

1 **AEGIS LAW FIRM, PC**

2 KASHIF HAQUE, State Bar No. 218672

3 SAMUEL A. WONG, State Bar No. 217104

4 JESSICA L. CAMPBELL, State Bar No. 280626

5 KRISTY R. CONNOLLY, State Bar No. 328477

6 9811 Irvine Center Drive, Suite 100

7 Irvine, California 92618

8 Telephone: (949) 379-6250

9 Facsimile: (949) 379-6251

10 kconnolly@aegislawfirm.com

11 Attorneys for Plaintiff Xenia Cesilia De Alba, individually,
12 and on behalf of all others similarly situated.

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

14 **FOR THE COUNTY OF SAN JOAQUIN**

15 XENIA CESILIA DE ALBA, individually
16 and on behalf of all others similarly situated,

17 Plaintiff,

18 vs.

19 COGIR MANAGEMENT USA INC.;
20 WELLTOWER COGIR TENANT, LLC;
21 and DOES 1 through 20, inclusive,

22 Defendants.

Case No. STK-CV-UOE-2022-0007961

*Assigned for all purposes to
Hon. Barbara Kronlund
Dept. 10D*

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

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	SUMMARY OF THE LITIGATION.....	2
III.	SUMMARY OF THE SETTLEMENT	3
A.	Terms of Settlement.....	3
B.	Proposed Opt-Out and Exclusion Process.....	4
C.	Proposed Release	5
IV.	LEGAL ARGUMENTS SUPPORTING PRELIMINARY APPROVAL.....	6
A.	Provisional Certification of the Class is Appropriate	6
1.	The Proposed Class is Numerous and Ascertainable	6
2.	A Well-Defined Community of Interest Exists Among Class Members.....	7
a.	Common Questions Predominate	6
b.	Plaintiff; Claims are Typical of the Class Claims.....	7
c.	Plaintiff's and Plaintiff's Counsel Will Adequately Represent the Interests of the Proposed Class	7
3.	A Class Action is Superior to a Multitude of Individual Lawsuits	7
B.	The Settlement Meets the Standards for Preliminary Approval.....	8
1.	The Settlement is Entitled to a Presumption of Fairness	9
a.	The Settlement is the Result of Arm's Length Negotiations	9
b.	Plaintiff's Counsel Conducted Sufficient Investigation and Discovery	9
c.	Plaintiff's Counsel is Experienced in Similar Litigation.....	9
2.	The Settlement is Reasonable Given the Strengths of Plaintiff's Claims and the Risks and Expense of Litigation	10
a.	Exposure Analysis.....	10
C.	The Requested Incentive Award for Plaintiff.....	11
D.	The Requested Attorneys' Fees and Costs	12
V.	CONCLUSION.....	13

TABLE OF AUTHORITIES

Page(s)

Cases

<i>Bell v. Farmers Ins. Exch.</i> , 115 Cal. App. 4th 715 (2004).....	12
<i>Brinker Restaurant Corp. v. Superior Court</i> , 53 Cal. 4th 1004 (2012)	6
<i>Capitol People First v. State Dep't of Developmental Servs.</i> , 155 Cal. App. 4th 676 (2007).....	7
<i>Chavez v. Netflix, Inc.</i> , 162 Cal. App. 4th 43 (2008).....	12
<i>Classen v. Weller</i> , 145 Cal. App. 3d 27 (1983).....	6
<i>Dunk v. Ford Motor Co.</i> , 48 Cal. App. 4th 1794 (1996).....	8
<i>Fireside Bank v. Superior Court</i> , 40 Cal. 4th 1069 (2007)	6
<i>Ghazaryan v. Diva Limousine, Ltd.</i> , 169 Cal. App. 4th 1524 (2008).....	8
<i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal. App. 4th 116 (2008).....	9
<i>Linder v. Thrifty Oil Co.</i> , 23 Cal. 4th 429 (2000)	8
<i>Munoz v. BCI Coca-Cola Bottling Co. of L.A.</i> , 186 Cal. App. 4th 399 (2010).....	9
<i>North County Contractor's Ass'n., Inc. v. Touchstone Ins. Servs.</i> , 27 Cal. App. 4th 1085 (1994).....	8
<i>Rebney v. Wells Fargo Bank</i> , 220 Cal. App. 3d 1117 (1991).....	10
<i>Reyes v. Bd. of Supervisors</i> , 196 Cal. App. 3d 1263 (1987).....	6
<i>Sav-On Drug Stores, Inc. v. Superior Court</i> , 34 Cal. 4th 319 (2004)	6, 12

1	<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal. App. 4th 224 (2001).....	10
---	--	----

2 **Statutes**

3	Business and Professions Code § 17200, <i>et seq</i>	2, 5
---	--	------

4	Civ. Code § 1542	5
---	------------------------	---

5	Lab. Code § 203	11
---	-----------------------	----

6	Lab. Code § 226	11
---	-----------------------	----

7	Lab. Code § 2698, <i>et seq</i> (.California Private Attorneys General Act of 2004-PAGA).....	<i>passim</i>
---	--	---------------

9	Lab. Code § 2699(e)(2)	11
---	------------------------------	----

10	Lab. Code § 2699(f)	11
----	---------------------------	----

11	Lab. Code § 2699(l)(2).....	3
----	-----------------------------	---

12	Lab. Code § 2699.3(a).....	2
----	----------------------------	---

13 **Other Authorities**

14	Cal. R. Ct. 3.766(d)	4
----	----------------------------	---

15	Cal. R. Ct. 3.766 (d)-(f).....	4
----	--------------------------------	---

16 **Treatises**

17	Conte & Newberg, <i>Newberg on Class Actions</i> , § 11.26 (4th ed. 2002)	8
----	---	---

1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court 3.769 (d) and (e), Plaintiff Xenia Cesilia De Alba
3 (“Plaintiff”) requests that the Court grant preliminary approval of a class action settlement of wage and
4 hour claims, including claims under the California Private Attorneys General Act of 2004, codified at
5 Lab. Code § 2698, *et seq.* (“PAGA”), against Defendants Cogir Management USA Inc. and Welltower
6 Cogir Tenant, LLC (“Defendants”) (collectively, Plaintiff and Defendants referred to as, the “Parties”).
7 The putative class consists of approximately 1,500 non-exempt employees who worked for Defendants
8 in California (individually, “Class Member”; collectively, the “Class”) from April 15, 2021, through
9 February 14, 2024 (the “Class Period”). The basic terms of the Joint Stipulation of Settlement
10 (“Settlement Agreement” or “Settlement”)¹ provide for the following:

- 11 (1) A non-reversionary Gross Settlement Amount of \$3,000,000.00 allocated to
12 approximately 1,500 Class Members on a pro rata basis according to the number
13 of 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 \$1,000,000.00) and up to \$55,000.00 in reimbursement of costs to Plaintiff’s
16 Counsel for services rendered as counsel on this matter;
17 (3) Incentive Award of up to \$20,000.00 for Plaintiff;
18 (4) Settlement Administration fees and costs of up to \$19,500; and
19 (5) Allocations of \$100,000 for resolution of civil penalties under PAGA. Seventy-
20 five percent (75%) of this payment will be paid to the California Labor and
21 Workforce Development Agency (“LWDA Payment”), and twenty-five percent
22 (25%) will be paid to Class Members who worked for Defendants during the
23 PAGA Period (the “PAGA Group Members”).
24

25
26 ¹ A true and correct copy of the fully-executed “Joint Stipulation of Settlement” is attached as **Exhibit 1**
27 to the Declaration of Kristy R. Connolly in Support of Plaintiff’s Motion for Preliminary Approval of
28 Class Action Settlement (“Connolly Decl.”), filed concurrently herewith. Unless otherwise defined
herein, all capitalized terms in this Motion will be used as such terms are defined and used in the
Settlement.

1 With each Class Member allocated an average recovery of approximately \$1,207 from the Net
2 Settlement Amount, the Settlement satisfies the criteria for preliminary approval and falls well within
3 the range of reasonableness given the risks and costs of continued litigation. The Settlement was reached
4 through informed, arms-length bargaining at and after mediation between experienced attorneys. As
5 such, Plaintiff requests that the Court grant preliminary approval of the Settlement, conditionally certify
6 the Class for settlement purposes only, appoint Plaintiff as the Class Representative, appoint Plaintiff's
7 Counsel as Class Counsel, appoint Phoenix Settlement Administrators, Inc, as the Settlement
8 Administrator, authorize the Settlement Administrator to send notice of the Settlement, and set a final
9 approval hearing date.

10 **II. SUMMARY OF THE LITIGATION**

11 On June 30, 2020, Plaintiff's counsel provided written notice to the LWDA and Defendants
12 regarding Defendant's alleged Labor Code violations, as required by Lab. Code § 2699.3(a). Connolly
13 Decl., ¶ 3. The LWDA did not respond to this notice, indicating it did not intend to investigate, thus
14 allowing Plaintiff to bring a PAGA claim against Defendants. *Id.* On June 30, 2020, Plaintiff filed a class
15 action on behalf of Defendants' non-exempt employees, which Defendants removed to the United States
16 District Court on September 7, 2022 (the "Federal Court Action"). *Id.* at ¶ 4. Plaintiff alleged the following
17 causes of action: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to
18 provide meal periods; (4) failure to permit rest breaks; (5) failure to provide accurate wage statements; (6)
19 failure to pay all wages timely and upon separation of employment; (7) violation of Business and
20 Professions Code § 17200, *et seq.*, based on the preceding claims. *Id.*

21 While the class action was pending in federal court, Plaintiff filed this separate action as a PAGA-
22 only case in the Superior Court of California (the "State Court Action"). Connolly Decl., ¶ 5. On March
23 15, 2023, this Court stayed the State Court Action pending the resolution of the Federal Court Action. *Id.*

24 In the Federal Court Action, the Parties engaged in significant formal discovery. Connolly Decl., ¶
25 6. Both Parties served and responded to Interrogatories and Requests for Production of Documents. *Id.*
26 Through formal discovery, Defendant produced a significant amount of documents and information,
27 including Plaintiff's personnel file, relevant policy documents, the class members' contact information,
28 and a 20% sample of class members' timekeeping and pay records. *Id.* After formal discovery and

engaging in numerous discussions between the Parties' attorneys, the Parties agreed to attend a private mediation session. *Id.* To prepare for mediation, Plaintiff's counsel worked with experts to analyze time-keeping and payroll data related to the claims in order to evaluate the potential damages and penalties. *Id.*

On June 12, 2023, the Parties attended private mediation with David Rotman, a respected wage and hour mediator. Connolly Decl., ¶ 7. The action did not settle. *Id.* Accordingly, the Parties again proceeded with litigation. *Id.* at ¶ 8. Defendant took Plaintiff's deposition and Plaintiff took the deposition of Defendant's representative. *Id.* Plaintiff's counsel also spent considerable time preparing the Motion for Class Certification, including engaging an expert to provide opinions at the certification stage. *Id.*

On February 6, 2024, the Parties attended a second day of mediation with Jeff Ross, a respected wage and hour mediator. Connolly Decl., ¶ 9. After a full day of negotiating, the Parties agreed to a settlement amount and executed a Memorandum of Understanding with the material terms the parties had agreed to. *Id.* The Parties spent the next few months negotiating the terms of the Settlement, which was finalized in July of 2024. *Id.* The negotiations were adversarial, conducted at arm's length and tempered by the efforts of both sides to serve the interests of their clients. *Id.*

Pursuant to the terms of the Settlement, the Parties stipulated to stay the Federal Court Action pending approval of the Settlement in the State Court Action before this Court. Connolly Decl., ¶ 10. To that end, the Parties agreed that Plaintiffs would file a First Amended Complaint in the State Court Action to allege the class claims asserted in the Federal Court Action. *Id.* Plaintiff's First Amended Complaint was filed on May 24, 2024. *Id.*

On July 25, 2024, Plaintiff submitted the Settlement to the LWDA pursuant to Lab. Code § 2699(1)(2). Connolly Decl., ¶ 10, Ex. 2.

III. SUMMARY OF THE SETTLEMENT

A. Terms of Settlement

Plaintiff and Defendants agreed to settle the class claims in exchange for a Gross Settlement Amount of \$3,000,000.00. Settlement Agreement, § 3.07(a). 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 \$55,000.00; (4) an Incentive Award up to

1 \$20,000.00 for Plaintiff; (5) Settlement Administration fees and costs of \$19,500.00; and (6) a payment
2 to the LWDA of \$75,000.00 pursuant to PAGA. *Id.* at § 3.07(a-e). Defendants will fund the Gross
3 Settlement Amount within 15 days after the Court signs the final approval order, unless there are any
4 objections to the settlement, in which case Defendants will fund after the time for appeals expires. *Id.*
5 at § 3.07(a). Class Members' Individual Settlement Payments will be distributed 10 days after
6 Defendants funds the Gross Settlement Amount. *Id.* Individual Settlement Payments will be calculated
7 by comparing the total Qualifying Workweeks for the Class to each individual Class Member's
8 Qualifying Workweeks. *Id.* at § 3.07(f). With approximately 1,500 Class Members, the Net Settlement
9 Amount allocates an average of \$1,207 per Class Member. The Settlement Administrator will calculate
10 the actual estimated recovery to include in the Class Notice and provide the estimated low and high
11 range of possible recovery at final approval. Settlement Agreement, Ex. A (Notice of Class Action
12 Settlement).

13 The Individual Settlement Payments to Class Members will be allocated for tax purposes as
14 follows: 20% to wages; 80% to penalties and interest. Settlement Agreement, § 3.07(f). The employer-
15 side payroll taxes on the portion allocated to wages will be paid by Defendants separately from, and in
16 addition to the Gross Settlement Amount. *Id.* at § 3.07(f). No portion of the Gross Settlement Amount
17 will revert to Defendants. *Id.* Funds from uncashed or undeliverable checks will be tendered by the
18 Settlement Administrator to the Manteca Children's Foundation, the *cy pres* designated by the Parties. *Id.*
19 at § 3.07(f).

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

21 The Settlement Administrator will send Class Members the Notice of Class Action Settlement
22 ("Class Notice") by first-class mail after checking for updated addresses through the National Change of
23 Address database. Settlement Agreement, § 3.03. The Class Notice provides information regarding the
24 nature of the lawsuit, a summary of the substance of the settlement terms, the formula for calculating
25 Individual Settlement Payments, the individual's estimated payout, a statement that Class Members who
26 take no action will release their claims and receive settlement checks, instructions regarding how to
27 dispute the calculations, instructions regarding how to request exclusion or object to the Settlement, the
28 date for the final approval hearing, the amounts sought for attorneys' fees and costs, the Settlement

1 Administration Costs, the Class Representative's Incentive Award, and the PAGA allocation.. *See*
2 Settlement Agreement, Ex. A (Class Notice).

3 The Class Notice provides instructions for Class Members who choose to exclude themselves
4 from the Settlement. *See* Settlement Agreement § 3.05(b). To opt out, Class Members are instructed to
5 submit a Request for Exclusion to the Settlement Administrator by a specified date (60 days after the date
6 of mailing of the Class Notice). *See* Settlement Agreement, Ex. A (Class Notice), pp. 1, 6-7. Class
7 Members do not need to submit a claim form to participate in the Settlement. *Id.* at p. 1. Class Members
8 are informed of how they can object to the Settlement, and the Class Notice informs Class Members of
9 the date, time, and location of the final fairness and approval hearing so that they can appear in person.
10 *Id.* at pp. 1, 6-7. Accordingly, the content of the Class Notice complies with the requirements of Cal. R.
11 Ct. 3.766(d).

12 If Class Notice packets are returned as undeliverable, the Settlement Administrator will perform a
13 skip-trace or other search, and re-mail the Class Notice with an extended deadline, to opt out or object, of
14 15 days from the date of mailing or the original deadline, whichever is later. Settlement Agreement, §
15 3.04. The initial 45-day notice period and extension process ensures the notice program provides due
16 process by giving Class Members enough time to determine whether they want to participate in the
17 Settlement. This means of notice is reasonably calculated to apprise Class Members of the pendency of
18 the action. *See* Cal. R. Ct. 3.766 (d)-(f).

19 **C. Proposed Release**

20 The release to be given by Class Members is limited to the Defendants any of its former and
21 present parents, subsidiaries, direct or indirect holding companies, investors, sister and affiliated
22 companies, divisions, and other related entities, as well as their successors, predecessors, shareholders,
23 officers, directors, partners, assigns, agents, employees, principals, heirs, administrators, attorneys,
24 vendors, accountants, auditors, consultants, fiduciaries, insurers, reinsurers, employee benefit plans,
25 and representatives, both individually and in their official capacities, past or present, as well as persons
26 acting by, through, under, or in concert with any of these persons or entities, including, but not limited
27 to, entities holding ownership interests in Defendants ("Released Parties"). Settlement Agreement, §
28 I(11). Under the proposed release, Class Members who do not exclude themselves from the Settlement

1 will be deemed to have released or waived the following “Released Claims” against the Released
2 Parties during the period of April 15, 2021, through February 14, 2024:

3 all claims, judgments, liens, losses, debts, liabilities, demands, obligations, guarantees,
4 penalties (including but not limited to waiting time penalties and all other penalties
5 available under the California Labor Code), costs, expenses, attorneys’ fees, damages,
6 indemnities, actions, causes of action, and obligations of every kind and nature in law,
7 equity, or otherwise, known or unknown, suspected or unsuspected, disclosed or
8 undisclosed, contingent or accrued, that were or could have reasonably been alleged based
9 upon the facts pleaded in the Federal Action, including, but not limited to, off-the-clock
10 claims, claims based upon Wage Order No. 5, related to the following claims, (1) Failure
11 To Pay Minimum Wages (Violation of Labor Code §§ 1194, 1194.2, and 1197; Violation
12 of IWC Wage Order §3-4); (2) Failure To Pay Overtime Wages (Violation of Labor Code
13 §§ 510, 1194, and 1198; Violation of IWC Wage Order §3); (3) Failure To Provide Meal
14 Periods (Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order § 11);
15 (4) Failure To Permit Rest Breaks (Violation of Labor Code §§ 226.7; Violation of IWC
16 Wage Order § 12); (5) Failure to Reimburse Business Expenses (Violation of Labor Code
17 §§ 2800, 2802); (6) Failure To Provide Accurate Itemized Wage Statements (Violation of
18 Labor Code § 226; Violation of IWC Wage Order); (7) Failure to Pay Wages Timely
19 During Employment (Violation of Labor Code §§ 204, 210); (8) Failure To Pay All Wages
20 Due Upon Separation Of Employment (Violation of Labor Code §§ 201, 202, and 203);
21 and (9) Violation of California Business and Professions Code §§17200, et seq., arising
22 out of the aforementioned claims during the Class Period.

23 *Id* at §§ I(jj), 5.01.

24 PAGA Group Members will release the Released Parties from all claims exhausted in Plaintiff’s
25 notice sent to the LWDA and alleged in the operative complaint, which arose during the PAGA Period,
26 regardless of whether PAGA Group Members opt out of the Class Settlement. Settlement Agreement,
27 §§ I(kk), 5.03.

1 Only Plaintiff will agree to a general release of any and all claims, whether known or unknown,
2 which exist or may exist on Plaintiff's behalf as of the date of the Settlement, and a waiver of Civ. Code
3 § 1542. Settlement Agreement, § 5.02.

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

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

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

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

11 Whether a class is "ascertainable" is "determined by examining (1) the class definition, (2) the
12 size of the class, and (3) the means available for identifying class members." *Reyes v. Bd. of Supervisors*,
13 196 Cal. App. 3d 1263, 1271 (1987). Here, the Class consists of all current and former non-exempt
14 employees who are or were employed by Defendants in California at any time from April 15, 2021,
15 through February 14, 2024. Settlement Agreement, § I(c). Defendants' records show the Class consists
16 of approximately 1,500 individuals, making joinder of all Class Members impracticable. Connolly
17 Decl., ¶ 12. Further, the Class is readily ascertainable from Defendants' business records because all
18 Class Members are current or former employees of Defendants. *Id.*

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

20 "[T]he 'community of interest requirement embodies three factors: (1) predominant common
21 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3)
22 class representatives who can adequately represent the class.'" *Fireside Bank v. Superior Court*, 40 Cal.
23 4th 1069, 1089 (2007) (quoting *Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 470 (1981)).

24 **a. Common Questions Predominate**

25 To assess whether common questions predominate, courts focus on whether the theories of
26 recovery advanced are likely to prove amenable to class treatment. *See Sav-On Drug Stores, Inc. v.*
27 *Superior Court*, 34 Cal. 4th 319, 327 (2004). In other words, courts determine whether the elements
28

1 necessary to establish liability are susceptible of common proof, even if the class members must
2 individually prove their damages. *Brinker, supra*, 53 Cal. 4th at 1021-1022, 1024.

3 Plaintiff alleged that Defendants maintained uniform employment policies and/or practices that
4 illegally deprived Class Members of lawful wages, meal periods, rest breaks, accurate wage statements,
5 and waiting time pay. Connolly Decl., ¶ 13. Plaintiff's allegations present common legal and factual
6 questions of, *inter alia*, whether Defendants applied the same scheduling, timekeeping, minimum and
7 overtime pay, meal period, and rest break policies to all Class Members; whether these policies and
8 practices resulted in Labor Code violations; whether Defendants' conduct was intentional; and whether
9 Class Members are entitled to penalties. *Id.* These common questions could be resolved using Class
10 Members' schedules, time punches, and payroll records, Defendants' corporate representative's
11 testimony, written communications between Defendants and Class Members, and Class Member
12 declarations. *Id.* Thus, the Court can and should exercise its discretion to grant conditional class
13 certification for settlement purposes.

14 *b. Plaintiff's Claims are Typical of the Class Claims*

15 The typicality requirement is satisfied when the legal theories and facts supporting Plaintiff's
16 claims are substantially similar to other class members. *See Classen v. Weller*, 145 Cal. App. 3d 27, 46
17 (1983). Here, Plaintiff alleges that she and other Class Members were employed by Defendants and
18 injured by Defendant's common wage and hour policies and practices, including Defendants'
19 scheduling, timekeeping, compensation, meal period, and rest break practices and policies. Connolly
20 Decl., ¶ 14. Through documents and information exchanged in formal discovery, including production
21 of thousands of pages of documents by Defendants and the Parties' depositions, Plaintiff confirmed that
22 these common policies and practices similarly affected Plaintiff and the Class. *Id.* Thus, Plaintiff's
23 claims arise from the same employment practices and are based on the same legal theories as those
24 applicable to other Class Members, as further explained in Plaintiff's exposure analysis below.

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

27 Certification requires adequacy of both the proposed class representative(s) and proposed class
28 counsel. With respect to the class representative, a plaintiff must adequately represent and protect the

1 interests of other members of the class and demonstrate that his or her claim is not inconsistent with the
2 claims of other members of the class. *See Capitol People First v. State Dep't of Developmental Servs.*,
3 155 Cal. App. 4th 676, 696-697 (2007). Here, Plaintiff's interests are coextensive with the interests of
4 the Class. Plaintiff demonstrated an ability to advocate for the interests of the Class by initiating this
5 litigation, gathering documents and information, being available on the day of mediation to answer
6 questions, meeting with their attorneys on several occasions to understand the claims and theories of
7 liability at issue, assisting attorneys in preparing for mediation, reviewing the proposed settlement
8 agreement to understand its legal effect, and obtaining a fair settlement on behalf of Class Members
9 who stand to recover a substantial amount under the Settlement.

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

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

14 Class treatment is superior to other methods of adjudication when the probability is small that
15 each class member will come forward to prove his or her claim and when the class approach would deter
16 and redress the alleged wrongdoing. *See Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 435, 446 (2000);
17 *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524, 1537-1538 (2008). Here, none of the other
18 1,500 Class Members had shown any interest in bearing the expense and burden of litigating their own
19 claims. Connolly Decl. ¶ 26. Thus, a class action is the superior method for seeking relief.

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

21 Preliminary approval is warranted if the settlement falls within a "reasonable range." *See North*
22 *County Contractor's Ass'n., Inc. v. Touchstone Ins. Servs.*, 27 Cal. App. 4th 1085, 1089-90 (1994);
23 *Conte & Newberg, Newberg on Class Actions*, § 11.26 (4th ed. 2002). In reviewing the fairness of a
24 class action settlement, due regard should be given to what is "otherwise a private consensual
25 agreement between the parties." *Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380, 1389
26 (2010). The inquiry "must be limited to the extent necessary to reach a reasoned judgment that the
27 agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties,
28 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 two full days of mediation sessions with respected mediators after formal discovery. Connolly Decl. ¶¶ 6-9. 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 ¶ 9. 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 ¶ 27.

b. Plaintiff’s Counsel Conducted Sufficient Investigation and Discovery

Plaintiff’s Counsel thoroughly investigated the class claims, applicable law, and potential defenses. *See generally*, Connolly Decl. In particular, Plaintiff’s Counsel assessed the value of the class claims using Defendant’s data and documents produced through formal discovery as well as lengthy deposition testimony. Connolly Decl., ¶¶ 6-8. Plaintiff’s counsel also interviewed Class Members and extensively reviewed policy documents and Class Members’ time and pay records to perform a thorough analysis. *Id.* at ¶ 6. Further, Plaintiff’s Counsel engaged an expert to quantify the potential exposure using the time and payroll records, and then assessed the risks associated with each of the claims meriting reductions in the likely recovery at trial. *Id.* Accordingly, Plaintiff’s Counsel fully understood the strengths and weaknesses of the claims before the Parties reached a settlement.

c. Plaintiff’s Counsel is Experienced in Similar Litigation

Plaintiff is represented by Aegis Law Firm, PC (“Class Counsel”). Class Counsel prosecute wage and hour class actions on behalf of employees and others who have had their rights violated. Connolly

Decl. ¶¶ 29-41. The attorneys working on this case have been appointed class counsel in many cases, through both contested motions and settlement approval motions. *Id.* Thus, Plaintiff's Counsel has extensive experience in similar litigation and should be appointed as Class Counsel.

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

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

While 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. Connolly Decl., ¶ 16. To determine if the amount offered at mediation was reasonable, Plaintiff's Counsel weighed that figure against many risk factors. *Id.* at ¶ 17. 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 additional depositions, expended time and resources to resolve disputes, prepared and filed potential dispositive motions and/or discovery motions, and engaged in extensive trial preparation. An adverse ruling at any one of these stages could have prevented the Class from obtaining any recovery. *Id.* at ¶ 18.

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*, 220 Cal. App. 3d 1117, 1139 (1991). Rather, compromise is expected:

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

Wershba v. Apple Computer, Inc., 91 Cal. App. 4th 224, 250 (2001) (citation omitted). Here, Plaintiff contends that her claims are based on Defendants' common, class-wide policies and procedures, and

1 that liability could be determined on a class-wide basis without dependence on individual assessments
2 of liability. Connolly Decl., ¶ 15. Although the amount of Defendant's potential exposure – if proven –
3 is substantial, the legitimate and serious risks of succeeding at class certification and trial compelled a
4 serious consideration of the benefit of a settlement. *Id.* at ¶ 17.

5 Minimum Wage and Overtime Claims: Plaintiff's minimum wage and overtime claims were
6 premised on the theories that Defendants failed to compensate class members for all time worked,
7 including by requiring them to conduct temperature checks and health screenings prior to clocking in
8 for work. Assuming unpaid wages of five minutes per shift, Plaintiff's expert calculated a maximum
9 exposure of \$690,142. However, because any time spent completing the Covid-19 screenings was not
10 recorded, this theory would be largely dependent on competing testimonial evidence about Defendants'
11 practices. Plaintiff would need supportive testimony through depositions and declarations (which will
12 likely be countered with Defendants' own testimony received by Class Members) to support that wages
13 were unpaid under these theories in every pay period. The reliance on supportive testimony through
14 depositions and declarations renders the value of this claim uncertain. Furthermore, Defendants
15 provided evidence that these temperature checks ended in March of 2023, thereby reducing Defendants'
16 exposure and the estimated damages. As such, Plaintiffs assumed there was a 60% chance of success at
17 class certification and 40% chance of success on the merits at trial, rendering the claim worth
18 approximately \$165,634. Connolly Decl., ¶ 19.

19 Meal Period Claims: Plaintiff's meal period claim was potentially worth about \$325,906 in light
20 of the violations shown in the records. However, Defendants argued that they maintained compliant
21 written policies and that employees could waive their meal periods. Further, they provided evidence
22 that they paid a significant amount of meal period premiums. Thus, Plaintiffs discounted this claim for
23 the risk that the damages could at least be reduced, and that the claim would be hard to certify with a
24 compliant policy and the existence of written meal period waivers. As such, Plaintiffs' counsel believed
25 there was a 50% chance succeeding at class certification and a 30% chance at trial, resulting in a value
26 of \$48,886. Connolly Decl., ¶ 20.

27 Rest Break Claim: Plaintiff alleged Defendants failed to provide rest breaks at the required
28 intervals due a rest break policy that only authorized rest breaks in four-hour increments rather than

1 “major fractions thereof.” Plaintiff also alleged that Defendants failed to relieve Class Members from
2 duty by requiring them to monitor their radios at all times. If Plaintiffs could prove a 100% violation
3 rate for each shift over 3.5 hours, then damages could reach up to \$7,187,710. However, Defendants
4 argued they complied with their obligations to provide rest breaks, revised the policy documents to
5 provide for timely rest breaks, and provided evidence that Class Members were instructed to leave their
6 radios unattended at work during breaks. As such, Plaintiffs were unsure if they could certify this claim
7 since it would depend heavily on class member testimony. Plaintiff’s counsel believed there was a 60%
8 chance succeeding at class certification and a 30% chance at trial, resulting in a value of \$1,293,788.
9 Connolly Decl., ¶ 21.

10 Unreimbursed Business Expenses Claims: Plaintiff argued that Class Members were not
11 reimbursed for expenses related to personal cell phones. Plaintiffs’ expert calculated unreimbursed
12 business expenses to be valued at around \$1,718,796 assuming \$30 of unreimbursed cell phone expenses
13 per month. However, Defendants argued that they maintained a policy and practice permitting class
14 members to seek reimbursement of business expenses. Further, even if class members did have to resort
15 to their personal cell phones for work, there is no source of common proof as to who incurred expenses
16 and whether they sought reimbursement, making the claim difficult to prove at trial. Plaintiff’s counsel
17 believed there was a 20% chance succeeding at class certification and a 20% chance at trial, resulting
18 in a value of \$68,752. Connolly Decl., ¶ 22.

19 Facial Wage Statement Violations: Plaintiff’s Counsel investigated and evaluated direct and
20 derivative claims for failure to maintain accurate itemized wage statements. Plaintiff argued that
21 Defendants failed to accurately identify the rate of pay when they paid double-time wages. If Plaintiff
22 could prove that all wage statements were inaccurate, then damages could reach \$5,099,750. However,
23 Defendants argued that despite the rates listed, Class Members could determine the actual rate paid by
24 simple math. Accordingly, Plaintiff considered the fact that Defendant could argue that Plaintiff could not
25 show that Class Members suffered an “injury” because of the wage statement violations, as required by
26 Labor Code section 226, since the overtime rate could be determined from the information provided on
27 the wage statements. Plaintiff would also have to overcome damaging precedent to prove the Class
28 deserved penalties. *See, e.g., Alonzo v. Maximum, Inc.*, 832 F. Supp. 2d 1122, 1134-1137 (C.D. Cal.

2011)(finding insufficient evidence of bad faith or actual injury). Thus, Plaintiff discounted this claim accordingly, assuming a 60% chance of class certification and 30% chance of proving liability, which brings the value down to about \$917,955. Connolly Decl., ¶ 23.

Derivative Waiting Time Penalties: Plaintiff's Counsel also considered the arguable presence of derivative waiting time penalties, and weighed the potential recoveries against probable defenses. Specifically, Defendants could argue that Plaintiff could not prove the "willful" prong needed to obtain waiting time penalties under Labor Code § 203. Moreover, Plaintiff would not recover these derivative penalties if she failed to prove the underlying claims. Thus, although these penalty claims could have reached \$2.2 million if Plaintiff prevailed, Plaintiff discounted this claims assuming a 40% chance of class certification and 30% chance at the merits, resulting in a realistic value of \$266,061. Connolly Decl. ¶ 24.

PAGA Claim: The PAGA claim presented even higher hurdles. Although Plaintiff's Counsel found Defendants' exposure could potentially reach approximately \$5,173,700 under Lab. Code § 2699(f), assuming the initial penalty rate of \$100 for each pay period, Plaintiff would have to prove a violation in every pay period. Most importantly, the Court would have discretion to reduce the PAGA award based on whether the amount of the award would be "unjust, arbitrary and oppressive, or confiscatory." Lab. Code § 2699(e)(2). In theory, the Court could reduce the award by 99% if it so wished. Plaintiff was doubtful she could recover any PAGA penalties, especially if a large class judgment was entered for the same violations. Accordingly, Plaintiff could not place a high value on the PAGA penalties, and therefore allocated \$100,000 of the Gross Settlement Amount to settle these claims. Connolly Decl. ¶ 25.

C. The Requested Incentive Award for Plaintiff

Plaintiff seeks an Incentive Award of up to \$20,000.00 for accepting the responsibilities of representing the interests of the Class and assuming risks and potential costs that were not borne by any other Class Members. Settlement Agreement, § 3.07(d). A named plaintiff is eligible for payment that reasonably compensates him or her for undertaking and fulfilling a fiduciary duty to represent absent class members. *See Cellphone Termination Fee Cases, supra*, 186 Cal. App. 4th at 1393; *Bell v. Farmers Ins. Exch.*, 115 Cal. App. 4th 715, 726 (2004).

1 Here, Plaintiff had the option to pursue her claims individually, but instead chose to pursue this
2 class action, delaying individual recovery until approval of a class action settlement. Connolly Decl., ¶
3 26. Throughout the case, Plaintiff assisted counsel in gathering the evidence necessary to prosecute the
4 class claims, helped respond to written discovery, maintained regular contact with counsel, was
5 available on the two full days of mediation and communicated with her attorneys during the days of
6 mediation to answer critical questions, and reviewed the Settlement to make sure it was fair to the Class.
7 *Id.* Plaintiff was also deposed and provided crucial testimony in support of mediations and in preparation
8 of her Motion for Class Certification. *Id.* No action would likely have been taken by Class Members
9 individually, and no compensation would have been recovered for them, but for Plaintiff's services on
10 behalf of the Class. *Id.*

11 By actively pursuing this action, Plaintiff furthered the California public policy goal of enforcing
12 the State's wage and hour laws. *See Sav-On Drug Stores, Inc., supra*, 34 Cal. 4th at 340. The requested
13 Incentive Award for Plaintiff's service as the class representative and for a general release of all
14 employment claims is reasonable and should be preliminarily approved. At the final approval stage,
15 Plaintiff will further support the request for an Incentive Award by declaration addressing the factors
16 for the award. Connolly Decl., ¶ 28.

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

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

25 Plaintiff seeks appointment of Aegis Law Firm, PC as Class Counsel. The attorneys performed
26 significant work and expended litigation costs in prosecuting the matter with no guarantee of any
27 payment. Connolly Decl., ¶ 42. Plaintiff's Counsel seeks preliminary approval for \$1,000,000.00 in
28 attorneys' fees, which is up to one-third of the Gross Settlement Amount, and up to \$50,000.00 in

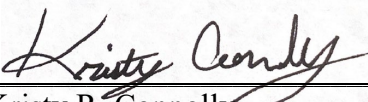
1 reimbursement of litigation costs. Given the work performed in this matter, the extensive information
2 exchange, and substantial recovery obtained on behalf of Plaintiff and the Class, Plaintiff's Counsel
3 achieved a settlement through efficient and diligent work. *See generally*, Connolly Decl. At final
4 approval, Plaintiff's Counsel will fully brief the merits of its request for the award of attorneys' fees
5 and litigation costs. *Id.* at ¶ 43.

6 **V. CONCLUSION**

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

11
12 Dated: July 25, 2024

AEGIS LAW FIRM, PC

13
14 By: 
15 Kristy R. Connolly
16 Attorneys for Plaintiff
17
18
19
20
21
22
23
24
25
26
27
28