notice and provide the estimated low and high range of possible recovery at final approval. *Id.*; Settlement Agreement, Ex. A (Notice of Class Action Settlement).

The Parties have agreed to allocate $100,000.00 of the Gross Settlement Amount to the resolution of Aggrieved Employees' claims arising under PAGA. Settlement Agreement, § 3.2.5. Of this amount, 75% will go to the LWDA and the remaining 25% will be distributed to the Aggrieved Employees. Settlement Agreement, § 1.4. All Aggrieved Employees are bound to the PAGA Settlement and will still be issued an Individual PAGA Payment, regardless of whether they seek exclusion from the Class Settlement. *Id.* at § 7.5. The PAGA Payment will be divided between all Aggrieved Employees in proportion to the number of pay periods that each Aggrieved Employee worked during the PAGA Period. *Id.* at § 3.2.5.1.

The Settlement Agreement is based on Defendants' estimate that there are 29,862 Total Workweeks during the Class Period. Settlement Agreement, § 4.1. As such, the Net Settlement Amount allocates approximately $18.13 per Workweek ($541,583.33/29,862=$18.13). If the number of Total Workweeks exceeds this amount by 10%, then Defendant will either pay the pro rata percentage increase in Total Workweeks, or cap the Class Period to the date 32,848 Total Workweeks are met. *Id.* at § 8. Defendant must make this election no later than five (5) days after delivering the Class Data to the Administrator after Preliminary Approval. *Id.*

The Individual Settlement Payments to Class Members will be allocated for tax purposes as follows: 20% to wages; 80% to penalties and interest. Settlement Agreement, § 3.2.4.1. The Individual PAGA Payments to be distributed to the Aggrieved Employees are to be considered 100% penalties. *Id.* at § 3.2.5.2. The employer-side payroll taxes on the portion allocated to wages will be paid by Defendants separately from, and in addition to the Gross Settlement Amount. *Id.* at § 4.3. No portion of the Gross Settlement Amount will revert to Defendants. *Id.* at § 3.1. Prior to this distribution, the Settlement Administrator will perform a search based on the National Change of Address database. *Id.* at § 7.4.2. Funds from uncashed or undeliverable checks will be tendered by the Settlement Administrator to the State Controller Unclaimed Property Fund in the name of the Class Member for whom the funds are designated. *Id.* at § 4.4.3.

B. Proposed Class Notice, Opt-Out, and Objection Process

The Parties have agreed to appoint Phoenix Settlement Administrators as the Settlement Administrator in this Action, as it has provided the lowest bid while still maintaining a history of providing trustworthy services. Settlement Agreement, § 1.2; Connolly Decl., ¶ 27.

Defendants will have 15 days after the Court grants preliminary approval to produce the Class Data to the Settlement Administrator. Settlement Agreement, § 4.2. The Settlement Administrator will then have 14 days from receipt to send the Notice of Class Action Settlement ("Class Notice") by first-class mail after checking for updated addresses through the National Change of Address database. § 8.4.2. The Class Notice will be sent in English and Spanish. *Id.* The Class Notice provides information regarding the nature of the lawsuit, a summary of the substance of the settlement terms, the formula for calculating Individual Settlement Payments, the individual's estimated payout, a statement that Class Members who take no action will release their claims and receive settlement checks, instructions regarding how to dispute the calculations, instructions regarding how to request exclusion or object to the Settlement, the date for the final approval hearing, the amounts sought for attorneys' fees and costs, the Settlement Administration Costs, the class representatives' Service Payments, the PAGA allocation, and information on how to access the court's website to view the case records. *See* Settlement Agreement, Ex. A (Class Notice). The Settlement Administrator will also establish and maintain a website to post copies of the Settlement Agreement, this Motion, the Preliminary Approval Order, an example Class Notice, the Motion for Final Approval, and the Final Approval Order and Judgment. Settlement Agreement, § 8.8.1. Since Phoenix has not yet been appointed as the Settlement Administrator, no website has yet to be established, but will prior to the mailing of the Class Notice. Connolly Decl., ¶ 28.

The Class Notice provides instructions for Class Members who choose to exclude themselves from the Settlement. *See* Class Notice. To opt out, Class Members are instructed to submit a Request for Exclusion to the Settlement Administrator by a specified date (60 days after the date of mailing of the Class Notice). *Id.* at pp. 1, 6. Class Members do not need to submit a claim form to participate in the Settlement. *See* Settlement Agreement, Ex. A (Class Notice), p. 1. Class Members are informed of how they can object to the Settlement, and the Class Notice informs Class Members of the date, time, and location of the final fairness and approval hearing so that they can appear in person. *Id.* at pp. 1, 7. Accordingly, the content of the Class Notice complies with the requirements of Cal. R. Ct. 3.766(d).

If Class Notice packets are returned as undeliverable, the Settlement Administrator will perform a skip-trace or other search, and re-mail the Class Notice with an extended deadline, to opt out or object, of 15 days from the date of mailing or the original deadline, whichever is later. Settlement Agreement, § 1.10. The initial 60-day notice period and extension process ensures the notice program provides due process by giving Class Members enough time to determine whether they want to participate in the Settlement. This means of notice is reasonably calculated to apprise Class Members of the pendency of the action. *See* California Rules of Court Rule 3.766 (d)-(f).

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C. Proposed Release

The release to be given by Class Members is limited to the Defendants MP Nexlevel of California, Inc., MP Nexlevel, LLC, and MP Technologies, LLC and any of their past, present and future direct or indirect parents, subsidiaries, predecessors, successors and affiliates, as well as each of their past, present and future officers, directors, corporate-level employees, partners, members, shareholders and agents, attorneys, insurers, reinsurers, and any individual or entity which could be jointly liable with Defendant for any of the Released Class Claims and Released PAGA Claims. ("Released Parties"). Settlement Agreement, § 1.45. Under the proposed release, Class Members who do not exclude themselves from the Settlement will be deemed to have released the Released Parties from all claims arising during the Class Period that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and PAGA Notices, which arose at any time during the Class Period. *Id.* at § 5.2.

Aggrieved Employees will also release the Released Parties from all claims for civil penalties arising during the PAGA Period that were alleged, or reasonably could have been alleged, based on the facts stated in the PAGA Notices. Settlement Agreement, § 5.3.

IV. <u>LEGAL ARGUMENTS SUPPORTING PRELIMINARY APPROVAL</u>

A. Provisional Certification of the Class is Appropriate

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

1. The Proposed Class is Numerous and Ascertainable

Whether a class is "ascertainable" is "determined by examining (1) the class definition, (2) the size of the class, and (3) the means available for identifying class members." *Reyes v. Bd. of Supervisors*, 196 Cal. App. 3d 1263, 1271 (1987). Here, the Class consists of all persons currently or formerly employed by MP Nexlevel of California, Inc. as a non-exempt employee in the State of California at any time during the Class Period of August 2, 2018 through May 15, 2024. Settlement Agreement, §§ 1.5, 1.13. Defendants' records show the Class consists of approximately 340 individuals, making joinder of all Class Members impracticable. Connolly Decl., ¶ 11. Further, the Class is readily ascertainable from

Defendants' business records because all Class Members are current or former employees of Defendants. *Id*.

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

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

a. Common Questions Predominate

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

Plaintiffs alleged that Defendants maintained uniform employment policies and/or practices that illegally deprived Class Members of lawful wages, meal periods, rest breaks, accurate wage statements, and waiting time pay. Connolly Decl., ¶ 12. Plaintiffs' allegations present common legal and factual questions of, *inter alia*, whether Defendants applied the same scheduling, timekeeping, minimum and overtime pay, meal period, and rest break policies to all Class Members; whether these policies and practices resulted in Labor Code violations; whether Defendants' conduct was intentional; and whether Class Members are entitled to penalties. *Id*.

These common questions could be resolved using Class Members' schedules, time punches, and payroll records, Defendants' corporate representative's testimony, written communications between Defendants and Class Members, and Class Member declarations. Connolly Decl., ¶ 12. Thus, the Court can and should exercise its discretion to grant conditional class certification for settlement purposes.

b. Plaintiffs' Claims are Typical of the Class Claims

The typicality requirement is satisfied when the legal theories and facts supporting Plaintiff's claims are substantially similar to other class members. *See Classen v. Weller*, 145 Cal. App. 3d 27, 46 (1983). Here, Plaintiffs alleges that they and other Class Members were employed by Defendants and injured by Defendant's common wage and hour policies and practices, including Defendant's scheduling, timekeeping, minimum wage pay, overtime pay, meal period, and rest break policies. Connolly Decl., ¶ 13. Through documents and information exchanged in formal and informal discovery, Plaintiffs confirmed that these common policies and practices similarly affected Plaintiffs and the Class. *Id.* Thus, Plaintiffs' 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. *<u>Plaintiffs and Plaintiff's Counsel Will Adequately Represent the Interests of the Proposed Class</u>*

Certification requires adequacy of both the proposed class representative(s) and proposed class counsel. With respect to the class representative, plaintiffs 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 Dep't of Developmental Servs.*, 155 Cal. App. 4th 676, 696-697 (2007). Here, Plaintiffs' interests are coextensive with the interests of the Class. Plaintiffs demonstrated an ability to advocate for the interests of the Class by initiating this litigation, gathering documents and information, being available on the day of mediation to answer questions, meeting with their attorneys on several occasions to understand the claims and theories of liability at issue, assisting attorneys in preparing for mediation, 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.

Likewise, Aegis Law Firm, PC and Lawyers for Justice, PC have expended considerable time and effort on this case and will continue to do so through final approval. *See generally,* Connolly Decl. and Hosseini Decl. Accordingly, Plaintiffs should be appointed Class Representative, and Plaintiffs' 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.*, 23 Cal. 4th 429, 435, 446 (2000);

Ghazaryan v. Diva Limousine, Ltd., 169 Cal. App. 4th 1524, 1537-1538 (2008). Here, none of the other 340 Class Members had shown any interest in bearing the expense and burden of litigating their own claims. Connolly Decl., ¶ 25. Thus, a class action is the superior method for seeking relief.

B. The Settlement Meets the Standards for Preliminary Approval

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

Reasonableness and fairness are presumed where (1) the settlement is reached through "arms-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." *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802 (1996). The Settlement satisfies the first three factors. Plaintiffs will analyze the fourth factor at the final approval stage.

1. The Settlement is Entitled to a Presumption of Fairness

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

Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered. Thus, there is a presumption that settlement negotiations are conducted in good faith. Here, the Settlement was the product of a full day mediation session with a respected mediator and continued settlement discussions after formal and informal discovery. Connolly Decl., ¶¶ 6-7. The negotiations were adversarial, conducted at arm's length and tempered by the efforts of both sides to serve the interests of their clients. *Id.* at ¶ 7. The amount of Plaintiffs' requested Class Representative Service Payments was not negotiated until after the Parties agreed to the Gross Settlement Amount and many other terms. *Id.* at ¶ 25.

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

Plaintiffs' Counsel thoroughly investigated the class claims, applicable law, and potential defenses. *See generally,* Connolly Decl. In particular, Plaintiffs' Counsel assessed the value of the class claims using Defendant's data and documents produced through formal and informal discovery and evaluating the risks. Connolly Decl., ¶¶ 6-7, 17. Plaintiffs' Counsel extensively reviewed policy documents and Class Members' time and pay records to perform a thorough exposure analysis. *Id*. Further, Plaintiffs' Counsel engaged an expert to quantify the potential exposure using the time and payroll records, and then assessed the risks associated with each of the claims meriting reductions in the likely recovery at trial. *Id.* at ¶ 13. Accordingly, Plaintiffs' Counsel fully understood the strengths and weaknesses of the claims before the Parties reached a settlement. *Id*.

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

Plaintiffs are represented by Aegis Law Firm, PC and Lawyers for Justice, PC ("Class Counsel"). Class Counsel prosecute wage and hour class actions on behalf of employees and others who have had their rights violated. Connolly Decl., ¶¶ 27-39. The attorneys working on this case have been appointed class counsel in many cases, through both contested motions and settlement approval motions. *Id.* Thus, Plaintiffs' Counsel has extensive experience in similar litigation and should be appointed as Class Counsel.

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

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

While Plaintiffs and their counsel believed and continue to believe this is a strong case for certification, the significant risks and expenses associated with class certification and liability proceedings were taken into account. Connolly Decl. ¶ 15. To determine if the amount offered at mediation was reasonable, Plaintiffs' Counsel weighed that figure against many risk factors. *Id.* at ¶ 16. If Plaintiffs continued to prosecute the claims rather than accept a settlement, Plaintiffs would have faced deadlines to file a motion for class certification, had to have engaged in more formal written discovery and taken depositions, expended time and resources to resolve disputes, prepared and filed potential dispositive motions and/or discovery motions, and engaged in extensive trial preparation. *Id.* at ¶ 17. An adverse ruling at any one of these stages could have prevented the Class from obtaining any recovery. *Id.*

a. <u>*Exposure Analysis*</u>

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

> Compromise is inherent and necessary in the settlement process . . . even if "the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be 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."

Wershba v. Apple Computer, Inc., 91 Cal. App. 4th 224, 250 (2001) (citation omitted). Here, Plaintiffs contend that their claims are based on Defendants' common, class-wide policies and procedures, and that liability could be determined on a class-wide basis without dependence on individual assessments of liability. Connolly Decl., ¶ 14. Although the amount of Defendants' potential exposure – if proven – is substantial, the legitimate and serious risks of succeeding at class certification and trial compelled a serious consideration of the benefit of a settlement. *Id.* at ¶ 16.

<u>Overtime Claim</u>: Plaintiffs' overtime claim was premised on the theory that Defendants failed to properly calculate the regular rate of pay for purposes of overtime when non-discretionary annual bonuses and per diem payments were paid. Connolly Decl., ¶ 18. Plaintiffs' expert calculated the exposure by calculating the amount of unpaid overtime in each pay period to each employee. *Id.* The expert calculated this claim using the Class Member's records of every bonus paid, hours worked, and wages paid in individual pay periods, ultimately finding $72,335 in unpaid overtime wages, which affected nearly 48% of pay periods. *Id.* However, Defendants argued that the bonuses were discretionary. *Id.* Specifically, Defendants argued that the annual bonuses were left to the choice of management, and provided evidence that not every employee received it, and that the bonus was not based on any pre-set calculation. *Id.* Further, Defendants argued that the per diem payments are considered expense reimbursements, not wages, and thus were not required to be accounted for in the

regular rate. *Id.* Accordingly, Plaintiff did consider the risk that a trial court could agree that Defendants' method of overtime compensation was correct and that class members were not owed any additional wages. *Id.* With an assumed 60% chance of success at class certification and a 40% chance at trial, the realistic value of the claim was worth about $17,360 for settlement purposes. *Id.*

<u>Meal Period Claim</u>: Plaintiff's theory of liability for meal period violations was based on the violations shown in the records. Connolly Decl., ¶ 19. Plaintiffs' expert discovered a 33.6% violation rate for all shifts over 5 hours that did not have: (1) at least a 30-minute meal period, (2) a meal period taken before the end of the fifth hour worked; or (3) did not have a second meal period if a shift was greater than 10 hours. This violation rate resulted in a maximum exposure of $808,485 in damages (90,766 shifts * 33.6% violation rate * $26.51 average rate of pay). *Id.* However, the time and pay records showed that Defendants did start making meal period premium payments in 2022, thereby reducing its damages. *Id.* Defendants also argued that they maintained policies providing compliant meal periods, that they were not responsible for policing meal periods, and that any missed breaks were the employees' personal choice to waive the break, citing to *Brinker Restaurant Corp. v. Superior Court* 53 Cal. 4th 1004, 1029 (2012), in which the Supreme Court explained that employers do not need to "police" breaks, i.e., ensure that a meal is being taken if it was provided. *See also Murphy v. Kenneth Cole Productions, Inc.*, 40 Cal. 4th 1094, 1104 (2007) (finding a violation occurs only if the employee is "forced to forgo his or her meal period"). To this end, Defendants also provided evidence of signed meal period waivers. Connolly Decl., ¶ 19. As such, Plaintiffs assumed there would be a 60% chance of success at class certification and a 40% chance of success at trial, making this claim worth around $194,036 for settlement purposes. *Id.*

<u>Rest Break Claims</u>: Plaintiff's rest break claim was based on the allegations that Defendants rest break policy illegally required employees to remain on-premises during rest breaks. Connolly Decl., ¶ 19. Plaintiffs argued that under *Augustus v. ABM Security Services*, Inc., 5 Cal.5th 257, 269 (2016), Defendants failed to relieve employees of duty during all rest breaks by requiring them to stay on-premises. *Id.* If Plaintiffs could prove a 100% violation rate for all shifts greater than 3.5 hours, then damages could reach $2,385,104 (89,970 shifts greater than 3.5 hours * $26.51). *Id.* However, Defendants provided evidence that they updated these written policies in 2021 to allow for employees

to go off premises and take duty-free breaks. *Id.* Additionally, Defendants argued that even if employees did remain on premises, they were not necessarily under Defendants' control and were still relieved of duty. *Id.* Defendants also argued that a 100% violation rate is unrealistic especially given that in practice, they did provide employees with compliant rest breaks as reflected by its compliant rest break policies. *Id.* Certification would likely have required depositions of Class Members who provided declarations, and Defendants surely would have obtained opposing declarations stating either rest breaks were taken or rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.*, 2013 WL 210223, at *11 (C.D. Cal. Jan. 17, 2013) ("Because of the competing testimony before the Court, plaintiff's evidence that defendants may have an illegal, written rest break policy is insufficient for this Court to find that common issues predominate."). As a result, Plaintiffs discounted this claim significantly to a realistic value of $500,872, assuming a 70% chance of prevailing at class certification and a 30% chance of success at trial. Connolly Decl., ¶ 19.

Derivative Waiting Time Penalties: Plaintiffs' Counsel also considered the arguable presence of various penalties, and weighed the potential recoveries against probable defenses. Connolly Decl., ¶ 21. Plaintiffs' expert calculated the derivative waiting time penalties by multiplying the separated employees' daily wage (at the final rate of pay upon separation of employment) by the number of days that the employee was not paid, up to a maximum of 30 days. *Id.* Because this claim is derivative, Plaintiffs' expert assumed that none of the terminated employees were paid all wages due given the unpaid wage violations described above. *Id.* Based on the employment data produced by Defendants, Plaintiffs' expert calculated a maximum recovery of $1,447,446 for waiting time penalties for 200 terminated employees (200 terminated employees x $26.51 average rate of pay x 30 days x 9.1 hours for average shift length). *Id.* However, Plaintiffs considered that he could not be able to prove the "willful" prong needed to obtain waiting time penalties under Labor Code section 203. *Id.* Most importantly, Plaintiffs would not recover any derivative penalties if they failed to prove the underlying claims. *Id.* Thus, Plaintiffs discounted these claims appropriately, assuming a 40% chance of class certification a 20% chance at the merits, resulting in a realistic value of $115,796 for waiting time penalties. *Id.*

Derivative Wage Statement Penalties: Plaintiffs' Counsel also calculated the wage statement penalties assuming a violation in every pay period during the liability period, assuming a $50 initial penalty and $100 subsequent penalty. Connolly Decl., ¶ 22. There were 20,676 total pay periods, meaning 338 employees would have one $50 initial violation for $16,900 (338 * $50 = $16,900), and the 20,338 subsequent pay periods would be calculated at $100 each, or $2,033,800 (20,338 * $100 = $2,033,800). *Id.* In total, this valued the wage statement claim at $2,050,700. *Id.* However, Defendants argued that Plaintiffs could not show that Class Members suffered an "injury" as a result of derivative wage statement violations, as required by Labor Code section 226. *Id.* Further, at the time of mediation, the California Supreme Court had agreed to take up the issue of an employer's defense to derivative wage statement violations if there is "a good faith dispute" as to whether were wages in *Naranjo v. Spectrum Security Services,* 15 Cal.5th 1056 (2024). *Id.* Therefore, if Defendants could show that there was a good faith dispute as to whether the Class was owed additional wages for the claims discussed above, then it was very possible that Plaintiffs would not be able to recover ***any*** derivative wage statement penalties. *Id.* Thus, Plaintiffs estimated a 40% chance of prevailing at class certification and a 20% chance of prevailing at trial, thereby discounting this claim to approximately $164,056. *Id.*

PAGA Claim: The PAGA claim presented even higher hurdles. Connolly Decl., ¶ 23. Although Plaintiff's Counsel found Defendant's exposure could potentially reach approximately $1,963,200 under Labor Code section 2699(f), assuming the initial penalty rate of $100 for all 19,632 pay periods, Plaintiff would have to prove a violation in every pay period. *Id.* This amount was calculated by multiplying 19,632 pay periods by the initial penalty rate of $100. *Id.* Plaintiffs did not use the subsequent violation rate of $200 because of binding precedent that subsequent violations under PAGA only start to accrue after employers receive notice through a citation from the Labor Commissioner. *See Amaral v. Cintas Corp.* No. 2, 163 Cal. App. 4th 1157, 1209 (2008) (holding "[u]ntil the employer has been notified that it is violating a Labor Code provision . . . the employer cannot be presumed to be aware that its continuing underpayment of employees is a 'violation' subject to penalties."). Connolly Decl., ¶ 21. Although the maximum exposure for the PAGA claim was almost $2 million, the Court would have discretion to reduce the PAGA award based on whether the amount of the award would be "unjust, arbitrary and oppressive, or confiscatory" pursuant to Labor Code section 2699(e)(2). *Id.* Notably, there are very few California appellate cases discussing PAGA issues. *Id.* In theory, the Court could reduce the award by 99% if it so wished. *Id. See, e.g. Carrington v. Starbucks Corp.*, 30

Cal.App.5th 504, 528 (2018) (awarding PAGA penalties of only 0.2% of the maximum). Plaintiffs were doubtful they could recover any PAGA penalties, especially if a large class judgment was entered for the same violations and in light of any "good faith" defense brought by Defendants. Connolly Decl., ¶ 23. Accordingly, Plaintiffs could not place a high value on the PAGA penalties, and therefore allocated $100,000 of the Gross Settlement Amount to settle these claims. *Id.* In determining the value for PAGA penalties to be included in the Settlement, Plaintiffs considered the risks described above as to each underlying claim, concluding that their best chance at trial would be to prove at least one penalty per pay period with a 10% chance of prevailing, which would result in a recovery of about $196,320. *Id.* Plaintiffs then estimated that Court could then exercise its discretion to reduce the PAGA penalties by around 50%, making the potential recovery about $98,160. *Id.* Based on the foregoing, Plaintiffs valued the PAGA penalties at a round number of $100,000. *Id.*

C. The Requested Service Payments for Plaintiffs

Plaintiffs seek Service Payments of not more than $7,500 for Plaintiff Elizabeth Alberta Price and $15,000 for Plaintiff Darin Miller for accepting the responsibilities of representing the interests of the Class and assuming risks and potential costs that were not borne by any other Class Members. Settlement Agreement, § 3.2.1. A named plaintiff is eligible for payment that reasonably compensates him or her for undertaking and fulfilling a fiduciary duty to represent absent class members. *See Cellphone Termination Fee Cases*, *supra,* 186 Cal. App. 4th at 1393; *Bell v. Farmers Ins. Exch.*, 115 Cal. App. 4th 715, 726 (2004).

Here, Plaintiffs had the option to pursue their claims individually, but instead chose to pursue this class action, delaying individual recovery until approval of a class action settlement. Connolly Decl., ¶ 24. Throughout the case, Plaintiffs assisted counsel in gathering the evidence necessary to prosecute the class claims, maintained regular contact with counsel, were available on the day of mediation and communicated with their attorneys during the day of mediation to answer critical questions, and reviewed the Settlement to make sure it was fair to the Class. *Id.* No action would likely have been taken by Class Members individually, and no compensation would have been recovered for them, but for Plaintiffs' services on behalf of the Class. *Id.*

By actively pursuing this action, Plaintiffs furthered the California public policy goal of enforcing the State's wage and hour laws. *See Sav-On Drug Stores, Inc.*, *supra*, 34 Cal. 4th at 340. The requested Service Payments for Plaintiffs' service as the class representatives and for a general release of all employment claims is reasonable and should be preliminarily approved. At the final approval stage, Plaintiffs will further support the request for the Service Awards by declaration addressing the factors for the award. Connolly Decl., ¶ 25.

D. The Requested Attorneys' Fees and Costs

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

Plaintiffs seeks appointment of Aegis Law Firm, PC and Lawyers for Justice, PC as Class Counsel. The attorneys performed significant work and expended litigation costs in prosecuting the matter with no guarantee of any payment. Connolly Decl., ¶ 43. Plaintiffs have signed a fee-split agreement with their counsel for purposes of sharing any fees awarded by this Court. *Id.* at ¶ 42. The fee-split is as follows: 67% to Aegis Law Firm, PC and 33% to Lawyers for Justice. *Id.*

Plaintiffs' Counsel seeks preliminary approval of up to one-third of the Gross Settlement Amount for attorneys fees, which is currently $361,666.67 and up to $50,000.00 in reimbursement of litigation costs. Given the work performed in this matter, the extensive information exchange, and substantial recovery obtained on behalf of Plaintiffs and the Class, Plaintiffs' Counsel achieved a settlement through efficient and diligent work. *See generally,* Connolly Decl. At final approval, Plaintiffs' Counsel will fully brief the merits of its request for the award of attorneys' fees and litigation costs. *Id.* at ¶ 44. However, as of the date of filing this Motion, Plaintiffs' Counsel have incurred $35,541.36 in costs so far. *Id.* at ¶ 45; Hosseini Decl., ¶ 13.

V. CONCLUSION

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

Dated: March 6, 2025

AEGIS LAW FIRM, PC

By: ____*/s/ Kristy R. Connolly*________________
Kristy R. Connolly
Attorneys for Plaintiffs