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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

MARCUS ISIAH TURNER, individually
and on behalf of all others similarly situated,

Plaintiffs,

v.

MARVIN ENGINEERING CO., INC.; and
DOES 1 through 20, inclusive,

Defendants.

Case No. 22STCV19469

Assigned for all purposes to:

Hon. Lawrence P. Riff

Dept. 7

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

Date: October 12, 2023

Time: 10:00 a.m.

Dept: 7

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1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court 3.769 (d) and (e), Plaintiff Marcus Isiah Turner (“Plaintiff”)
3 requests that the Court grant preliminary approval of a class action settlement of wage and hour claims,
4 including a claim under the California Private Attorneys General Act of 2004, codified at Lab. Code §
5 2698, *et seq.* (“PAGA”), against Defendant Marvin Engineering Co., Inc. (“Defendant”) (collectively,
6 Plaintiff and Defendant referred to as the “Parties”). The putative class consists of approximately 814
7 non-exempt employees who worked for Defendant in California (individually, “Class Member”;
8 collectively, the “Class Members”) from July 23, 2020 to April 25, 2023 (the “Class Period”). The basic
9 terms of the Class Action and PAGA Settlement Agreement and Class Notice (“Settlement Agreement”
10 or “Settlement”)¹ provide for the following:

- 11 (1) A non-reversionary Gross Settlement Amount of \$1,440,000 allocated to
12 approximately 814 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 \$480,000)
15 and up to \$25,000.00 in reimbursement of costs to Plaintiff’s Counsel for services
16 rendered as counsel on this matter;
17 (3) Service Payment of up to \$7,500.00 to the Named Plaintiff;
18 (4) Settlement Administration fees and costs of up to \$12,250; and
19 (5) Allocations of \$40,000 for resolution of civil penalties under PAGA. Seventy-five
20 percent (75%) of this payment will be paid to the California Labor and Workforce
21 Development Agency (“LWDA Payment”), and twenty-five percent (25%) will be
22 paid to Class Members who worked for Defendant during the PAGA Period.

23 With each Class Member allocated an average recovery of approximately \$1,000 from the Net
24 Settlement Amount, the Settlement satisfies the criteria for preliminary approval and falls well within

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

1 the range of reasonableness given the risks and costs of continued litigation. The Settlement was reached
2 through informed, arm's-length bargaining at and after a mediation between experienced attorneys. As
3 such, Plaintiff requests that the Court grant preliminary approval of the Settlement, conditionally certify
4 the Class for settlement purposes only, appoint Plaintiff as the Class Representative, appoint Plaintiff's
5 Counsel as Class Counsel, appoint CPT Group, 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 15, 2022, Plaintiff's counsel provided written notice to the LWDA and Defendant
9 regarding Defendant's alleged Labor Code violations, as required by Lab. Code § 2699.3, subd. (a).
10 (Campbell Decl., ¶ 3, Ex. 3.) The LWDA did not respond to this notice, indicating it did not intend to
11 investigate, thus allowing Plaintiff to bring a PAGA claim against Defendant. (*Id.*) On June 15, 2022,
12 Plaintiff filed a putative class action on behalf of Defendant's non-exempt employees alleging the
13 following causes of action: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3)
14 failure to provide meal periods; (4) failure to permit rest breaks; (5) failure to reimburse business expenses;
15 (6) failure to provide accurate itemized wage statements; (7) failure to pay wages timely during
16 employment; (8) failure to pay all wages due upon separation of employment; and (9) violation of
17 Business and Professions Code § 17200, *et seq.* for the preceding claims. (*Id.*) On September 9, 2022,
18 Plaintiff filed a First Amended Complaint adding a tenth cause of action for enforcement of Labor Code
19 § 2698 *et seq.* ("PAGA"), and amending the Class Period from December 20, 2017 to the date of class
20 certification, to July 23, 2023 to the date of class certification. (Campbell Decl., ¶ 4.) The Class Period
21 change resulted after Plaintiff's Counsel discovered a prior PAGA lawsuit against Defendant in Los
22 Angeles County, *Alvarez v. Marvin Engineering Co., Inc.*, case no. BC681939, which covered wage and
23 hour claims from October 31, 2016 to July 22, 2020. (*Id.*)

24 The Parties proceeded with formal and informal discovery. (Campbell Decl., ¶ 5.) Plaintiff served
25 written discovery, seeking, *inter alia*, his personnel files; Defendant's policy documents; the estimated
26 total number of Class Members; Class Members' contact information, job titles and positions; and Class
27 Members' timekeeping and pay records, and Defendant produced responses and documents. (*Id.*)
28 Defendant also informally produced its tax returns, financial audits, and the pay summaries of the Class

1 Members. (*Id.*)

2 On April 25, 2023, the Parties attended a mediation session with Eve Wagner, a respected mediator.
3 (Campbell Decl., ¶ 6.) After a full day of negotiating and subsequent discussions after the mediation, the
4 Parties agreed to a settlement amount and executed a memorandum of understanding, with the material
5 terms the Parties had agreed to, on May 3, 2023. (*Id.*) Over the next few months, the Parties negotiated
6 the Settlement’s full terms, which were finalized in July 2023. (*Id.*) On July 7, 2023, Plaintiff submitted
7 the Settlement to the LWDA pursuant to Lab. Code § 2699(1)(2). (Campbell Decl., ¶ 7. Ex. 4.)

8 **III. SUMMARY OF THE SETTLEMENT**

9 **A. Terms of Settlement**

10 Plaintiff and Defendant agreed to settle the class claims in exchange for a Gross Settlement
11 Amount of \$1,440,000. (Settlement Agreement, § 3.1.) The Gross Settlement Amount will be used to
12 make payments for the following: (1) Individual Settlement Payments to Participating Class Members;
13 (2) attorneys’ fees to Class Counsel of up to one-third of the Gross Settlement Amount; (3)
14 reimbursement of Class Counsel’s litigation costs of up to \$25,000; (4) a Service Payment to Plaintiff
15 of up to \$7,500; (5) Settlement Administration fees and costs of \$12,250; and (6) a payment to the
16 LWDA of \$30,000 pursuant to PAGA. (*Id.* at §§ 3.2.1–3.2.5.) Class Members’ Individual Settlement
17 Payments will be distributed after final approval of the Settlement and Defendant fully funds the Gross
18 Settlement Amount. (*Id.* at §§ 4.3–4.4.) Individual Settlement Payments will be calculated by comparing
19 the total Qualifying Workweeks for the Class to each individual Class Member’s Qualifying
20 Workweeks. (*Id.* at § 3.2.4.) The Settlement Administrator will calculate the actual estimated recovery
21 to include in the Class Members the Notice of Class Action Settlement (“Class Notice”) and provide the
22 estimated low and high range of possible recovery at final approval. (*Id.* at § 8.4.2 & Ex. A (Class
23 Notice).) The Parties agreed that a Class Notice provided in English and Spanish will be sufficient. (*See*
24 Settlement Agreement, § 1.11; Declaration of Tulia Mora, ¶ 4.) Once the Court grants final approval and
25 enters judgment, Plaintiff will provide Notice of Entry of Final Judgment and the Settlement Administrator
26 will post the Class Notice on its website. (Settlement Agreement, §§ 7.3 & 8.8.1.)

27 The Individual Settlement Payments will be allocated 20% to wages; 80% to interest and penalties
28 for tax purposes. (*Id.* at § 3.2.4.1.) Defendant will pay the employer-side payroll taxes on the portion

1 allocated to wages separately from, and in addition to, the Gross Settlement Amount. (*Id.* at § 3.1.)
2 Funds from uncashed or undeliverable checks will be tendered by the Settlement Administrator to the
3 State Controller Unclaimed Property Fund in the Class Member's name for whom the funds are
4 designated. (*Id.* at § 4.4.3.) The Gross Settlement Amount will not revert to Defendant. (*Id.* at § 3.1.)

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

6 Once the Court grants preliminary approval, Defendant will have fifteen days to deliver the Class
7 Data to the Settlement Administrator. (Settlement Agreement, § 4.2.) The Settlement Administrator will
8 then have fourteen days to send Class Notice by first-class mail after checking for updated addresses
9 through the National Change of Address database. (*Id.* at § 8.4.2.) The Class Notice provides information
10 regarding the nature of the lawsuit, a summary of the substance of the settlement terms, the formula for
11 calculating Individual Settlement Payments, the individual's estimated payout, a statement that Class
12 Members who take no action will release their claims and receive settlement checks, instructions
13 regarding how to dispute the calculations, instructions regarding how to request exclusion or object to
14 the Settlement, the date for the final approval hearing, the amounts sought for attorneys' fees and costs,
15 the Settlement Administration Costs, the Class Representative's Service Payment, and the PAGA
16 allocation. (*See* Settlement Agreement, Ex. A.)

17 The Class Notice provides instructions for Class Members who choose to exclude themselves
18 from the Settlement. (*See* Settlement Agreement, Ex. A.) To opt out, Class Members are instructed to
19 submit a Request for Exclusion to the Settlement Administrator by a specified date (45 days after the date
20 of mailing of the Class Notice). (*See* Settlement Agreement, § 8.5.1 & Ex. A.) Class Members do not
21 need to submit a claim form to participate in the Settlement. (*See* Settlement Agreement, Ex. A.) The
22 Class Notice informs Class Members of how they can object to the Settlement, and of the date, time, and
23 location of the final fairness and approval hearing so that they can appear at the hearing in person. (*Id.*)
24 The Class Notice also informs Class Members to check the Administrator's website or contact Class
25 Counsel to verify the date and time of the Final Approval Hearing. (*Id.*) Accordingly, the content of the
26 Class Notice complies with the requirements of Cal. R. Ct. 3.766, subd. (d).

27 If Class Notice packets are returned as undeliverable, the Settlement Administrator will perform a
28 skip-trace or other search, and re-mail the Class Notice with an extended deadline to opt out or object, of

1 14 days from the date of mailing or the original deadline, whichever is later. (Settlement Agreement, §§
2 8.4.3–8.4.4.) The initial 45-day notice period and extension process ensures the notice program provides
3 due process by giving Class Members enough time to determine whether they want to participate in the
4 Settlement. This means of notice is reasonably calculated to apprise Class Members of the pendency of
5 the action. (See Cal. R. Ct. 3.766, subds. (d)–(f).)

6 **C. Proposed Release**

7 The release to be given by Class Members is limited to Defendant and each of its affiliated
8 companies and their respective parent companies, subsidiaries, affiliates, shareholders, members,
9 owners, agents (including, without limitation, any investment bankers, accountants, insurers, reinsurers,
10 attorneys, and any past, present, or future officers, directors, and employees), predecessors, successors,
11 and assigns (the “Released Parties”). (Settlement Agreement, § 1.41.) Under the proposed release, Class
12 Members who do not exclude themselves from the Settlement will be deemed to have released the
13 following:

14 all claims that were alleged, or reasonably could have been alleged, based on the facts stated
15 in the Operative Complaint and ascertained in the course of the Action, which arose during
16 the Class Period, including claims for Defendant’s: (1) Failure to Pay Minimum Wages
17 (Labor Code §§ 1194 and 1197); (2) Failure to Pay Overtime Wages (Labor Code §§ 510,
18 1194, and 1198); (3) Failure to Provide Meal Periods (Labor Code §§ 226.7 and 512); (4)
19 Failure to Provide Rest Breaks (Labor Code § 226.7); (5) Failure to Reimburse Business
20 Expenses (Labor Code §§ 2800 and 2802); (6) Failure to Provide Accurate Itemized Wage
21 Statements (Labor Code § 226); (7) Failure to Pay All Wages Timely During Employment
22 (Labor Code §§ 204, 210); (8) Failure to Timely Pay All Wages Due at Separation (Labor
23 Code §§ 201, 202, and 203); and (9) Violation of Unfair Competition Law (Business &
24 Professions Code §§ 17200, *et seq.*) (the “Class Claims”).

25 (*Id.* at § 6.2.)

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

28 “all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based
on facts stated in the Operative Complaint, and the PAGA Notice and ascertained in the course
of the Action, which arose during the PAGA Period.”

(*Id.* at § 6.3.)

Additionally, Plaintiff will be deemed to have released the following:

1 “(a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in
2 the Operative Complaint, and (b) all PAGA claims that were, or reasonably could have been,
3 alleged based on facts contained in the Operative Complaint.”

4 (*Id.* at § 6.1.) Plaintiff releases all known or unknown claims under Civil Code § 1542. (*Id.* at § 6.1.1.)

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

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

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

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

12 Whether a class is “ascertainable” is “determined by examining (1) the class definition, (2) the
13 size of the class, and (3) the means available for identifying class members.” (*Reyes v. Bd. of Supervisors*
14 (1987) 196 Cal. App. 3d 1263, 1271.) Here, the Class consists of all persons currently or formerly
15 employed by Defendant as a non-exempt employee in the State of California at any time from July 23,
16 2020 to April 25, 2023. (Settlement Agreement, §§ 1.5 & 1.12.) Defendant’s records show the Class
17 consists of approximately 814 individuals, making joinder of all Class Members impracticable.
18 (Campbell Decl., ¶ 8.) Further, the Class is readily ascertainable from Defendant’s business records
19 because all Class Members are current or former employees of Defendant. (*Id.*)

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

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

25 **a. Common Questions Predominate**

26 To assess whether common questions predominate, courts focus on whether the theories of
27 recovery advanced are likely to prove amenable to class treatment. (*See Sav-On Drug Stores, Inc. v.*
28 *Super. Ct.* (2004) 34 Cal. 4th 319, 327 (*Sav-On Drug Stores, Inc.*)). 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 employment policies and/or practices that illegally deprived Class Members of lawful wages, meal periods, rest breaks, business expense reimbursement, accurate wage statements, payment of all wages upon separation from employment, and waiting time pay. (Campbell Decl., ¶ 9.) Plaintiff’s allegations present common legal and factual questions of, *inter alia*, whether Defendant applied the same scheduling, timekeeping, minimum and overtime pay, meal period, and rest break policies to all Class Members; whether these policies and practices resulted in Labor Code violations; whether Defendant’s conduct was intentional; and whether Class Members are entitled to penalties. (*Id.*) These common questions could be resolved using Class Members’ schedules, time punches, and payroll records, Defendant’s corporate representative’s testimony, written communications between Defendant and Class Members, and Class Member declarations. (*Id.*) Thus, the Court can and should exercise its discretion to grant conditional class certification for settlement purposes.

b. Plaintiff’s Claims are Typical of the Class Claims

The typicality requirement is satisfied when the legal theories and facts supporting Plaintiff’s claims are substantially similar to other class members. (*See Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46.) Here, Plaintiff alleges that he and other Class Members were employed by Defendant and injured by Defendant’s common wage and hour policies and practices, including Defendant’s scheduling, timekeeping, minimum wage pay, overtime pay, meal period, and rest break practices and policies. (Declaration of Marcus Isiah Turner (“Turner Decl.”), ¶ 6). Through documents and information exchanged in discovery, including production of policy documents by Defendant, Plaintiff confirmed that these common policies and practices similarly affected Plaintiff and the Class. (Campbell Decl., ¶ 10.) Thus, Plaintiff’s claims arise from the same employment practices and are based on the same legal theories as those applicable to the Class, as explained in Plaintiff’s exposure analysis below.

c. Plaintiff and Plaintiff’s Counsel Will Adequately Represent the Class

Certification requires adequacy of both the proposed class representative(s) and proposed class counsel. With respect to the class representative, a plaintiff must adequately represent and protect the interests of other members of the class and demonstrate that his or her claim is not inconsistent with the

claims of other members of the class. (*See Capitol People First v. State Dept. of Developmental Servs.* (2007) 155 Cal. App. 4th 676, 696-697.) Here, Plaintiff's interests are coextensive with the interests of the Class. Plaintiff demonstrated an ability to advocate for the interests of the Class by litigating this action, gathering documents and information, being available on the day of mediation to answer questions, meeting with his attorneys on several occasions to understand the claims and theories of liability at issue, reviewing the proposed settlement agreement to understand its legal effect, and obtaining a fair settlement on behalf of Class Members who stand to recover a substantial amount under the Settlement. (Turner Decl., ¶¶ 4–8; Campbell Decl., ¶ 21.)

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

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.* (2000) 23 Cal. 4th 429, 435, 446; *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal. App. 4th 1524, 1537–1538.) Here, none of the other 814 Class Members had shown any interest in bearing the expense and burden of litigating their own claims. (Campbell 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.* (1994) 27 Cal. App. 4th 1085, 1089-90; 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* (2010) 186 Cal. App. 4th 1380, 1389.) 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 “arm’s-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.* (1996) 48 Cal. App. 4th 1794, 1802.) 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 extensive discovery, as well as several negotiations in the months the followed the mediation. (Campbell Decl., ¶¶ 5–6.) 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 Service Award was not negotiated until after the Parties agreed to the Gross Settlement Amount and many other terms. (*Id.* at ¶ 22.)

b. Plaintiff’s Counsel Conducted Sufficient Investigation and Discovery

Plaintiff’s Counsel thoroughly investigated the class claims, applicable law, and potential defenses. (*See generally*, Campbell Decl.) In particular, Plaintiff’s Counsel assessed the value of the class claims using Defendant’s data and documents produced through formal and informal discovery. (Campbell Decl., ¶¶ 10, 12–13.) Plaintiff’s counsel extensively reviewed policy documents and Class Members’ time and pay records to perform a thorough analysis. (Campbell Decl., ¶ 10.) 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. (*Id.*)

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. (Campbell

Decl., ¶¶ 24–37.) 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 Further 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.* (2010) 186 Cal. App. 4th 399, 407; *see also Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, 129.)

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

a. Exposure Analysis

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

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

(*Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 250 (citation omitted).) Here, Plaintiff contends that his claims are based on Defendant’s common, class-wide policies and procedures, and that liability could be determined on a class-wide basis without dependence on individual assessments

1 of liability. (Campbell Decl., ¶ 11.) Although the amount of Defendant’s potential exposure—if
2 proven—is substantial, the legitimate and serious risks of succeeding at class certification and trial
3 compelled consideration of the benefit of a settlement. (*Id.* at ¶ 13.)

4 Minimum Wage and Overtime Claims: Plaintiff’s minimum wage and overtime claims were
5 premised on the following theories: (1) Defendant paid Class Members non-discretionary bonuses, but
6 failed to include the bonuses in Class Members’ regular rates of pay; (2) Defendant regularly gave
7 COVID-19 health examinations to Class Members prior to their work shift, but did not compensate them
8 for the time spent in such examinations; and (3) Defendants routinely required Class Members to
9 complete tasks after they had clocked out for the day, but before they were permitted to leave. (Campbell
10 Decl., ¶ 15.) An expert retained by Plaintiff’s Counsel calculated a potential exposure of approximately
11 \$1 million for this claim. (*Id.*) However, Defendant argued that that the bonuses it gave employees were
12 discretionary, and that the time employees spent in COVID-19 health examinations was not
13 compensable. (*Id.*) Accordingly, Plaintiff’s counsel believed there was a 50% chance of success at class
14 certification and 50% chance of success on the merits at trial, rendering the claim worth approximately
15 \$250,000. (*Id.*)

16 Meal Period Claims: Plaintiff’s meal period claims were premised on the theories that (1)
17 Defendant interrupted Class Members’ meal breaks by forcing them to work through their meal period
18 to complete their work, (2) Defendant did not permit Class Members to take meal periods until late in
19 the day, (3) Defendant required Class Members to return to work from the meal periods before the thirty-
20 minute break period had expired, and (4) Defendant failed to provide for meal premiums. (Campbell
21 Decl., ¶ 16.) Plaintiff’s expert calculated that the meal period claim was potentially worth approximately
22 \$2,300,000. (*Id.*)

23 However, Defendant could defeat these claims by showing that it had facially compliant meal
24 period policies, many interruptions were of a short duration, and Class Members waived meal periods
25 in writing. (*Id.*) As such, Plaintiff’s Counsel believed there was a 40% chance at class certification and
26 a 25% chance at trial on Plaintiff’s meal period claim, resulting in a realistic value of approximately
27 \$230,000. (*Id.*)

1 Rest Period Claims: Similar to Plaintiff's meal period claim, Plaintiff alleges that (1) Defendant
2 interrupted Class Members' rest periods by communicating with Class Members via walkie-talkie
3 during break periods, (2) Defendant required Class Members to return to work before their break period
4 had elapsed, (3) Defendant failed to relinquish control over Class Members during their rest breaks by
5 discouraging Class Members from leaving Defendant's premises, (4) Defendant failed to provide for
6 rest break premiums, and (5) Defendant even dissuaded Class Members from taking rest breaks.
7 (Campbell Decl., ¶ 17.) Assuming Plaintiff could prove a 100% violation rate for each shift over 3.5
8 hours, Plaintiff's expert calculated that damages could potentially reach up to approximately
9 \$8,700,000. (*Id.*)

10 However, Defendant could defeat these claims by showing that it had facially compliant rest
11 period policies and provided all required rest breaks in practice. (*Id.*) Moreover, whether Class Members
12 were relieved of all duty for rest breaks would have required depositions of Class Members, and
13 Defendants likely would have obtained opposing declarations stating rest breaks were adequately taken
14 or voluntarily waived, significantly decreasing the likelihood of class certification. (*Id.*; see also, e.g.,
15 *Rai v. CVS Caremark Corp.* (C.D. Cal. Oct. 11, 2013) 2013 U.S. Dist. LEXIS 177730 (denying
16 certification of rest break claims where competing testimony regarding actual practice meant
17 adjudication would involve predominantly individual issues); *Gonzalez v. OfficeMax North Am.* (C.D.
18 Cal. Nov. 5, 2012) 2012 U.S. Dist. LEXIS 163853, at *9–12 (denying certification on predominance
19 grounds where plaintiff offered no evidence that a uniform rest break policy was implemented
20 uniformly)). As such, Plaintiff's counsel estimated that there would be a 25% chance of succeeding at
21 class certification and a 15% chance at trial on Plaintiff's rest break claim, resulting in a value of around
22 \$326,250. (*Id.*)

23 Reimbursement for Business Expenses Claims: Plaintiff's claim for reimbursement of business
24 expenses was premised on Defendant requiring Class Members to utilize their private cell phones for
25 work purposes, such as communications regarding upcoming work assignments and administrative
26 matters. (Campbell Decl., ¶ 18.) After analyzing employment data, Plaintiff's expert calculated a
27 potential recovery of approximately \$599,000 in unreimbursed business expenses. (*Id.*) Plaintiff's
28

1 counsel believed there was a 40% chance succeeding at class certification and a 25% chance at trial,
2 resulting in a value of around \$59,800. (*Id.*)

3 Waiting Time and Wage Statement Penalties: Plaintiff's Counsel also considered the arguable
4 presence of various derivative penalties, and weighed the potential recoveries against probable defenses.
5 (Campbell Decl., ¶ 19.) Specifically, Defendant could argue that Plaintiff could not prove the "willful"
6 prong needed to obtain waiting time penalties under Labor Code § 203; Plaintiff could not show that Class
7 Members suffered an "injury" as a result of wage statement violations, as required by Labor Code § 226;
8 or that the wage statements correctly reflected the wages paid and owed. (*Id.*) Although the Class could
9 have seen a potential payout of approximately \$1,700,000 for waiting time penalties and approximately
10 \$2,500,000 for wage statement penalties, Plaintiff would not recover any of these derivative penalties if
11 he failed to prove the underlying claims. (*Id.*) Thus, Plaintiff discounted these claims, assuming a 40%
12 chance of class certification and 25% chance at the merits for each claim, resulting in a realistic value of
13 around \$170,000 for the waiting time claim and around \$250,000 for the wage statement claim. (*Id.*)

14 PAGA Claim: The PAGA claim presented even higher hurdles. (Campbell Decl., ¶ 22.) Plaintiff's
15 expert analyzed the employment data provided by Defendant and found that Defendant's exposure could
16 potentially reach approximately \$1,871,300 under Lab. Code § 2699, subd. (f), assuming the initial
17 penalty rate of \$100 for each pay period. (*Id.*) However, to recover that amount, Plaintiff would have to
18 prove a violation in every pay period. (*Id.*) Most importantly, the Court would have discretion to reduce
19 the PAGA award based on whether the amount of the award would be "unjust, arbitrary and oppressive,
20 or confiscatory." Lab. Code § 2699, subd. (e)(2). In theory, the Court could reduce the award by 99%
21 if it so wished. Plaintiff was doubtful he could recover any PAGA penalties, especially if a large class
22 judgment was entered for the same violations. Accordingly, Plaintiff could not place a high value on
23 the PAGA penalties, and therefore allocated \$20,000 of the Gross Settlement Amount to settle these
24 claims. (*See Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) 2009 U.S. Dist. LEXIS 33900 at *24
25 (finding amount of PAGA penalties reasonable where the amounts are negotiated in good faith and
26 "there is no indication that [the] amount was the result of self-interest at the expense of other Class
27 Members"); *Nordstrom Comm'n Cases* (2010) 186 Cal.App.4th 576, 579 ("trial court did not abuse its
28 discretion in approving a settlement which does not allocate any damages to the PAGA claims").)

1 Thus, given the maximum exposure to Defendant and Defendant's financial limitations, the
2 settlement amount of \$1,440,000 is reasonable, fair, and proper.

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

4 Plaintiff seeks a Service Award of up to \$7,500 for accepting the responsibilities of representing
5 the interests of the Class and assuming risks and potential costs that were not borne by any other Class
6 Members. (Settlement Agreement, § 3.2.1.) A named plaintiff is eligible for payment that reasonably
7 compensates him or her for undertaking and fulfilling a fiduciary duty to represent absent class
8 members. (*See Cellphone Termination Fee Cases, supra*, 186 Cal. App. 4th at 1393-94 ("The rationale
9 for making enhancement or incentive awards to named plaintiffs is that they should be compensated for
10 the expense or risk they have incurred in conferring a benefit to other members of the class"); *Bell v.*
11 *Farmers Ins. Exch.* (2004) 115 Cal. App. 4th 715, 726.) In evaluating the propriety of enhancement
12 awards, courts consider the following relevant factors, including: (1) the time and effort put into the
13 litigation and the degree to which the class has benefitted from those actions, (2) the duration of the
14 litigation, (3) a comparison between the service awards range of monetary recovery available to the
15 class, (4) whether the litigation will further the public policy underling the statutory scheme, and (5)
16 risks to the class representatives in participating in the lawsuit, including financial exposure, retaliation,
17 and negative notoriety related to the lawsuit. (*See, e.g., Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d
18 938, 977; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 301 F.Supp. 294, 299.)

19 Plaintiff had the option to pursue his claims individually, but instead chose to pursue this class
20 action, delaying individual recovery until approval of a class action settlement. (Campbell Decl., ¶ 21.)
21 Throughout the case, Plaintiff assisted counsel in gathering the evidence necessary to prosecute the class
22 claims, maintained regular contact with counsel, was available on the day of mediation and
23 communicated with his attorneys during the day of mediation to answer critical questions, reviewed the
24 Settlement to make sure it was fair to the Class, and otherwise assisted the action as needed since this
25 action was filed approximately seventeen months ago (February 2022). (*Id.*; Turner Decl., ¶¶ 4–8.) No
26 action would likely have been taken by Class Members individually, and no compensation would have
27 been recovered for them, but for Plaintiff's services on the Class's behalf. (Campbell Decl., ¶ 21.)
28

1 By actively pursuing this action, Plaintiff also furthered the California public policy goal of
2 enforcing the State's wage and hour laws. (*See Sav-On Drug Stores, Inc., supra*, 34 Cal. 4th at 340.)
3 The requested Service Award for Plaintiff's service as the class representative and for a general release
4 of all employment claims is reasonable and should be preliminarily approved. At the final approval
5 stage, Plaintiff will further support the request for the Service Award by declarations addressing the
6 factors for the award. (Campbell Decl., ¶ 23.)

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. (*Chavez v. Netflix, Inc.* (2008)
12 162 Cal. App. 4th 43, 66, n.11 ("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. (Campbell Decl., ¶ 38.) Plaintiff's Counsel seeks preliminary approval for \$480,000 in
18 attorneys' fees, which is up to one-third of the Gross Settlement Amount, and up to \$25,000.00 in
19 reimbursement of litigation costs. (Settlement Agreement § 3.2.2.) Given the work performed in this
20 matter, the extensive information exchange, and substantial recovery obtained on behalf of Plaintiff and
21 the Class, Plaintiff's Counsel achieved a settlement through efficient and diligent work. (*See generally*,
22 Campbell Decl.) At final approval, Plaintiff's Counsel will fully brief the merits of its request for the
23 award of attorneys' fees and litigation costs. (*Id.* at ¶ 39.)

24 **V. CONCLUSION**

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

1 Dated: July 7, 2023

AEGIS LAW FIRM, PC

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3 By: /s/ Jessica L. Campbell

4 Jessica L. Campbell

5 Attorneys for Plaintiff
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