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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

SHAUNDA SCOTT, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

THE CHILDREN'S CLINIC 'SERVING
CHILDREN AND THEIR FAMILIES'; and
DOES 1 through 20, inclusive,

Defendants.

Case No. 22STCV12577

Assigned for all purposes to:

Hon. Judge Kenneth R. Freeman; Dept. 14

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

Date: March 21, 2024

Time: 10:00 a.m.

Dept: 14

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1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court 3.769 (d) and (e), Plaintiff Shaunda Scott (“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 Defendant The Children’s Clinic ‘Serving Children and Their Families’
6 (“Defendant”) (collectively, Plaintiff and Defendant referred to as the “Parties”). The putative class
7 consists of approximately 574 current and former non-exempt employees who worked for Defendant in
8 the State of California (individually, “Class Member”; collectively, “Class Members”) from October 17,
9 2017 to June 22, 2023 (the “Class Period”). The basic terms of the Class Action and PAGA Settlement
10 Agreement and Class Notice (“Settlement Agreement” or “Settlement”)¹ provide for the following:

- 11 (1) A non-reversionary Gross Settlement Amount of \$1,700,000.00 allocated to
12 approximately 574 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 \$566,666.67) and up to \$30,000.00 in reimbursement of costs to Plaintiff’s
16 Counsel for services rendered as counsel on this matter;
17 (3) Service Payment of up to \$10,000.00 to the Named Plaintiff;
18 (4) Settlement Administration fees and costs of up to \$8,750.00; and
19 (5) Allocations of \$50,000 for resolution of civil penalties under PAGA. Seventy-five
20 percent (75%) of this payment will be paid to the California Labor and Workforce
21 Development Agency (“LWDA Payment”), and twenty-five percent (25%) will be
22 paid to Class Members who worked for Defendant during the PAGA Period.

23 With each Class Member allocated an average recovery of approximately \$1,800.00 from the Net
24 Settlement Amount, the Settlement satisfies the criteria for preliminary approval and falls well within

25
26 ¹ A true and correct copy of the fully-executed “Class Action and PAGA Settlement Agreement and
27 Class Notice” is attached as **Exhibit 1** to the Declaration of Jessica L. Campbell in Support of Plaintiff’s
28 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 the range of reasonableness given the risks and costs of continued litigation. The Settlement was reached
2 through informed, arm's-length bargaining at and after a mediation between experienced attorneys. As
3 such, Plaintiff requests that the Court grant preliminary approval of the Settlement, conditionally certify
4 the Class for settlement purposes only, appoint Plaintiff as the Class Representative, appoint Plaintiff's
5 Counsel as Class Counsel, appoint Phoenix Class Action Administration Solutions as the Settlement
6 Administrator, authorize the Settlement Administrator to send notice of the Settlement, and set a final
7 approval hearing date.

8 **II. SUMMARY OF THE LITIGATION**

9 On April 14, 2022, Plaintiff's counsel provided written notice to the LWDA and Defendant
10 regarding Defendant's alleged Labor Code violations, as required by Lab. Code § 2699.3(a). (Campbell
11 Decl., ¶ 3, Ex. 3.) The LWDA did not respond to this notice, indicating it did not intend to investigate,
12 thus allowing Plaintiff to bring a PAGA claim against Defendant. (*Id.*) On April 14, 2022, Plaintiff filed
13 a putative class action on behalf of Defendant's non-exempt employees alleging the following causes of
14 action: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal
15 periods; (4) failure to permit rest breaks; (5) failure to reimburse business expenses; (6) failure to provide
16 accurate itemized wage statements; (7) failure to pay wages timely during employment; (8) failure to pay
17 all wages due upon separation of employment; and (9) violation of Business and Professions Code §
18 17200, *et seq.* for the preceding claims. (*Id.*)

19 On August 24, 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. Defendant informally produced a 15% sampling of
22 Class Members' timekeeping and payroll records, and its policy documents and employee handbooks.
23 (Campbell Decl., ¶ 5.)

24 On March 22, 2023, the Parties attended a mediation session with Tripper Ortman, Esq., a respected
25 mediator. (Campbell Decl., ¶ 6.) After a full day of negotiating and subsequent negotiations in the months
26 that followed the mediation, the Parties agreed to a settlement amount and executed a Memorandum of
27 Understanding, with the material terms the Parties had agreed to, on May 5, 2023. (*Id.*) The Parties spent
28 the next few months negotiating the full terms of the Settlement, which was finalized in August of 2023.

(*Id.*) On September 1, 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 Defendant agreed to settle the class claims in exchange for a Gross Settlement Amount of \$1,700,000. (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 \$30,000; (4) a Service Payment to Plaintiff of up to \$10,000; (5) Settlement Administration fees and costs of \$8,750; and (6) a payment to the LWDA of \$37,500 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 Defendant 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 Class Notice will only be provided in English because Class Members have the ability to read and comprehend English. (See Settlement Agreement, § 1.11; Declaration of Dr. Elisa Nicholas, ¶¶ 2, 5.)

The Individual Settlement Payments will be allocated 20% to wages; 80% to interest and penalties for tax purposes. (*Id.* at § 3.2.4.1.) Defendant 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 Controller Unclaimed Property Fund in the Class Member’s name for whom the funds are designated. (*Id.* at § 4.4.3.) The Gross Settlement Amount will not revert to Defendant. (*Id.* at § 3.1.)

B. Proposed Opt-Out and Objection Process

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

1 will 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 Defendant 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 that were alleged, or reasonably could have been alleged, based on the facts stated in
7 the Operative Complaint and ascertained in the course of the Action, including but not limited to
8 (1) all claims for failure to pay minimum wages; (2) all claims for failure to pay overtime wages;
9 all claims for failure to provide meal periods; (4) all claims for failure to permit rest breaks; (5)
10 all claims for failure to reimburse business expenses; (6) all claims for failure to provide accurate
11 itemized wage statements; (7) all claims for failure to pay wages timely during employment; (8) all
12 claims for failure to pay all wages due upon separation of employment; and (9) all claims for
13 violation of Business and Professions Code §§ 17200 *et seq.*”

14 (*Id.* at § 5.2.)

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

17 “all claims for PAGA penalties that were alleged or reasonably could have been alleged, based
18 on the facts stated in the Operative Complaint, the PAGA Notice, and ascertained in the course
19 of the Action, including but not necessarily limited to violations of Labor Code §§ 201, 202, 203,
20 204, 210, 226, 226.3, 226.7, 246, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197,
21 1197.1, 1198, 2800, 2802, 2698, 2699, 2699.3, and 2699.5.”

22 (*Id.* at § 5.3.)

23 Additionally, Plaintiff will be deemed to have released all potential claims, except for:

24 “(1) claims that were asserted in her complaint filed with the California Civil Rights Department
25 (CRD matter Number: 202303-20119030), or any other claims under the California Fair
26 Employment Housing Act (“FEHA”) that may be amended to such complaint; (2) wrongful
27 termination in violation of public policy; (3) whistleblower retaliation in violation of Labor Code
28 § 1102.2; (4) Negligent retention, supervision and hiring; and (5) Intentional infliction of
emotional distress.”

(*Id.* at § 5.1.1–5.1.2.) Plaintiff’s aforementioned claims are being adjudicated separate and apart from
this action and no part of the Settlement is intended to compensate Plaintiff for those claims. Plaintiff
also releases all known or unknown claims under Civil Code § 1542, aside from the above exclusions.

(*Id.* at § 5.1.1.)

IV. LEGAL ARGUMENTS SUPPORTING PRELIMINARY APPROVAL

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

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

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

7 Whether a class is “ascertainable” is “determined by examining (1) the class definition, (2) the
8 size of the class, and (3) the means available for identifying class members.” (*Reyes v. Bd. of Supervisors*
9 (1987) 196 Cal. App. 3d 1263, 1271.) Here, the Class consists of all current and former non-exempt
10 employees who worked for Defendant in the State of California at any time from October 17, 2017 and
11 June 22, 2023. (Settlement Agreement, §§ 1.5 & 1.11.) Defendant’s records show the Class consists of
12 approximately 574 individuals, making joinder of all Class Members impracticable. (Campbell Decl., ¶
13 8.) Further, the Class is readily ascertainable from Defendant’s business records because all Class
14 Members are current or former employees of Defendant. (*Id.*)

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

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

20 a. Common Questions Predominate

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

26 Plaintiff alleged that Defendant maintained employment policies and/or practices that illegally
27 deprived Class Members of lawful wages, meal periods, rest breaks, business expense reimbursement,
28 accurate wage statements, payment of all wages upon separation from employment, and waiting time pay.

(Campbell Decl., ¶ 9.) Plaintiff's allegations present common legal and factual questions of, *inter alia*, whether Defendant 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 Defendant's 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, Defendant's corporate representative's testimony, written communications between Defendant and Class Members, and Class Member declarations. (*Id.*) Thus, the Court can and should exercise its discretion to grant conditional class certification for settlement purposes.

b. Plaintiff's 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* (1983) 145 Cal. App. 3d 27, 46.) Here, Plaintiff alleges that she and other Class Members were employed by Defendant 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 practices and policies. (Declaration of Shaunda Scott ("Scott Decl.") ¶¶ 4–8) Through documents and information exchanged in informal discovery, including production of policy documents by Defendant, 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 her attorneys on several occasions to understand the claims and theories of

1 liability at issue, reviewing the proposed settlement agreement to understand its legal effect, and
2 obtaining a fair settlement on behalf of Class Members who stand to recover a substantial amount under
3 the Settlement. (Scott Decl., ¶¶ 4–8; Campbell Decl., ¶ 25.)

4 Likewise, Aegis Law Firm, PC has expended considerable time and effort on this case and will
5 continue to do so through final approval. (*See generally*, Campbell Decl.) Accordingly, Plaintiff should
6 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**

8 Class treatment is superior to other methods of adjudication when the probability is small that
9 each class member will come forward to prove his or her claim and when the class approach would deter
10 and redress the alleged wrongdoing. (*See Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 435, 446;
11 *Ghazaryan v. Diva Limousine, Ltd.*, (2008) 169 Cal. App. 4th 1524, 1537-1538.) Here, none of the other
12 574 Class Members had shown any interest in bearing the expense and burden of litigating their own
13 claims. (Campbell Decl., ¶ 25.) Thus, a class action is the superior method for seeking relief.

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

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

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

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

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

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

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

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

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

21 Plaintiff is represented by Aegis Law Firm, PC (“Class Counsel”). Class Counsel prosecute wage
22 and hour class actions on behalf of employees and others who have had their rights violated. (Campbell
23 Decl., ¶¶ 28–41.) The attorneys working on this case have been appointed class counsel in many cases,
24 through both contested motions and settlement approval motions. (*Id.*) Thus, Plaintiff’s Counsel has
25 extensive experience in similar litigation and should be appointed as Class Counsel.

26 **2. The Settlement is Reasonable Given the Strengths of Plaintiff’s Claims and**
27 **the Risks and Expense of Further Litigation**
28

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.* (2010) 186 Cal. App. 4th 399, 407; *see also Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, 129.)

While Plaintiff and her 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. (Campbell Decl., ¶ 12.) To determine if the amount negotiated was reasonable, Plaintiff’s Counsel weighed that figure against many risk factors. (*Id.* at ¶ 13). If Plaintiff continued to prosecute the claims rather than accept a settlement, Plaintiff 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 ¶ 14.) An adverse ruling at any one of these stages could have prevented the Class from obtaining any recovery. (*Id.*)

a. Exposure Analysis

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* (1991) 220 Cal. App. 3d 1117, 1139.) 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.* (2001) 91 Cal. App. 4th 224, 250 (citation omitted).) Here, Plaintiff contends that her claims are based on Defendant’s common, class-wide policies and procedures, and that liability could be determined on a class-wide basis without dependence on individual assessments of liability. (Campbell Decl., ¶ 11.) Although the amount of Defendant’s potential exposure—if proven—is substantial, the legitimate and serious risks of succeeding at class certification and trial compelled consideration of the benefit of a settlement. (*Id.* at ¶ 13.)

Minimum Wage and Overtime Claims: Plaintiff’s minimum wage and overtime claims are premised on the following theories: (1) Defendant allegedly paid non-discretionary bonuses to Class

Members, but failed to include the bonuses in their calculations of regular rates of pay; and (2) Defendant allegedly failed to compensate Class Members for submitting to off-the-clock COVID-19 temperature screenings before they could begin working. (Campbell Decl., ¶ 15.) An expert retained by Plaintiff's Counsel calculated a potential exposure of approximately \$363,000. (*Id.*) However, Defendant could defeat these claims by proving the bonuses were discretionary and the COVID-19 screenings were compensated. (*Id.*) Accordingly, Plaintiff's counsel believed there was a 75% chance of success at class certification and 50% chance of success on the merits at trial, rendering the claim worth approximately \$136,125. (*Id.*)

Meal Period Claims: Plaintiff's meal period claim was premised on the theories that (1) Defendant allegedly failed to provide Class Members with second meal periods during scheduled 10–12-hour shifts; and (2) Defendant failed to pay meal premiums to Class Members. (Campbell Decl., ¶ 16.) Plaintiff's expert analyzed the employment data received from Defendant, and calculated that the meal period claim was potentially worth approximately \$815,000. (*Id.*) However, Defendant argued that its meal period policies facially complied with the law and Class Members waived their second meal periods. (*Id.*) As such, Plaintiff's Counsel believed there was a 50% chance at class certification and a 50% chance at trial on Plaintiff's meal period claim, resulting in a value of approximately \$203,750. (*Id.*)

Rest Period Claims: Plaintiff's rest period claim was premised on the theories that (1) Defendant allegedly interrupted Class Members' rest breaks by requiring them to stay on Defendant's premises, forcing them to work through their rest period to complete their work, and failing to schedule their breaks at appropriate intervals; and (2) Defendant failed to pay rest premiums. (Campbell Decl., ¶ 17.) After analyzing Class Members' time and pay data, Plaintiff's expert estimated that the rest break claim was potentially worth approximately \$4,300,000. (*Id.*)

However, Defendant argued that its rest period policies facially complied with the law. (*Id.*) Whether Class Members were relieved of all duty for rest breaks would have required depositions of Class Members, and Defendants likely would have obtained opposing declarations stating rest breaks were adequately taken or voluntarily waived, significantly decreasing the likelihood of class certification. (*Id.*; see also, e.g., *Rai v. CVS Caremark Corp.* (C.D. Cal. Oct. 11, 2013) 2013 U.S. Dist.

1 LEXIS 177730 (denying certification of rest break claims where competing testimony regarding actual
2 practice meant adjudication would involve predominantly individual issues); *Gonzalez v. OfficeMax*
3 *North Am.* (C.D. Cal. Nov. 5, 2012) 2012 U.S. Dist. LEXIS 163853, at *9–12 (denying certification on
4 predominance grounds where plaintiff offered no evidence that a uniform rest break policy was
5 implemented uniformly)). For this reason, Plaintiff’s counsel estimated that there would be a 40%
6 chance of succeeding at class certification and a 40% chance at trial on Plaintiff’s rest break claim,
7 resulting in a value of around \$688,000. (*Id.*)

8 Waiting Time and Wage Statement Penalties: Plaintiff’s Counsel considered the arguable presence
9 of various derivative penalties, and weighed the potential recoveries against probable defenses. (Campbell
10 Decl., ¶ 18.) Specifically, Defendant could argue that Plaintiff could not prove the “willful” prong needed
11 to obtain waiting time penalties under Labor Code § 203; Plaintiff could not show that Class Members
12 suffered an “injury” as a result of wage statement violations, as required by Labor Code § 226; or that the
13 wage statements correctly reflected the wages paid and owed. (*Id.*) Although the Class could have seen a
14 potential payout of approximately \$1,100,000 for waiting time penalties and approximately \$1,500,000
15 for wage statement penalties, Plaintiff would not recover any of these derivative penalties if she failed to
16 prove the underlying claims. (*Id.*) Thus, Plaintiff discounted these claims assuming a 50% chance of class
17 certification and 50% chance at the merits for both claims, resulting in a realistic value of approximately
18 \$275,000 for the waiting time claim and around \$375,000 for the wage statement claim. (*Id.*)

19 PAGA Claim: The PAGA claim presented even higher hurdles. (Campbell Decl., ¶ 19.) Plaintiff’s
20 expert analyzed the employment data provided by Defendant and found that Defendant’s exposure could
21 potentially reach approximately \$1,570,000 under Lab. Code § 2699(f), assuming the initial penalty rate
22 of \$100 for each pay period. (*Id.*) However, to recover that amount, Plaintiff would have to prove a
23 violation in every pay period. (*Id.*) Most importantly, the Court would have discretion to reduce the
24 PAGA award based on whether the amount of the award would be “unjust, arbitrary and oppressive, or
25 confiscatory.” Lab. Code § 2699(e)(2). In theory, the Court could reduce the award by 99% if it so
26 wished. Plaintiff was doubtful she could recover any PAGA penalties, especially if a large class
27 judgment was entered for the same violations. Accordingly, Plaintiff could not place a high value on
28 the PAGA penalties, and therefore allocated \$50,000 of the Gross Settlement Amount to settle these

claims. (*See Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) 2009 U.S. Dist. LEXIS 33900 at *24 (finding amount of PAGA penalties reasonable where the amounts are negotiated in good faith and “there is no indication that [the] amount was the result of self-interest at the expense of other Class Members”); *Nordstrom Comm’n Cases* (2010) 186 Cal.App.4th 576, 579 (“trial court did not abuse its discretion in approving a settlement which does not allocate any damages to the PAGA claims”).)

Thus, given the realistic exposure to Defendant, the settlement amount of \$1,700,000 is reasonable, fair, and proper.

b. Exposure Analysis

Plaintiff and Defendant agreed that in lieu of providing the data of all Class Members in discovery, Defendant would provide Plaintiff’s data and a sampling of the Class Members’ data, using methods that ensured the sampling would adequately represent the claims and damages of the class. (Campbell Decl. ¶ 20.) Through this sampling of data, Plaintiff received a statistically reliable portrait of the Class Members’ hours and potential damages. (*Id.*) In total, Defendant produced an approximate 15% data sampling of the Class Members within the Class Period. (*Id.*) Since the Class Size consists of approximately 574 employees an approximately 15% sample size during the Class Period resulted in Plaintiff actually analyzing and investigating the time and pay records of 86 Class Members. (*Id.*)

Courts typically determine whether a sample size is statistically appropriate by analyzing whether the data sample is randomly selected, evaluating the extent of variability within the sample, removing any selection bias, and analyzing the margin of error. (*See Duran v. U.S. Bank National Assn.* (2014) 59 Cal.4th 1, 42–44.) Plaintiff and Defendant agreed to use a randomized sampling method to analyze the Class Members’ employment data. The data collection was determined by Defendant providing, anonymously, all Class Member’s employment identification numbers, and Plaintiff randomly selecting employment identification numbers to analyze their employment records. (Campbell Decl. at ¶ 21.) When performing the selection of employment data, no Class Members were excluded from the list generated to create the sample, and Plaintiff’s employment data was requested separately from the rest of the Class Members so as not to create a biased sample. (*Id.*)

Courts also typically use a 95% confidence level and find large margin of error percentages (over 30%) violative of due process. (*Duran*, 59 Cal.4th, 46–48.) Using Defendant’s 15% sampling size

1 resulted in a confidence level of over 95% in the accuracy of the sample’s data, and contained an
2 approximate margin of error of 9.8%. (Campbell Decl. at ¶ 22.) The 95% confidence level and 9.8%
3 margin of error are based on a sample size calculator by Survey Monkey
4 (<http://surveymonkey.com/mp/sample-size-calculator/>). (*Id.*) The sample size calculator uses a formula
5 that advises the survey conductor of how large a sample size is needed to achieve a specified confidence
6 level in their sample size (between 80 – 99%) and a margin of error of less than 10%. (*Id.*) Survey
7 Monkey is a feedback platform that is owned and operated by Momentive Global Inc., who has a Better
8 Business Bureau rating of A+, posted revenue of \$118.8 million in the first quarter of 2023, and is on
9 the NASDAQ securities market, according to their First Quarter Financial Results Press Release. (*Id.*)

10 Prior to mediation, the expert retained by Plaintiff’s counsel analyzed Defendant’s sample data,
11 and calculated damages that were relied upon for mediation. (Campbell Decl. at ¶ 23.) For example, the
12 expert analyzed 37,030 of the Class Members’ shifts. (*Id.*) Of the shifts analyzed, approximately 90.6%
13 were at least six hours in length, and nearly 53% were at least eight hours in length. (*Id.*) The lack of
14 variation in shift length between the sampling of Class Members reinforces Survey Monkey’s analysis
15 that the sample had a low variability and margin of error, which is statistically reliable and significant.

16 Requiring Defendant to produce all of the Class Members’ time and pay records would not
17 provide a more reliable data set than the sample analyzed by Plaintiff. (Campbell Decl. at ¶ 24.)

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

19 Plaintiff seeks a Service Award of up to \$10,000 for accepting the responsibilities of representing
20 the interests of the Class and assuming risks and potential costs that were not borne by any other Class
21 Members. (Settlement Agreement, § 3.2.1.) A named plaintiff is eligible for payment that reasonably
22 compensates him or her for undertaking and fulfilling a fiduciary duty to represent absent class
23 members. (*See Cellphone Termination Fee Cases, supra*, 186 Cal. App. 4th at 1393-94 (“The rationale
24 for making enhancement or incentive awards to named plaintiffs is that they should be compensated for
25 the expense or risk they have incurred in conferring a benefit to other members of the class”); *Bell v.*
26 *Farmers Ins. Exch.* (2004) 115 Cal. App. 4th 715, 726.) In evaluating the propriety of enhancement
27 awards, courts consider the following relevant factors, including: (1) the time and effort put into the
28 litigation and the degree to which the class has benefitted from those actions, (2) the duration of the

1 litigation, (3) a comparison between the service awards range of monetary recovery available to the
2 class, (4) whether the litigation will further the public policy underling the statutory scheme, and (5)
3 risks to the class representatives in participating in the lawsuit, including financial exposure, retaliation,
4 and negative notoriety related to the lawsuit. (*See, e.g., Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d
5 938, 977; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 301 F.Supp. 294, 299.)

6 Plaintiff had the option to pursue her claims individually, but instead chose to pursue this class
7 action, delaying individual recovery until approval of a class action settlement. (Campbell Decl., ¶ 25.)
8 Throughout the case, Plaintiff assisted counsel in gathering the evidence necessary to prosecute the class
9 claims, maintained regular contact with counsel, was available on the day of mediation and
10 communicated with her attorneys during the day of mediation to answer critical questions, reviewed the
11 Settlement to make sure it was fair to the Class, and otherwise assisted the action as needed since this
12 action was filed approximately sixteen months ago (February 2022). (*Id.*; Scott Decl., ¶¶ 4–8.) No action
13 would likely have been taken by Class Members individually, and no compensation would have been
14 recovered for them, but for Plaintiff’s services on the Class’s behalf. (Campbell Decl., ¶ 25.)

15 By actively pursuing this action, Plaintiff also furthered the California public policy goal of
16 enforcing the State’s wage and hour laws. (*See Sav-On Drug Stores, Inc., supra*, 34 Cal. 4th at 340.)
17 The requested Service Award for Plaintiff’s service as the class representative and for a general release
18 of all employment claims is reasonable and should be preliminarily approved. At the final approval
19 stage, Plaintiff will further support the request for the Service by declarations addressing the factors for
20 the award. (Campbell Decl., ¶ 27.)

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

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

1 Plaintiff seeks appointment of Aegis Law Firm, PC as Class Counsel. The attorneys performed
2 significant work and expended litigation costs in prosecuting the matter with no guarantee of any
3 payment. (Campbell Decl., ¶ 42.) Plaintiff's Counsel seeks preliminary approval for \$566,666.67 in
4 attorneys' fees, which is up to one-third of the Gross Settlement Amount, and up to \$30,000.00 in
5 reimbursement of litigation costs. (Settlement Agreement § 3.2.2.) Given the work performed in this
6 matter, the extensive information exchange, and substantial recovery obtained on behalf of Plaintiff and
7 the Class, Plaintiff's Counsel achieved a settlement through efficient and diligent work. (*See generally*,
8 Campbell Decl.) At final approval, Plaintiff's Counsel will fully brief the merits of its request for the
9 award of attorneys' fees and litigation costs. (*Id.* at ¶ 38.)

10 **V. CONCLUSION**

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

15 Dated: September 1, 2023

AEGIS LAW FIRM, PC

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17 By: /s/ Jessica L. Campbell
18 Jessica L. Campbell
19 Attorneys for Plaintiff
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