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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **FOR THE COUNTY OF RIVERSIDE**

16 DALE RYAN WILSON, individually and on
17 behalf of all others similarly situated,

18 Plaintiffs,

19 v.

20 IDENTITY INTELLIGENCE GROUP,
21 LLC; IDIQ INC; and DOES 1 through 20,
22 inclusive,

23 Defendants.

Case No. CVRI2200927

Assigned for All Purposes to:
Judge Harold W. Hopp
Dept. 10

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

Date: May 18, 2023

Time: 8:30 am

Dept: 10

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1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court 3.769 (d) and (e), Plaintiff Dale Wilson (“Plaintiff”)
3 requests that the Court grant preliminary approval of a class action settlement of wage and hour claims,
4 including claims under the California Private Attorneys General Act of 2004, codified at Lab. Code §
5 2698, *et seq.* (“PAGA”), against Defendant Identity Intelligence Group, LLC (“Defendant”); IDIQ Inc
6 and DOES 1 through 20, inclusive (collectively, Plaintiff and Defendant are hereafter referred to as, the
7 “Parties”). The putative class consists of approximately 245 non-exempt employees who worked for
8 Defendant in California (individually, “Class Member”; collectively, the “Class”) from from March 4,
9 2018 through January 27, 2023 (“Class Period”), The basic terms of the Settlement Agreement¹ provide
10 for the following:

- 11 (1) A non-reversionary Gross Settlement Amount of \$250,000.00 allocated to
12 approximately 245 Class Members on a pro rata basis according to the number of
13 weeks each Class Member worked during the Class Period;
- 14 (2) An award of up to one-third of the Gross Settlement Amount (currently
15 \$83,333.33) and up to \$25,000 in reimbursement of costs to Plaintiff’s Counsel for
16 services rendered as counsel on this matter;
- 17 (3) Incentive Award of up to \$10,000.00 to Plaintiff Dale Wilson;
- 18 (4) Settlement Administration fees and costs of up to \$15,000.00; and
- 19 (5) Payment to the California Labor and Workforce Development Agency (“LWDA”)
20 of \$20,000 for civil penalties pursuant to PAGA. Seventy-five percent (75%) of this
21 payment will be paid to the California Labor and Workforce Development Agency
22 (“LWDA Payment”), and twenty-five percent (25%) will be paid to the Net
23 Settlement Amount for distribution to Class Members.

24 With each Class Member allocated an average recovery of approximately \$390.00 from the Net
25

26 ¹ A true and correct copy of the fully-executed “Stipulation and Settlement of Class Action Claims” is
27 attached as **Exhibit 3** to the Declaration of Steven A. McNicholl in Support of Plaintiff’s Motion for
28 Preliminary Approval of Class Action Settlement (“McNicholl Decl.”), filed concurrently herewith.
Unless otherwise defined herein, all capitalized terms in this Motion will be used as such terms are
defined and used in the Settlement.

Settlement Amount, 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 selected ILYM Group, Inc. 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

On March 4, 2022, Plaintiff filed this action on behalf of Defendants' non-exempt employees. McNicholl Decl., ¶ 3. Plaintiff alleged the following causes of action in the original Complaint: (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 statement; (6) failure to pay all wages due upon separation of employment; (7) failure to reimburse business expenses; and (8) violation of Business and Professions Code §§ 17200, *et seq.*, based on the preceding claims. *Id.* On the same day, Plaintiff's counsel provided written notice to the LWDA and Defendant regarding Defendant's alleged Labor Code violations, as required by Lab. Code § 2699.3(a). *Id.* The LWDA did not respond to this notice, indicating it did not intend to investigate, thus allowing Plaintiff to bring a PAGA claim against Defendant. *Id.* at ¶ 4.

Through informal discovery, Plaintiff requested certain information and documents related to, *inter alia*, class employment dates, class pay rates, policy documents, time records, and pay records. *Id.* at ¶ 5. Prior to mediation, Defendants produced a 40% random sampling of pay records, time sheets, hiring and termination dates, signed on duty meal waivers, employee handbooks and employee policies for Class Members for the Class Period. *Id.* After the Parties engaged in numerous discussions, the Parties agreed to attend a private mediation session. *Id.*

On November 28, 2022, the Parties attended a mediation session with Steve Pearl, a respected mediator, and reached a settlement. *Id.* at ¶ 6. On November 30, 2022, the Parties executed a Memorandum of Understanding with the material terms the parties had agreed too. *Id.* The Parties spent the next month

1 negotiating the terms of the Settlement, which was finalized in January of 2023. *Id.* Plaintiff submitted
2 the Settlement to the LWDA pursuant to Lab. Code § 2699(1)(2). *Id.* at ¶ 7, Ex. 2 (Confirmation of
3 Submission of Settlement to LWDA).

4 **III. SUMMARY OF THE SETTLEMENT**

5 **A. Terms of Settlement**

6 Plaintiff and Defendant agreed to settle the class claims in exchange for a Gross Settlement
7 Amount of \$250,000.00. Settlement Agreement, § 3.06. However, should the number of work weeks
8 exceed 11,751 by more than 10% (i.e., 12,926 workweeks or more) as of the end of the Class Period,
9 there will be a pro rata adjustment to the Gross Settlement Amount per additional work week equal to
10 \$21.27. *Id.* at § 3.04(e). The Gross Settlement Amount will be used to make payments for the following:
11 (1) Individual Settlement Payments to Participating Class Members; (2) attorneys' fees to Class Counsel
12 of up to thirty five percent of the Gross Settlement Amount; (3) reimbursement of Class Counsel's
13 litigation costs of up to \$25,000; (4) an Incentive Award to Plaintiff of up to \$10,000.00; (5) Settlement
14 Administration fees and costs of \$15,000; and (6) a payment to the LWDA of \$20,000 pursuant to
15 PAGA. *Id.* at § 3.06(a-e). Class Members' Individual Settlement Payments will be distributed after final
16 approval of the Settlement and Defendant funds the Gross Settlement Amount. *Id.* at § 3.06(f).
17 Individual Settlement Payments will be calculated by comparing the total Qualifying Workweeks for
18 the Class to each individual Class Member's Qualifying Workweeks. *Id.* With approximately 245 Class
19 Members, the Net Settlement Amount allocates an average of approximately \$400.00 per Class Member.
20 The Settlement Administrator will calculate the actual estimated recovery to include in the Class Notice
21 and provide the estimated low and high range of possible recovery at final approval. *Id.*; Settlement
22 Agreement, Ex. A (Notice of Class Action Settlement).

23 The Individual Settlement Payments to Class Members will be allocated for tax purposes as
24 follows: 40% to wages; 60% to penalties and interest. Settlement Agreement, § 3.06(f). The employer-
25 side payroll taxes on the portion allocated to wages will be paid by Defendant separately from, and in
26 addition to the Gross Settlement Amount. *Id.* No portion of the Gross Settlement Amount will revert to
27 Defendant. *Id.* at § I. Funds from uncashed or undeliverable checks will be tendered by the Settlement
28

1 Administrator to the cy pres recipient chosen by the parties: Riverside Legal Aid, 4129 Main Street, Suite
2 101, Riverside, CA 92501. *Id.* at § 3.06(f).

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

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

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

22 If Class Notice packets are returned as undeliverable, the Settlement Administrator will perform a
23 skip-trace or other search, and re-mail the Class Notice with an extended deadline, to opt out or object, of
24 an additional 15 calendar days from the re-mailing, or 45 calendar days from the date of the initial mailing,
25 whichever is later, in which to postmark objections or requests for exclusion. Settlement Agreement, §
26 3.03. The initial 45-day notice period and extension process ensures the notice program provides due
27 process by giving Class Members enough time to determine whether they want to participate in the
28

1 Settlement. This means of notice is reasonably calculated to apprise Class Members of the pendency of
2 the action. *See* Cal. R. Ct. 3.766 (d)-(f).

3 **C. Proposed Release**

4 The release to be given by Class Members is limited to the Defendant (“Released Parties”).
5 Settlement Agreement, § I. Under the proposed release, Class Members who do not exclude themselves
6 from the Settlement will be deemed to have released or waived the following “Released Claims” against
7 the Released Parties during the period of March 4, 2018 through January 27, 2023:

8 “... any and all claims alleged in Named Plaintiffs’ Operative Complaint, during the Class Period,
9 including but not limited to (1) failure to pay minimum wages (2) failure to pay overtime wages
10 (3) failure to provide meal periods (4) failure to authorize or permit rest periods (5) failure to
11 reimburse business expenses (6) failure to furnish accurate itemized wage statements wage
statement violations (7) failure to pay wages upon separation of employment and within the
required time and (8) violation of California Business and Professions Code §§17200, *et seq.*, based
on the preceding claims.”

12 *Id* at § 5.01.

13 The State of California and PAGA Group Members will release Defendant from all claims
14 exhausted in Plaintiff’s notice sent to the LWDA and alleged in the operative complaint, which arose
15 during the PAGA Period, regardless of whether PAGA Group Members opt out of the Class Settlement.
16 Settlement Agreement, § 5.02.

17 Only Plaintiff will agree to a general release of any and all claims, whether known or unknown,
18 which exist or may exist on Plaintiff’s behalf as of the date of the Settlement, and a waiver of Civ. Code
19 § 1542. Settlement Agreement, § 5.03.

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

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

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

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

27 Whether a class is “ascertainable” is “determined by examining (1) the class definition, (2) the
28 size of the class, and (3) the means available for identifying class members.” *Reyes v. Bd. of Supervisors*,

1 196 Cal. App. 3d 1263, 1271 (1987). Here, the Class consists of all current and former non-exempt
2 employees who are and/or were employed by Defendant in California at any time from March 4, 2018
3 through January 27, 2023. Settlement Agreement, § I. Defendant's records show the Class consists of
4 approximately 245 individuals, making joinder of all Class Members impracticable. McNicholl Decl.,
5 ¶ 8. Further, the Class is readily ascertainable from Defendant's business records because all Class
6 Members are current or former employees of Defendant. *Id.*

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

8 "[T]he 'community of interest requirement embodies three factors: (1) predominant common
9 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3)
10 class representatives who can adequately represent the class.'" *Fireside Bank v. Superior Court*, 40 Cal.
11 4th 1069, 1089 (2007) (quoting *Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 470 (1981)).

12 *a. Common Questions Predominate*

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

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

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

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*, McNicholl Decl. Accordingly, Plaintiff should be appointed Class Representative, and Plaintiff's Counsel should be appointed Class Counsel.

7

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 245 Class Members had shown any interest in bearing the expense and burden of litigating their own claims. McNicholl Decl. ¶ 12. 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. Plaintiff 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 extensive investigation and a full day mediation session with a respected mediator after exchanging informal discovery. McNicholl Decl. ¶¶ 5-6. The negotiations were adversarial, conducted at arm’s length and tempered by the efforts of both

1 sides to serve the interests of their clients. *Id.* at ¶ 6. The amount of Plaintiff’s requested Incentive
2 Award was not negotiated until after the Parties agreed to the Gross Settlement Amount and many other
3 terms. *Id.* at ¶ 24.

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

5 Plaintiff’s Counsel thoroughly investigated the class claims, applicable law, and potential
6 defenses. *See generally*, McNicholl Decl. In particular, Plaintiff’s Counsel assessed the value of the
7 class claims using Defendant’s data and documents produced through informal discovery. *Id.* Plaintiff’s
8 Counsel personally reviewed policy documents, timekeeping records, and wage statements to identify
9 potential violations. *Id.* at ¶¶ 13-22. Accordingly, Plaintiff’s Counsel fully understood the strengths and
10 weaknesses of the claims before the Parties reached a settlement. *Id.* at ¶ 14.

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

12 Plaintiff is represented by Aegis Law Firm, PC (“Class Counsel”). Class Counsel prosecute wage
13 and hour class actions on behalf of employees and others who have had their rights violated. McNicholl
14 Decl. ¶¶ 26-38. The attorneys working on this case have been appointed class counsel in many cases,
15 through both contested motions and settlement approval motions. *Id.* Thus, Plaintiff’s Counsel has
16 extensive experience in similar litigation and should be appointed as Class Counsel.

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

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

23 While Plaintiff and his counsel believed and continue to believe this is a strong case for
24 certification, the significant risks and expenses associated with class certification and liability
25 proceedings were taken into account. McNicholl Decl., ¶ 13. To determine if the amount offered at
26 mediation was reasonable, Plaintiff’s Counsel weighed that figure against many risk factors. *Id.* at ¶ 14.
27 If Plaintiff continued to prosecute the claims rather than accept a settlement, Plaintiff would have faced
28 deadlines to file a motion for class certification, had to have engaged in more formal written discovery

1 and taken depositions, expended time and resources to resolve disputes, prepared and filed potential
2 dispositive motions and/or discovery motions, and engaged in extensive trial preparation. *Id.* at ¶ 15.
3 An adverse ruling at any one of these stages could have prevented the Class from obtaining any recovery.
4 *Id.*

5 a. Exposure Analysis

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

9 Compromise is inherent and necessary in the settlement process . . . even if “the relief afforded
10 by the proposed settlement is substantially narrower than it would be if the suits were to be
11 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.”

12 *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 250 (2001) (citation omitted). Here, Plaintiff
13 contends that his claims are based on Defendant’s common, class-wide policies and procedures, and
14 that liability could be determined on a class-wide basis without dependence on individual assessments
15 of liability. McNicholl Decl., ¶ 10-11. Although the amount of Defendant’s potential exposure – if
16 proven – is substantial, the legitimate and serious risks of succeeding at class certification and trial
17 compelled a serious consideration of the benefit of a settlement. *Id.* at ¶ 14.

18 Unpaid Wages Claims: Plaintiff argued that Defendant paid class members commissions and non-
19 discretionary bonuses in addition to their hourly wages but failed to include the commission and bonuses
20 in the regular rate. Plaintiff’s expert estimated the total value of such damages for failing to pay overtime
21 at the regular rate to be approximately \$6,408 based on the sample of pay and time records. McNicholl
22 Decl., ¶ 16. Defendant claimed the bonus was discretionary and not paid regularly. In addition, Plaintiff
23 argued that class members were pressured to work off-the-clock. *Id.* Plaintiff argued class members
24 were required to make sales calls during their entire shift and would be forced to draft mandatory daily
25 reports only after clocking out. *Id.* Plaintiff argued Defendant used a ranking system based on sales to
26 motivate class members to work off-the-clock. *Id.* Plaintiff’s expert estimated the total value of the off-
27 the-clock damages to be approximately \$587,488 assuming 20 minutes of off-the-clock work per work
28 day for each class member. Defendant argued that only 47 employees had the same position as Plaintiff

1 reducing the likelihood of class certification. Plaintiff estimated an 50% chance of class certification on
2 Plaintiff's unpaid wages claims, and a 25% chance at trial, making this claim worth around \$74,000 for
3 settlement purposes. *Id.*

4 Unreimbursed Business Expenses Claims: Plaintiff argued that Class Members were not
5 reimbursed for expenses related for personal cell-phone and internet. Plaintiff's expert calculated
6 unreimbursed business expenses to be valued at \$335,522.00 assuming \$109 of unreimbursed business
7 expenses per month per class member. McNicholl Decl., ¶ 17. However, Defendant argued that it
8 provided employees with \$100 COVID reimbursement pay each month. Defendant also argued that it
9 provided employees with the equipment necessary to perform their jobs. For example, Defendant
10 argued they provided a laptop and headset to Plaintiff. *Id.* Further, if Defendant was required to
11 reimburse these expenses, there is no source of common proof as to who incurred expenses and whether
12 they sought reimbursement, making the claim difficult to prove at trial. *Id.* As such, Plaintiff estimated
13 a 40% chance at class certification and 20% chance at trial, resulting in a settlement value of \$27,000.
14 *Id.*

15 Meal Period Claims: Plaintiff's meal period claim was potentially worth a maximum of about
16 \$183,136, in light of the violations shown in the records. McNicholl Decl., ¶ 18. Plaintiff argued Class
17 Members' daily time-punch data evidenced frequently missed, late, short, and interrupted first meal
18 periods. However, Defendant argued that it maintained compliant written policies. *Id.* Defendant argued
19 that all meal breaks were scheduled. *Id.* Defendant also indicated that it maintained an automatic system
20 to pay meal periods for all late, short, and missed meal breaks. *Id.* The sample of time records showed
21 119 meal premiums were paid to class members. *Id.* Plaintiff discounted the value of the meal claim
22 based on Defendant's argument that they maintained facially compliant meal period policies within its
23 employee handbooks and other policies. *Id.* Defendant argued that, in light of its compliant meal period
24 policy, Plaintiff's meal period claims could not be jointly adjudicated due to the prevalence of
25 individualized inquiries, including whether employees choose to skip or take a late break. Thus,
26 Plaintiff discounted this claim for the risk that the damages could at least be reduced, and that the claim
27 would be hard to certify with a compliant policy. However, Plaintiff estimated a 50% chance of
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certifying his meal period claims and a 30% chance of success at trial. Thus, Plaintiff valued his meal period claim at around \$27,000 for settlement purposes. *Id.*

Rest Break Claim: Plaintiff alleged that Defendant failed to provide all uninterrupted rest breaks. McNicholl Decl., ¶ 19. Plaintiff's expert valued his rest break claim at \$1,215,467 assuming a 100% violation rate. *Id.* Defendant maintained that they had a compliant rest break policy and scheduled all rest breaks. *Id.* Certification of the rest break claim likely would have required depositions of Class Members who provided declarations, and Defendant would likely have obtained opposing declarations stating rest breaks were taken, significantly decreasing the likelihood of certification. In addition, Plaintiff would is not likely to establish a rest break violation of 100% through testimony. *Id.* Plaintiff estimated a 40% chance of class certification and a 10% chance at trial, making this claim worth around \$49,000 for settlement purposes. *Id.*

Wage Statement Penalties: Plaintiff's Counsel investigated and evaluated direct and derivative claims for failure to accurate itemized wage statements. McNicholl Decl., ¶ 20. Plaintiff argued the either the employer's name or address was incorrect on class member wage statements. *Id.* Defendant argued that the facial deficiencies were not present in any wage statements. *Id.* Defendant also argued that the name on the pay stub was a registered dba of Defendant. Additionally, Defendant argued that Plaintiff could not show that Class Members suffered an "injury" as a result of "knowing and intentional" wage statement violations as required by Cal. Lab. Code § 226. Defendant also argued that Plaintiff's wage statement claim would fail if the wage statements contained all required information; that the wage statements accurately reflected gross and net wages paid by the employer and the rates at which those wage were paid). *Id.* Using the start and end dates of employment and capping the penalties at \$4,000 per person, Plaintiff calculated a maximum of \$264,693. *Id.* In light of the above, Plaintiff estimated an 80% chance at class certification and a 30% chance at trial, valuing the wage statement claim at roughly \$64,000. *Id.*

Derivative Waiting Time: Plaintiff investigated and evaluated the claim for waiting time penalties. McNicholl Decl., ¶ 21. Plaintiff did discover evidence of direct waiting time violations in the time and pay records provided by Defendant. *Id.* In addition, waiting time penalties would be derivative of, and rise or fall, with Plaintiff's other claims. *Id.* While Plaintiff is confident that it can establish the existence of

1 unpaid wages, Defendant could argue that Plaintiff could not prove the “willful” prong needed to obtain
2 waiting time penalties, and that there is a good faith dispute that any unpaid wages are due. Based on the
3 documents and data produced by Defendant, Plaintiff’s expert calculated \$586,923 in waiting time
4 penalties. *Id.* Plaintiff estimated an 70% chance at class certification and a 30% chance at trial, making
5 this claim worth about \$123,000. *Id.*

6 PAGA Claim: The PAGA claim presented even higher hurdles. Although Plaintiff’s Counsel
7 found Defendant’s exposure could potentially reach \$269,900 under Lab. Code § 2699(f), assuming the
8 initial penalty rate of \$100 for each pay period, Plaintiff would have to prove a violation in every pay
9 period. McNicholl Decl., ¶ 22. Most importantly, the Court would have discretion to reduce the PAGA
10 award based on whether the amount of the award would be “unjust, arbitrary and oppressive, or
11 confiscatory.” Lab. Code § 2699(e)(2). *Id.* In theory, the Court could reduce the award by 99% if it so
12 wished. *Id.* Plaintiff was doubtful she could recover all PAGA penalties, especially if a large class
13 judgment was entered for the same violations. *Id.* Accordingly, Plaintiff could not place a high value on
14 the PAGA penalties, and therefore allocated \$20,000 of the Gross Settlement Amount to settle these
15 claims. *Id.*

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

17 Plaintiff seeks an Incentive Award of up to \$10,000 for accepting the responsibilities of
18 representing the interests of the Class and assuming risks and potential costs that were not borne by any
19 other Class Members. Settlement Agreement, § 3.06(d). A named plaintiff is eligible for payment that
20 reasonably compensates him or her for undertaking and fulfilling a fiduciary duty to represent absent
21 class members. *See Cellphone Termination Fee Cases, supra*, 186 Cal. App. 4th at 1393; *Bell v. Farmers*
22 *Ins. Exch.*, 115 Cal. App. 4th 715, 726 (2004).

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

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

9 **D. The Requested Attorneys' Fees and Costs**

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

17 Plaintiff seeks appointment of Aegis Law Firm, PC as Class Counsel. The attorneys performed
18 significant work and expended litigation costs in prosecuting the matter with no guarantee of any
19 payment. McNicholl Decl., ¶ 39. Plaintiff's Counsel seeks preliminary approval for attorney's fees in
20 the amount of thirty three percent of the Gross Settlement Amount, which is currently estimated to be
21 \$83,333.33, and up to \$25,000 in reimbursement of litigation costs. Given the work performed in this
22 matter, the extensive information exchange, and substantial recovery obtained on behalf of Plaintiff and
23 the Class, Plaintiff's Counsel achieved a settlement through efficient and diligent work. *See generally*,
24 McNicholl Decl. At final approval, Plaintiff's Counsel will fully brief the merits of its request for the
25 award of attorneys' fees and litigation costs. *Id.* at ¶ 40.

26 **V. CONCLUSION**

27 The Parties have negotiated a fair and reasonable Settlement of the class claims in light of the
28 risks present in this case. Plaintiff has appropriately presented the materials and information necessary

1 for preliminarily approval, and therefore, respectfully requests that the Court preliminarily approve the
2 Settlement and schedule a date to conduct the final approval hearing.

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4 Dated: April 27, 2023

AEGIS LAW FIRM, PC

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6 By: Steven McNicholl
7 Steven A. McNicholl
8 Attorneys for Plaintiff
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