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

14 **FOR THE COUNTY OF SANTA CLARA**

15 TAMI MARIE BOYER, individually and on
16 behalf of all others similarly situated,

17 Plaintiffs,

18 v.

19 SERRANO ELECTRIC INC.; and DOES 1
20 through 20, inclusive,

21 Defendants.

Case No. 22CV399734

Assigned for All Purposes to:

Judge Sunil R. Kulkarni; Dept. 1

22 **MEMORANDUM OF POINTS AND**
23 **AUTHORITIES IN SUPPORT OF**
24 **PLAINTIFF'S MOTION FOR**
25 **PRELIMINARY APPROVAL OF**
26 **CLASS AND REPRESENTATIVE**
27 **PAGA ACTION SETTLEMENT**

28 Date: January 11, 2024

Time: 1:30 p.m.

Dept: 1

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1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court 3.769 (d) and (e), Plaintiff Tami Marie Boyer (“Plaintiff”)
3 requests that the Court grant preliminary approval of a class action settlement of wage and hour claims,
4 including claims under the California Private Attorneys General Act of 2004, codified at Lab. Code §
5 2698, *et seq.* (“PAGA”), against Defendant Serrano Electric, Inc. (“Defendant”) (collectively, Plaintiff
6 and Defendant are hereafter referred to as, the “Parties”). The putative class consists of approximately
7 186 non-exempt employees who worked for Defendant for the period from January 2, 2018 through June
8 30, 2023 (the “Class Period”) in California (individually, “Class Member”; collectively, the “Class”).
9 The basic terms of the Class Action and PAGA Settlement Agreement and Class Notice (“Settlement
10 Agreement” or “Settlement”)¹ provide for the following:

- 11 (1) A non-reversionary Gross Settlement Amount of \$695,000.00 allocated to
12 approximately 186 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 \$231,666.67) and up to \$25,000.00 in reimbursement of costs to Plaintiff’s
16 Counsel for services rendered as counsel on this matter;
17 (3) Enhancement Award of up to \$10,000.00 to Plaintiff Tami Marie Boyer;
18 (4) Settlement Administration fees and costs of up to \$6,750.00; and
19 (5) Allocation of \$20,000.00 for settlement of claims for civil penalties under PAGA.
20 Seventy-five percent (75%) of this payment will be paid to the California Labor
21 and Workforce Development Agency (“LWDA Payment”), and twenty-five
22 percent (25%) will be distributed to Aggrieved Employees.

23 With each Class Member allocated an average recovery of approximately \$2,150.00 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 Jamie M. Loos in Support of Plaintiff’s
28 Motion for Preliminary Approval of Class Action Settlement (“Loos 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, arms-length bargaining at and after 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 Rust Consulting, Inc. as the Settlement Administrator, authorize the
6 Settlement Administrator to send notice of the Settlement, and set a final approval hearing date.

7 **II. SUMMARY OF THE LITIGATION**

8 On June 29, 2022, Plaintiff filed this action on behalf of Defendant's non-exempt employees. Loos
9 Decl., ¶ 1. On the same day, 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). *Id.* The
11 LWDA did not respond to this notice, indicating it did not intend to investigate, thus allowing Plaintiff to
12 bring a PAGA claim against Defendant. *Id.* On November 17, 2022, Plaintiff filed her First Amended
13 Complaint adding a cause of action under PAGA. *Id.* at ¶ 2. Plaintiff alleges the following causes of action
14 in the operative Complaint: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3)
15 failure to provide meal periods; (4) failure to permit rest breaks; (5) failure to reimburse business expenses;
16 (6) failure to provide accurate itemized wage statement; (7) failure to pay all wages due during
17 employment; (8) failure to pay all wages due upon separation of employment; and (9) violation of business
18 and professions code §§ 17200, *et seq.* *Id.*

19 After initial meet and confer discussions between counsel for the Parties, the Parties began
20 discussing the possibility of pursuing an informal discovery exchange with an eye towards early private
21 resolution of their dispute via mediation. *Id.* at ¶ 3. Through informal discovery, Defendant produced a
22 significant amount of documents and information, including Plaintiff's personnel file, the employee
23 handbook in effect during the Class Period, data pertaining to potential Class Members, a list of unique
24 employee identification numbers of potential Class Members with their hire and applicable termination
25 dates, meal period waivers allegedly signed by potential Class Members, and an approximate 25%
26 sampling of Class Members' timekeeping and pay records. *Id.* at ¶ 4.

27 On May 30, 2023, the Parties attended a mediation session with Jill Sperber, a respected mediator.
28 *Id.* at ¶ 5. Although the Parties did not reach a settlement at mediation, the Parties accepted a mediator's

proposal and executed a Memorandum of Understanding thereafter. *Id.* The Parties spent the next few months negotiating the terms of the Settlement, which was finalized in August of 2023. *Id.* On December 12, 2023, Plaintiff submitted the Settlement to the LWDA pursuant to Lab. Code § 2699(1)(2). *Id.* at ¶¶ 6, 38, Ex. 2 (Confirmation of Submission of Settlement to LWDA).

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 \$695,000.00. Settlement Agreement, § 3, ¶ 3.1. The Gross Settlement Amount will be used to make payments for the following: (1) Individual Class Payments to Participating Class Members; (2) attorneys' fees to Class Counsel of up to one-third of the Gross Settlement Amount (currently \$231,666.67); (3) reimbursement of Class Counsel's litigation costs of up to \$25,000.00; (4) an Enhancement Award to Plaintiff of up to \$10,000.00; (5) Settlement Administration fees and costs of \$6,750.00; and (6) a payment to the LWDA of \$15,000.00 pursuant to PAGA. *Id.* at § 3, ¶¶ 3.1 – 3.2.5. Class Members' Individual Class Payments will be distributed after final approval of the Settlement and after Defendant funds the Gross Settlement Amount. *Id.* at § 4, ¶ 4.4. Individual Class Payments will be calculated by comparing the total Qualifying Workweeks for the Class to each individual Class Member's Qualifying Workweeks. Settlement Agreement, § 3, ¶ 3.2.4. With approximately 186 Class Members, the Net Settlement Amount allocates an average of \$2,150.00 per Class Member. The Settlement Administrator will calculate the actual estimated recovery to include in the Class Notice and provide the estimated low and high range of possible recovery at final approval. Settlement Agreement, Ex. A (Notice of Class Action Settlement).

The Individual Class Payments to Class Members will be allocated for tax purposes as follows: 33% to wages; 66.67% to penalties and interest. Settlement Agreement, §3, ¶ 3.2.4.1. The employer-side payroll taxes on the portion allocated to wages will be paid by Defendant separately from, and in addition to the Gross Settlement Amount. *Id.* at § 3, ¶ 3.1. No portion of the Gross Settlement Amount will revert to Defendant. *Id.* Funds from uncashed or undeliverable checks will be tendered by the Settlement Administrator to the State Controller Unclaimed Property Fund in the name of the Class Member for whom the funds are designated. *Id.* at § 4, ¶ 4.4.3.

B. Proposed Opt-Out and Objection Process

The Settlement Administrator will send Class Members the Notice of Class Action Settlement (“Class Notice”) by first-class mail after checking for updated addresses through the National Change of Address database. Settlement Agreement, § 4, ¶ 4.4.1. The Class Notice provides information regarding the nature of the lawsuit, a summary of the substance of the settlement terms, the formula for calculating Individual Class Payments, the individual’s estimated payout, a statement that Class Members who take no action will release their claims and receive settlement checks, instructions regarding how to dispute the calculations, instructions regarding how to request exclusion or object to the Settlement, the date for the final approval hearing, the amounts sought for attorneys’ fees and costs, the Settlement Administration Costs, the Class Representative’s Enhancement Award, and the PAGA allocation.. *See generally*, Settlement Agreement, Ex. A (Class Notice).

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

If Class Notice packets are returned as undeliverable, the Settlement Administrator will perform a skip-trace or other search, and re-mail the Class Notice with an extended deadline submit a dispute, opt out or object, of either an additional 14 days from the date of mailing or the original deadline, whichever is later. Settlement Agreement, § 7, ¶¶ 7.5.1, 7.6, 7.7.2. The initial 60-day notice period and extension process ensures the notice program provides due process by giving Class Members enough time to determine whether they want to participate in the Settlement. This means of notice is reasonably calculated to apprise Class Members of the pendency of the action. *See* Cal. R. Ct. 3.766 (d)-(f).

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1 **C. Proposed Release**

2 The release to be given by Class Members is limited to the Defendant and Defendant’s owners,
3 trustees, officers, directors, agents, employees, partners, attorneys, insurers, and their respective
4 predecessors, successors, and assigns (“Released Parties”). Settlement Agreement, § 1, ¶ 1.41. Under
5 the proposed release, Class Members who do not exclude themselves from the Settlement will be
6 deemed to have released or waived the following “Released Claims” against the Released Parties
7 during the period of January 2, 2018 through June 30, 2023:

8 (i) all claims that were alleged, or reasonably could have been alleged, based on the facts
9 alleged in the Operative Complaint, which arose during the Class Period. Except [for the
10 release by Aggrieved Employees], Participating Class Members do not release any other
11 claims, including claims for vested benefits, wrongful termination, violation of the Fair
12 Employment and Housing Act, unemployment insurance, disability, social security, workers’
compensation, or claims based on facts occurring outside the Class Period.

13 *Id* at § 5, ¶ 5.2.

14 Aggrieved Employees will release the Released Parties from all claims for PAGA penalties that
15 were alleged, or reasonably could have been alleged, based on the facts stated in the Operative
16 Complaint and the PAGA Notice, which arose during the PAGA Period. *Id.* at § 5, ¶ 5.3.

17 Only Plaintiff will agree to a general release of any and all claims, whether known or unknown,
18 which exist or may exist on Plaintiff’s behalf as of the date of the Settlement, and a waiver of Civ. Code
19 § 1542. Settlement Agreement, § 5, ¶¶ 5.1, 5.1.1.

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

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

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

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

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

1 196 Cal. App. 3d 1263, 1271 (1987). Here, the Class consists of all non-exempt employees employed by
2 Defendant in California at any time from January 2, 2018 through June 30, 2023. See Settlement
3 Agreement, § 1, ¶¶ 1.5, 1.12. Defendant’s records show the Class consists of approximately 186
4 individuals, making joinder of all Class Members impracticable. Loos Decl., ¶ 7. Further, the Class is
5 readily ascertainable from Defendant’s business records because all Class Members are current or
6 former employees of Defendant. *Id.*

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

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

12 a. Common Questions Predominate

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

18 Plaintiff alleged that Defendant maintained uniform employment policies and/or practices that
19 illegally deprived Class Members of lawful wages, meal periods, rest breaks, reimbursements, accurate
20 wage statements, and waiting time pay. Loos Decl., ¶ 8. Plaintiff’s allegations present common legal and
21 factual questions of, *inter alia*, whether Defendant applied the same scheduling, timekeeping, minimum
22 and overtime pay, meal period, rest break, and reimbursement policies to all Class Members; whether
23 these policies and practices resulted in Labor Code violations; whether Defendant’s conduct was
24 intentional; and whether Class Members are entitled to penalties. *Id.* These common questions could be
25 resolved using Class Members’ schedules, time punches, and payroll records, Defendant’s corporate
26 representative’s testimony, written communications between Defendant and Class Members, and Class
27 Member declarations. *Id.* Thus, the Court can and should exercise its discretion to grant conditional class
28 certification for settlement purposes.

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

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

7

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

Class treatment is superior to other methods of adjudication when the probability is small that each class member will come forward to prove his or her claim and when the class approach would deter and redress the alleged wrongdoing. *See Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 435, 446 (2000); *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524, 1537-1538 (2008). Here, none of the other 186 Class Members had shown any interest in bearing the expense and burden of litigating their own claims. Loos Decl. ¶ 20. 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, a full day mediation session with a respected mediator after informal discovery, and continued negotiations. Loos Decl. ¶¶ 3-5. The negotiations were adversarial, conducted at arm’s length and tempered by the efforts

1 of both sides to serve the interests of their clients. *Id.* at ¶ 5. The amount of Plaintiff’s requested
2 Enhancement Award was not negotiated until after the Parties agreed to the Gross Settlement Amount
3 and many other terms. *Id.* at ¶ 21.

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

5 Plaintiff’s Counsel thoroughly investigated the class claims, applicable law, and potential
6 defenses. *See generally*, Loos Decl. In particular, Plaintiff’s Counsel assessed the value of the class
7 claims using Defendant’s data and documents produced through informal discovery. Loos Decl., ¶¶ 4,
8 14-19. Further, Plaintiff’s counsel engaged an expert to quantify the potential exposure using the time
9 and payroll records and then personally assessed the risks associated with each of the claims. *Id.*
10 Plaintiff’s Counsel fully understood the strengths and weaknesses of the claims before the Parties
11 reached a settlement.

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

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

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

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

24 While Plaintiff and her counsel believed and continue to believe this is a strong case for
25 certification, the significant risks and expenses associated with class certification and liability
26 proceedings were taken into account. Loos Decl., ¶ 11. To determine if the amount offered at mediation
27 was reasonable, Plaintiff’s Counsel weighed that figure against many risk factors. *Id.* at ¶ 12. If Plaintiff
28 continued to prosecute the claims rather than accept a settlement, Plaintiff would have faced deadlines

1 to file a motion for class certification, had to have engaged in formal written discovery and taken
2 depositions, expended time and resources to resolve disputes, prepared and filed potential dispositive
3 motions and/or discovery motions, and engaged in extensive trial preparation. *Id.* at. ¶ 13. An adverse
4 ruling at any one of these stages could have prevented the Class from obtaining any recovery. *Id.*

5 *a. Exposure Analysis*

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

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

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

18 Unpaid Wages Claim: Plaintiff’s unpaid wages claim was premised on the theories that Defendant
19 failed to pay for all time worked due to unpaid COVID-19 screenings. *Id.* at ¶ 14. Based on the sampling
20 of timekeeping and pay records produced by Defendant in advance of mediation, Plaintiff’s expert
21 calculated that these claims were worth approximately \$1,482,780.00 based on an assumption of one
22 hour of unpaid overtime per week. *Id.* However, Defendant argued that the screenings only occurred in
23 2020, rather than the entire Class Period, and that it provided Class Members with a mechanism for
24 recording their time. *Id.* As such, Plaintiff estimated an approximate 50% chance of success at class
25 certification and an approximate 30% chance of prevailing at trial, thereby discounting this claim to
26 \$222,417.00. *Id.*

27 Meal Period Claim: Plaintiff’s theory of liability for meal period violations was based on
28 Defendant’s alleged failure to provide compliant, uninterrupted 30-minute meal periods at the proper

1 intervals. *Id.* at ¶ 15. Plaintiff's meal period claim was potentially worth about \$2,161,923.00, based on
2 an approximate 50% violation rate as shown in the records produced for mediation. *Id.* However,
3 Defendant argued that it maintained compliant written policies throughout the liability period and
4 provided evidence that it paid some meal period premiums. Defendant also argued that Class Member
5 testimony would show that Class Members routinely received their meal periods, and that Class
6 Members could, and routinely did waive their meal periods verbally. *Id.* Certification therefore likely
7 would have required depositions of Class Members who provided declarations, and Defendant surely
8 would have obtained opposing declarations stating either that meal periods were provided and taken, or
9 otherwise voluntarily waived, making these riskier claims at the class certification and liability stages.
10 *Id.* Thus, Plaintiff discounted this claim to approximately \$270,240.38 for the risk that the damages
11 could at least be reduced, and because it would be hard to certify with a compliant policy. *Id.* In light of
12 the associated risks, Plaintiff estimated an approximate 50% chance of prevailing at class certification
13 and an approximate 25% chance of prevailing at trial. *Id.*

14 Rest Break Claim: Plaintiff's rest break claim was based on allegations that, despite its mostly
15 compliant written policies, in-practice Defendant failed to provide rest breaks because employees were
16 too busy to take their breaks and subject to an on-call requirement. *Id.* at ¶ 16. If Plaintiff could prove a
17 100% violation, then damages could reach up to approximately \$4,323,804. *Id.* However, Defendant
18 could argue that it maintained compliant written policies throughout the liability period, that Class
19 Members had discretion when to take their rest breaks, that Class Members were not required to be on
20 call during rest breaks, and that these assertions would be confirmed by Class Member testimony. *Id.*
21 As such, certification would likely have required declarations or depositions of Class Members, and
22 Defendants surely would have obtained opposing declarations stating either rest breaks were taken or
23 rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.*, 2013 WL 210223, at *11
24 (C.D. Cal. Jan. 17, 2013) ("Because of the competing testimony before the Court, plaintiff's evidence
25 that defendant may have an illegal, written rest break policy is insufficient for this Court to find that
26 common issues predominate."); *Villa v. United Site Servs. of California, Inc.*, 2012 WL 5503550, at *8
27 (N.D. Cal. Nov. 13, 2012) ("Indeed, Plaintiff's own evidence confirms that the written policy does not
28 generate uniform practices."). Given that this claim would have relied on Class Member testimony, it is

1 a riskier claim at class certification and liability stages. *Id.* Accordingly, based on an approximate 30%
2 likelihood of success at class certification and an approximate 20% chance of success at trial, the rest
3 break claim was heavily discounted in Plaintiff's valuation of the case, resulting in a discounted value
4 of \$259,428.24. *Id.*

5 Reimbursement Claim: Plaintiff further alleged that Defendant failed to issue reimbursement for
6 necessary business expenses due to the fact that Class Members were also required to use their personal
7 cell phones for business related purposes such as answering calls from supervisors to discuss their tasks,
8 without reimbursement from Defendant. *Id.* at ¶ 17. If proven, Plaintiff's expert calculated this claim to
9 be worth approximately \$246,025.00 assuming \$30.00 of unreimbursed cell phone expenses per month.
10 *Id.* However, Defendant argued that there was no requirement that Class Members used their personal
11 phones and that use of their personal cell phones was for convenience of the employees, not a necessary
12 expenditure or loss, as required by Labor Code section 2802. *Id.* Further, even if Class Members did
13 have to resort to their cell phones, there is no source of common proof as to who incurred expenses and
14 whether they sought reimbursement, making the claim difficult to prove at trial. *Id.* Accordingly,
15 Plaintiff estimated a 20% chance of success at class certification and a 10% chance of prevailing at trial,
16 thereby reducing the value of the claim to approximately \$4,920.50. *Id.*

17 Derivative Waiting Time Penalties and Wage Statement Violations: Plaintiff's Counsel also
18 considered the arguable presence of various penalties, and weighed the potential recoveries against
19 probable defenses. *Id.* at ¶ 18. Specifically, Defendant could argue that Plaintiff could not prove the
20 "willful" prong needed to obtain waiting time penalties under Labor Code § 203. *Id.* Additionally,
21 Defendant could argue that Plaintiff could not show that Class Members suffered an "injury" as a result
22 of wage statement violations, as required by Labor Code § 226, or that the wage statements correctly
23 reflected the wages paid and owed. *Id.* Moreover, Plaintiff would not recover any of these derivative
24 penalties if she failed to prove the underlying claims. *Id.* Thus, although these penalty claims could have
25 reached \$552,000.00 for wage statement violations and \$779,730.00 for waiting time penalties if Plaintiff
26 prevailed on every claim, they were heavily discounted in light of the risks discussed above. *Id.* Plaintiff
27 estimated an approximate 30% chance of prevailing at class certification and an approximate 20%
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1 chance of success at trial, resulting in a discounted value of approximately \$79,904.00 for both waiting
2 time penalties and wage statement violations.

3 PAGA Claim: The PAGA claim presented even higher hurdles. *Id.* at ¶ 19. Although Plaintiff's
4 Counsel found Defendant's exposure could potentially reach approximately \$1,094,600.00 under Lab.
5 Code § 2699(f), assuming the initial penalty rate of \$100 for each pay period, Plaintiff would have to
6 prove a violation in every pay period. *Id.* Most importantly, the Court would have discretion to reduce
7 the PAGA award based on whether the amount of the award would be "unjust, arbitrary and oppressive,
8 or confiscatory." Lab. Code § 2699(e)(2). In theory, the Court could reduce the award by 99% if it so
9 wished. Loos Decl. ¶ 19. Plaintiff was doubtful she could recover any PAGA penalties, especially if a
10 large class judgment was entered for the same violations. *Id.* Accordingly, Plaintiff could not place a
11 high value on the PAGA penalties, and therefore allocated \$20,000.00 of the Gross Settlement Amount
12 to settle these claims. *Id.*

13 **C. The Requested Enhancement Award for Plaintiff**

14 Plaintiff seeks an Enhancement Award of up to \$10,000.00 for accepting the responsibilities of
15 representing the interests of the Class and assuming risks and potential costs that were not borne by any
16 other Class Members. Settlement Agreement, § 3, ¶ 3.2.1. A named plaintiff is eligible for payment that
17 reasonably compensates him or her for undertaking and fulfilling a fiduciary duty to represent absent
18 class members. *See Cellphone Termination Fee Cases, supra*, 186 Cal. App. 4th at 1393; *Bell v. Farmers*
19 *Ins. Exch.*, 115 Cal. App. 4th 715, 726 (2004).

20 Here, Plaintiff had the option to pursue her claims individually, but instead chose to pursue this
21 class action, delaying individual recovery until approval of a class action settlement. Loos Decl., ¶ 20.
22 Throughout the case, Plaintiff assisted counsel in gathering the evidence necessary to prosecute the class
23 claims, maintained regular contact with counsel, assisted her attorneys in preparing for mediation, was
24 available on the day of mediation to answer critical questions, and reviewed the Settlement to make sure
25 it was fair to the Class. *Id.* No action would likely have been taken by Class Members individually, and
26 no compensation would have been recovered for them, but for Plaintiff's services on behalf of the Class.
27 *Id.*

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1 By actively pursuing this action, Plaintiff furthered the California public policy goal of enforcing
2 the State's wage and hour laws. *See Sav-On Drug Stores, Inc., supra*, 34 Cal. 4th at 340. The requested
3 Enhancement Award for Plaintiff's service as the class representative and for a general release of all
4 employment claims is reasonable and should be preliminarily approved. At the final approval stage,
5 Plaintiff will further support the request for an Enhancement Award by declaration addressing the
6 factors for the award. Loos Decl., ¶ 22.

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

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

15 Plaintiff seeks appointment of Aegis Law Firm, PC as Class Counsel. The attorneys performed
16 significant work and expended litigation costs in prosecuting the matter with no guarantee of any
17 payment. Loos Decl., ¶ 35. Plaintiff's Counsel seeks preliminary approval for \$231,666.67 in attorneys'
18 fees, which is up to one-third of the Gross Settlement Amount, and up to \$25,000.00 in reimbursement
19 of litigation costs. Settlement Agreement, § 3, 3.2.2. Given the work performed in this matter, the
20 extensive information exchange, and substantial recovery obtained on behalf of Plaintiff and the Class,
21 Plaintiff's Counsel achieved a settlement through efficient and diligent work. *See generally*, Loos Decl.
22 At final approval, Plaintiff's Counsel will fully brief the merits of its request for the award of attorneys'
23 fees and litigation costs. *Id.* at ¶ 36.

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1 **V. CONCLUSION**

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

6
7 Dated: December 12, 2023

AEGIS LAW FIRM, PC

8
9 By: _____



10 Jamie M. Loos
11 Attorneys for Plaintiff
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