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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **FOR THE COUNTY OF SONOMA**

15 HUEY ROUNDTREE, individually and on
16 behalf of all others similarly situated,

17 Plaintiff,

18 vs.

19 STOESSER INDUSTRIES; SCIENTIFIC
20 MOLDING CORPORATION, LTD; and
21 DOES 1 through 20, inclusive,

22 Defendants.

Case No. SCV-270587

Assigned for all purposes to

Hon. Oscar A. Pardo

Courtroom 19

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

Date: September 27, 2023

Time: 3:00 pm

Dept: 19

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1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court 3.769 (d) and (e), Plaintiff Huey Roundtree (“Plaintiff”)
3 requests that the Court grant preliminary approval of a class action settlement of wage and hour
4 claims, including claims under the California Private Attorneys General Act of 2004, codified at Lab.
5 Code § 2698, *et seq.* (“PAGA”), against Defendants Stoesser Industries; Scientific Molding
6 Corporation, LTD; and DOES 1 through 20, inclusive (“Defendant”) (collectively, Plaintiff and
7 Defendant referred to as, the “Parties”). The putative class consists of approximately 349 non-exempt
8 employees who worked for Defendant in California (individually, “Class Member”; collectively, the
9 “Class”) from October 17, 2017 through March 18, 2023 (the “Class Period”). The basic terms of the
10 Joint Stipulation of Settlement (“Settlement Agreement” or “Settlement”)¹ provide for the following:

- 11 (1) A non-reversionary Gross Settlement Amount of \$1,000,000 allocated to
12 approximately 349 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 \$333,333.33) and up to \$25,000 in reimbursement of costs to Plaintiff’s Counsel
16 for services rendered as counsel on this matter;
17 (3) Incentive Award of up to \$10,000.00 to Plaintiff Huey Roundtree;
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
20 (“LWDA”) of \$50,000 for civil penalties pursuant to PAGA. Seventy-five percent
21 (75%) of this payment will be paid to the California Labor and Workforce
22 Development Agency (“LWDA Payment”), and twenty-five percent (25%) will
23 be paid to the Net Settlement Amount for distribution to Class Members.

24 With each Class Member allocated an average recovery of approximately \$1,500 from the Net
25

26 ¹ A true and correct copy of the fully-executed “Joint Stipulation of Settlement” is attached as **Exhibit**
27 **1** to the Declaration of Steven A. McNicholl in Support of Plaintiff’s Motion for Preliminary Approval
28 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.

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

9 **II. SUMMARY OF THE LITIGATION**

10 On April 13, 2023, Plaintiff's counsel provided written notice to the LWDA and Defendant
11 regarding Defendant's alleged Labor Code violations, as required by Lab. Code § 2699.3(a). McNicholl
12 Decl., ¶ 3. The LWDA did not respond to this notice, indicating it did not intend to investigate, thus
13 allowing Plaintiff to bring a PAGA claim against Defendant. *Id.* On April 13, 2023, Plaintiff filed this
14 action on behalf of Defendant's non-exempt employees. Plaintiff alleges the following causes of action
15 in the operative Complaint: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3)
16 failure to provide meal periods; (4) failure to permit rest breaks; (5) failure to provide accurate wage
17 statements; (6) failure to pay all wages timely and upon separation of employment; (7) violation of
18 Business and Professions Code § 17200, *et seq.*, based on the preceding claims; and (8) enforcement of
19 Lab. Code § 2698, *et seq.* ("PAGA"), for the preceding claims. *Id.* at ¶ 4.

20 Through informal discovery, Plaintiff requested certain information and documents related to,
21 *inter alia*, class employment dates, class pay rates, policy documents, time records, and pay records. *Id.*
22 at ¶ 5. Prior to mediation, Defendants produced an approximately 25% random sampling of pay records,
23 time sheets, hiring and termination dates, employee handbooks and employee policies for Class
24 Members for the Class Period. *Id.* After the Parties engaged in numerous discussions, the Parties agreed
25 to attend a private mediation session. *Id.*

26 On February 16, 2023, the Parties attended a mediation session with Steve G. Pearl, a respected
27 mediator, and reached a settlement. *Id.* at ¶ 6. After a full day of negotiating, the Parties agreed to a
28 settlement amount. *Id.* On February 21, 2023, the Parties executed a Memorandum of Understanding

1 with the material terms the parties had agreed to. *Id.* The Parties spent the next few months negotiating
2 the terms of the Settlement, which was finalized in July of 2023. *Id.* Plaintiff submitted the Settlement
3 to the LWDA pursuant to Lab. Code § 2699(1)(2). *Id.* at ¶ 7, Ex. 2 (Confirmation of Submission of
4 Settlement to LWDA).

5 **III. SUMMARY OF THE SETTLEMENT**

6 **A. Terms of Settlement**

7 Plaintiff and Defendant agreed to settle the class claims in exchange for a Gross Settlement
8 Amount of \$1,000,000.00. Settlement Agreement, § 3.06(a). The Gross Settlement Amount will be
9 used to make payments for the following: (1) Individual Settlement Payments to Participating Class
10 Members; (2) attorneys' fees to Class Counsel of up to one-third of the Gross Settlement Amount; (3)
11 reimbursement of Class Counsel's litigation costs of up to \$25,000; (4) an Incentive Award to Plaintiff
12 of up to \$10,000.00; (5) Settlement Administration fees and costs of \$15,000; and (6) a payment to the
13 LWDA of \$50,000 pursuant to PAGA. *Id.* at § 3.06(a-f). Class Members' Individual Settlement
14 Payments will be distributed after final approval of the Settlement and Defendant funds the Gross
15 Settlement Amount. *Id.* at § 3.06(f). Individual Settlement Payments will be calculated by comparing
16 the total Qualifying Workweeks for the Class to each individual Class Member's Qualifying
17 Workweeks. Settlement Agreement, § 3.06(f). With approximately 349 Class Members, the Net
18 Settlement Amount allocates an average of \$1,500 per Class Member. The Settlement Administrator
19 will calculate the actual estimated recovery to include in the Class Notice and provide the estimated
20 low and high range of possible recovery at final approval. *Id.*; Settlement Agreement, Ex. A (Notice of
21 Class Action Settlement).

22 The Individual Settlement Payments to Class Members will be allocated for tax purposes as
23 follows: 10% to wages; 90% to penalties and interest. Settlement Agreement, § 3.06(f). The employer-
24 side payroll taxes on the portion allocated to wages will be paid by Defendant separately from, and in
25 addition to the Gross Settlement Amount. *Id.* at § 3.06(a). No portion of the Gross Settlement Amount
26 will revert to Defendant. *Id.* Funds from uncashed or undeliverable checks will be tendered by the
27 Settlement Administrator to the State Controller Unclaimed Property Fund in the name of the Class
28 Member for whom the funds are designated. *Id.* at § 3.06(f).

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

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

12 The Class Notice provides instructions for Class Members who choose to exclude themselves
13 from the Settlement. *See* Settlement Agreement § 3.04(b). To opt out, Class Members are instructed to
14 submit a Request for Exclusion to the Settlement Administrator by a specified date (45 days after the
15 date of mailing of the Class Notice). *See* Settlement Agreement, Ex. A (Class Notice), pp. 1, 6-7. Class
16 Members do not need to submit a claim form to participate in the Settlement. *Id.* at p. 1. Class Members
17 are informed of how they can object to the Settlement, and the Class Notice informs Class Members of
18 the date, time, and location of the final fairness and approval hearing so that they can appear in person.
19 *Id.* at pp. 1, 6-7. Accordingly, the content of the Class Notice complies with the requirements of Cal. R.
20 Ct. 3.766(d).

21 If Class Notice packets are returned as undeliverable, the Settlement Administrator will perform a
22 skip-trace or other search, and re-mail the Class Notice with an extended deadline, to opt out or object,
23 of 15 days from the date of mailing or the original deadline, whichever is later. Settlement Agreement, §
24 3.03. The initial 45-day notice period and extension process ensures the notice program provides due
25 process by giving Class Members enough time to determine whether they want to participate in the
26 Settlement. This means of notice is reasonably calculated to apprise Class Members of the pendency of
27 the action. *See* Cal. R. Ct. 3.766 (d)-(f).

28 ///

1 **C. Proposed Release**

2 The release to be given by Class Members includes Defendant Stoesser Industries dba Scientific
3 Molding Corporation, Ltd. and its former, present and future owners, predecessors, parent companies,
4 subsidiaries, investors, affiliates, divisions, and all of their current, former and future officers, directors,
5 members, managers, employees, consultants, partners, shareholders, joint ventures, agents, successors,
6 assigns, accountants, insurers, attorneys, and representatives. (“Released Parties”). Settlement
7 Agreement, § I(ff). Under the proposed release, Class Members who do not exclude themselves from
8 the Settlement will be deemed to have released or waived the following “Released Claims” against
9 the Released Parties during the period of October 7, 2017 through March 18, 2023:

10 any and all claims, rights, demands, liabilities and causes of action of any nature or
11 description, including any such claims, whether known or unknown, that were litigated in
12 the Action against Defendant or could have been litigated based on the facts and
13 circumstances alleged in the entire Action against Defendant, arising under the Operative
14 Complaint, including but not limited to, all claims under the California Labor Code, Wage
15 Orders, and related orders of the California Industrial Commission and Business and
16 Professions Code section 17200, et seq. alleged in the Action or which could have been
17 alleged based on the facts alleged in the Action, including all of the following claims for
18 relief: (1) failure to pay minimum wages (2) failure to pay overtime wages (3) failure to
19 provide meal periods (4) failure to authorize or permit rest periods (5) failure to provide
20 accurate itemized wage statements (6) failure to pay wages timely during employment (7)
21 failure to pay wages upon separation of employment and within the required time and (8)
22 violation of California Business and Professions Code §§17200, *et seq.*, based on the
23 preceding claims (the “Released Claims”). The claims released under this paragraph shall
24 include, but not necessarily be limited to, claims for: meal period violations and failure to
25 pay compensation in lieu thereof; rest break violations and failure to pay compensation in
26 lieu thereof; failure to pay minimum wages, regular wages, overtime and double time
27 wages; all theories related to unpaid wages (including but not limited to off-the-clock work,
28 time shaving, time rounding, on-call time, working through meal periods, regular rate
claims, on-duty meal period violations, or any other claims giving rise to minimum and/or
overtime violations); unpaid meal period penalties; unpaid rest period penalties; wage
statement violations; failure to reimburse business expenses; failure to pay wages upon
separation from employment; late payment of wages; waiting time penalties; any penalties
or wages owed or derivative of violations of the Unfair Competition Law, the Labor Code,
including Labor Code section 2699, et seq., as well as any damages, restitution,
disgorgement, civil penalties, statutory penalties, taxes, interest or attorneys’ fees or costs
resulting therefrom. This release will only release such claims during the Class Period.
 (“Released Claims”).

1 *Id* at § 5.01.

2 PAGA Group Members will release the Released Parties from all causes of action and claims for
3 civil penalties under the California Labor Code Private Attorneys General Act of 2004 that were alleged
4 in the Action, in Plaintiff’s LWDA Notice, or reasonably could have been alleged based on the facts and
5 legal theories contained in the Action, including claims for civil penalties based on the following: (1)
6 failure to pay minimum wages (2) failure to pay overtime wages (3) failure to provide meal periods (4)
7 failure to authorize or permit rest periods (5) failure to provide accurate itemized wage statements (6)
8 failure to pay wages timely during employment (7) failure to pay wages upon separation of employment
9 and within the required time. This release will only release such claims during the PAGA Period,
10 regardless of whether PAGA Group Members opt out of the Class Settlement. Settlement Agreement,
11 § 5.02.

12 Only Plaintiff will agree to a general release of any and all claims, whether known or unknown,
13 which exist or may exist on Plaintiff’s behalf as of the date of the Settlement, and a waiver of Civ. Code
14 § 1542. Settlement Agreement, § 5.03.

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

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

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

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

23 Whether a class is “ascertainable” is “determined by examining (1) the class definition, (2) the
24 size of the class, and (3) the means available for identifying class members.” *Reyes v. Bd. of*
25 *Supervisors*, 196 Cal. App. 3d 1263, 1271 (1987). Here, the Class consists of all current and former
26 non-exempt employees who are and/or were employed by Defendant in California at any time from
27 October 7, 2017 through March 18, 2023. Settlement Agreement, § I(c). Defendant’s records show the
28 Class consists of approximately 349 individuals, making joinder of all Class Members impracticable.

McNicholl Decl., ¶ 8. Further, the Class is readily ascertainable from Defendant’s business records because all Class Members are current or former employees of Defendant. *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.

Plaintiff alleged that Defendant 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. McNicholl 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*, 145 Cal. App. 3d 27, 46 (1983). Here, Plaintiff alleges that he and other Class Members were employed by Defendant and

1 injured by Defendant's common wage and hour policies and practices, including Defendant's
2 scheduling, timekeeping, minimum wage pay, overtime pay, meal period, and rest break practices and
3 policies. McNicholl Decl., ¶ 10. Through documents and information exchanged in both formal and
4 informal discovery, including production of hundreds of pages of documents by Defendant, Plaintiff
5 was able to use an expert to confirm that these common policies and practices similarly affected
6 Plaintiff and the Class. *Id.* Thus, Plaintiff's claims arise from the same employment practices and are
7 based on the same legal theories as those applicable to other Class Members, as further explained in
8 Plaintiff's exposure analysis below.

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

11 Certification requires adequacy of both the proposed class representative(s) and proposed class
12 counsel. With respect to the class representative, a plaintiff must adequately represent and protect the
13 interests of other members of the class and demonstrate that his or her claim is not inconsistent with
14 the claims of other members of the class. *See Capitol People First v. State Dep't of Developmental*
15 *Servs.*, 155 Cal. App. 4th 676, 696-697 (2007). Here, Plaintiff's interests are coextensive with the
16 interests of the Class. Plaintiff demonstrated an ability to advocate for the interests of the Class by
17 initiating this litigation, gathering documents and information, being available on the day of mediation
18 to answer questions, meeting with their attorneys on several occasions to understand the claims and
19 theories of liability at issue, assisting attorneys in preparing for mediation, reviewing the proposed
20 settlement agreement to understand its legal effect, and obtaining a fair settlement on behalf of Class
21 Members who stand to recover a substantial amount under the Settlement.

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

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

26 Class treatment is superior to other methods of adjudication when the probability is small that
27 each class member will come forward to prove his or her claim and when the class approach would
28 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 349 Class Members had shown any interest in bearing the expense and burden of litigating their own claims. McNicholl Decl. ¶ 21. 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 formal and informal discovery. McNicholl Decl. ¶¶ 6, 10. 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 ¶ 6. The amount of Plaintiff’s requested Incentive Award was not negotiated until after the Parties agreed to the Gross Settlement Amount and many other terms. *Id.* at ¶ 21.

b. Plaintiff’s Counsel Conducted Sufficient Investigation and Discovery

1 Plaintiff's Counsel thoroughly investigated the class claims, applicable law, and potential
2 defenses. *See generally*, McNicholl Decl. In particular, Plaintiff's Counsel assessed the value of the
3 class claims using Defendant's data and documents produced through formal and informal discovery.
4 McNicholl Decl., ¶¶ 5, 10, 12-20. Plaintiff's counsel, with the assistance of an expert, reviewed pay
5 and timekeeping records and compared them to wage statements to identify potential violations. *Id.*
6 Accordingly, Plaintiff's Counsel fully understood the strengths and weaknesses of the claims before
7 the Parties reached a settlement. *Id.*

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

9 Plaintiff is represented by Aegis Law Firm, PC ("Class Counsel"). Class Counsel prosecute
10 wage and hour class actions on behalf of employees and others who have had their rights violated.
11 McNicholl Decl. ¶¶ 23-35. The attorneys working on this case have been appointed class counsel in
12 many cases, through both contested motions and settlement approval motions. *Id.* Thus, Plaintiff's
13 Counsel has extensive experience in similar litigation and should be appointed as Class Counsel.

14 **2. The Settlement is Reasonable Given the Strengths of Plaintiff's Claims and**
15 **the Risks and Expense of Litigation**

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

20 While Plaintiff and his counsel believed and continue to believe this is a strong case for
21 certification, the significant risks and expenses associated with class certification and liability
22 proceedings were taken into account. McNicholl Decl., ¶ 12. To determine if the amount offered at
23 mediation was reasonable, Plaintiff's Counsel weighed that figure against many risk factors. If Plaintiff
24 continued to prosecute the claims rather than accept a settlement, Plaintiff would have faced deadlines
25 to file a motion for class certification, had to have engaged in more formal written discovery and taken
26 depositions, expended time and resources to resolve disputes, prepared and filed potential dispositive
27 motions and/or discovery motions, and engaged in extensive trial preparation. An adverse ruling at
28 any one of these stages could have prevented the Class from obtaining any recovery. *Id.* at ¶¶ 13-14.

1 a. Exposure Analysis

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

5 Compromise is inherent and necessary in the settlement process . . . even if “the relief afforded
6 by the proposed settlement is substantially narrower than it would be if the suits were to be
7 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.”

8 *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 250 (2001) (citation omitted). Here, Plaintiff
9 contends that his claims are based on Defendant’s common, class-wide policies and procedures, and
10 that liability could be determined on a class-wide basis without dependence on individual assessments
11 of liability. McNicholl Decl., ¶ 11. Although the amount of Defendant’s potential exposure – if proven
12 – is substantial, the legitimate and serious risks of succeeding at class certification and trial compelled
13 a serious consideration of the benefit of a settlement. *Id.* at ¶¶ 15-21.

14 Waiting Time: Plaintiff’s Counsel compared termination dates to the last date of pay in the
15 time and pay records produced by Defendant. Plaintiff discovered a pattern of allegedly failing to pay
16 employees either at the time of their discharge or within seventy-two (72) hours of their leaving
17 Defendant’s employment. In addition, waiting time penalties would be derivative of, and rise or fall,
18 with Plaintiff’s other claims. While Plaintiff is confident that it can establish the existence of unpaid
19 wages, Defendant could argue that Plaintiff could not prove the “willful” prong needed to obtain waiting
20 time penalties, and that there is a good faith dispute that any unpaid wages are due. Based on the
21 documents and data produced by Defendant, Plaintiff’s expert calculated a maximum \$605,447 in
22 waiting time penalties. Plaintiff estimated an 80% chance at class certification and a 50% chance at trial
23 given the need to prove willfulness, making this claim worth about \$240,000.00. McNicholl Decl., ¶ 15.

24 Unpaid Wages due to Rounding Claims: Plaintiff’s counsel argued Defendant’s practice to
25 round time to its unfair advantage in order to save in operational costs. Although raw time-punch data
26 was maintained by Defendant, Class Member’s time was rounded to the quarter hour (*e.g.* “0.25”,
27 “0.50,” “0.75,” etc.) for each clock-in and clock-out at the beginning and end of shifts and for meal
28 periods. This resulted in cumulative unpaid wages to the benefit of Defendant. Plaintiff’s expert

1 calculated a maximum \$74,319 in unpaid wages due to rounding. Plaintiff's expert found rounding only
2 occurred prior to 2021. Defendant maintained the rounding was neutral and did not result in
3 underpayments. Plaintiff estimated an 60% chance at class certification and a 30% chance at trial,
4 valuing the unpaid wages due to rounding claim at roughly \$13,000. McNicholl Decl., ¶ 16.

5 Minimum Wage and Overtime Claims: Plaintiff's minimum wage and overtime claims were
6 premised on the theories that Defendant required Class Members to work-off-the-clock and failed to
7 properly calculate a blended overtime rate to include nondiscretionary bonuses. Plaintiff calculated
8 that these claims were worth approximately \$841,226. However, this claim is dependent on the
9 Court's finding that Defendant knew or should have known that employees were working off the
10 clock, which is difficult to satisfy on a class-wide basis. Defendant also argued the bonuses were
11 discretionary. Plaintiff estimated an 60% chance at class certification and a 30% chance at trial,
12 valuing the unpaid wages due to rounding claim at roughly \$150,000. McNicholl Decl., ¶ 17.

13 Meal Period Claims: Plaintiff's meal period claim was potentially worth about \$1,271,472, in
14 light of the violations shown in the records. Plaintiff alleged that Defendant instituted an unlawful
15 policy that failed to specify that meal periods must be provided in the first five hours of work and
16 failed to provide a second meal periods from June 7, 2010 to February 1, 2019. However, Defendant
17 argued that it maintained compliant written policies and employees could waive their meal periods.
18 Plaintiff estimated an 60% chance at class certification and a 30% chance at trial, valuing the unpaid
19 wages due to rounding claim at roughly \$225,000. McNicholl Decl., ¶ 18.

20 Rest Break Claim: Plaintiff alleges Defendant's policy failed to include the "major fraction
21 thereof" language or authorize a third rest break at all. Plaintiff also alleged the rest break policy
22 contained an illegal on-premises requirement. If Plaintiff could prove a 100% violation rate for each
23 shift over 3.5 hours, then damages could reach up to \$1,660,757. However, Defendant argued that
24 despite the written policy, Class Members were not actually required to remain on-premises and class
25 members received all rest breaks at the appropriate intervals when they wanted to take them. As such,
26 this claim would have relied on Class Member testimony, making it a riskier claim at class
27 certification and liability stages, Plaintiff estimated an 60% chance at class certification and a 30%

1 chance at trial, valuing the unpaid wages due to rounding claim at roughly \$290,000. McNicholl
2 Decl., ¶ 19.

3 Derivative Wage Statement Penalties: Plaintiff's Counsel also considered the arguable presence
4 of various penalties, and weighed the potential recoveries against probable defenses. Specifically,
5 Defendant could argue that Plaintiff could not show that Class Members suffered an "injury" as a result
6 of wage statement violations, as required by Labor Code § 226, or that the wage statements correctly
7 reflected the wages paid and owed. Moreover, Plaintiff would not recover any of these derivative
8 penalties if he failed to prove the underlying claims. Thus, although these penalty claims could have
9 reached \$812,800 if Plaintiff prevailed on every claim, they were heavily discounted. McNicholl Decl. ¶
10 20.

11 PAGA Claim: The PAGA claim presented even higher hurdles. Although Plaintiff's Counsel
12 found Defendant's exposure could potentially reach approximately \$827,000 under Lab. Code §
13 2699(f), assuming the initial penalty rate of \$100 for each pay period, Plaintiff would have to prove a
14 violation in every pay period. Most importantly, the Court would have discretion to reduce the PAGA
15 award based on whether the amount of the award would be "unjust, arbitrary and oppressive, or
16 confiscatory." Lab. Code § 2699(e)(2). In theory, the Court could reduce the award by 99% if it so
17 wished. Plaintiff was doubtful he could recover any PAGA penalties, especially if a large class
18 judgment was entered for the same violations. Accordingly, Plaintiff could not place a high value on
19 the PAGA penalties, and therefore allocated \$50,000 of the Gross Settlement Amount to settle these
20 claims. McNicholl Decl. ¶ 21.

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

22 Plaintiff seeks an Incentive Award of up to \$10,000 for accepting the responsibilities of
23 representing the interests of the Class and assuming risks and potential costs that were not borne by
24 any other Class Members. Settlement Agreement, § 3.06(d). A named plaintiff is eligible for payment
25 that reasonably compensates him or her for undertaking and fulfilling a fiduciary duty to represent
26 absent class members. *See Cellphone Termination Fee Cases, supra*, 186 Cal. App. 4th at 1393; *Bell*
27 *v. Farmers Ins. Exch.*, 115 Cal. App. 4th 715, 726 (2004).
28

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

9 By actively pursuing this action, Plaintiff furthered the California public policy goal of
10 enforcing the State's wage and hour laws. *See Sav-On Drug Stores, Inc., supra*, 34 Cal. 4th at 340.
11 The requested Incentive Award for Plaintiff's service as the class representative and for a general
12 release of all employment claims is reasonable and should be preliminarily approved. At the final
13 approval stage, Plaintiff will further support the request for an Incentive Award by declaration
14 addressing the factors for the award. McNicholl Decl., ¶ 24.

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

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

23 Plaintiff seeks appointment of Aegis Law Firm, PC as Class Counsel. The attorneys performed
24 significant work and expended litigation costs in prosecuting the matter with no guarantee of any
25 payment. McNicholl Decl., ¶ 36. Plaintiff's Counsel seeks preliminary approval for \$250,000.00 in
26 attorneys' fees, which is up to one-third of the Gross Settlement Amount, and up to \$25,000 in
27 reimbursement of litigation costs. Given the work performed in this matter, the extensive information
28 exchange, and substantial recovery obtained on behalf of Plaintiff and the Class, Plaintiff's Counsel

1 achieved a settlement through efficient and diligent work. *See generally*, McNicholl Decl. At final
2 approval, Plaintiff's Counsel will fully brief the merits of its request for the award of attorneys' fees
3 and litigation costs. *Id.* at ¶ 39.

4 **V. CONCLUSION**

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

9
10 Dated: August 25, 2023

AEGIS LAW FIRM, PC

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12 By: Steven McNicholl
13 Steven A. McNicholl
14 Attorneys for Plaintiff
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