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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

LISA MEDLOCK, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

BLUE SHIELD OF CALIFORNIA; TALENT TECHNICAL SERVICES, INC.; and DOES 1 through 20, inclusive,

Defendants.

Case No. CGC-22-600992

Assigned for all purposes to:
Hon. Ethan P. Schulman, Dept. 304

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

Date: July 24, 2024
Time: 9:00am
Dept: 304

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I. INTRODUCTION

Pursuant to California Rules of Court 3.769 (d) and (e), Plaintiff Lisa Medlock, through her successor in interest Nimota Jimoh[1] ("Plaintiff") request that the Court grant preliminary approval of a class action settlement of wage and hour claims, including a claim under the California Private Attorneys General Act of 2004, codified at Lab. Code § 2698, *et seq.* ("PAGA"), against Defendant Talent Technical Services, Inc. ("Defendant") (collectively, Plaintiff and Defendant referred to as the "Parties"). The putative class consists of approximately 130 employees, and is defined as current and former non-exempt employees who worked for Defendant (individually, "Class Member"; collectively, "Class Members") from February 1, 2018 through March 25, 2024. (the "Class Period"). The basic terms of the Class Action and PAGA Settlement Agreement and Class Notice ("Settlement Agreement" or "Settlement")[2] provide for the following:

(1) A non-reversionary Gross Settlement Amount of $230,000.00 allocated to approximately 130 Class Members on a pro rata basis according to the number of weeks each Class Member worked during the Class Period;

(2) An award of up to one-third of the Gross Settlement Amount (currently $76,666.67) and up to $15,000.00 in reimbursement of costs to Plaintiff's Counsel for services rendered as counsel on this matter;

(3) Service Payments of up to $10,000.00 for the Named Plaintiff;

(4) Settlement Administration fees and costs of up to $7,250.00; and

(5) Allocations of $15,000 for resolution of civil penalties under PAGA. Seventy-five percent (75%) of this payment will be paid to the California Labor and Workforce Development Agency ("LWDA Payment"), and twenty-five percent (25%) will be

[1]On February 27, 2024, the Court permitted Nimota Jimoh to substitute as success in interest to the decedent Plaintiff Medlock. Cambell Decl., ¶ 6.

[2] A true and correct copy of the fully-executed "Class Action and PAGA Settlement Agreement and Class Notice" is attached as **Exhibit 1** to the Declaration of Jessica L. Campbell in Support of Plaintiff's 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.

paid to Class Members who worked for Defendant during the PAGA Period (the "Aggrieved Employees").

With each Class Member allocated an average recovery of approximately $835 from the Net Settlement Amount, the Settlement satisfies the criteria for preliminary approval and falls well within the range of reasonableness given the risks and costs of continued litigation. The Settlement was reached through informed, arm's-length bargaining at and after a mediation between experienced attorneys. As such, Plaintiff request that the Court grant preliminary approval of the Settlement, conditionally certify the Class for settlement purposes only, appoint Plaintiff as the Class Representatives, appoint Plaintiff's Counsel as Class Counsel, appoint Phoenix Settlement Administrators, Inc. as the Settlement Administrator, authorize the Settlement Administrator to send notice of the Settlement, and set a final approval hearing date.

II. SUMMARY OF THE LITIGATION

On July 29, 2022, Plaintiff Lisa Medlock 's counsel provided written notice to the LWDA and Defendant regarding Defendant's alleged Labor Code violations, as required by Lab. Code § 2699.3(a). (Campbell Decl., ¶ 3, Ex. 4.) The LWDA did not respond to this notice, indicating it did not intend to investigate, thus allowing Plaintiff to bring a PAGA claim against Defendant. (*Id.*) On July 29, 2022, Plaintiff Lisa Medlock filed a putative class action on behalf of Defendant's non-exempt employees alleging the following causes of action: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to permit rest breaks; (5) failure to reimburse business expenses (6) failure to provide accurate wage statements; (7) failure to pay all wages timely and upon separation of employment; and (8) violation of Business and Professions Code § 17200, *et seq*., for the preceding claims. (*Id.*) On February 27, 2023, Plaintiff Lisa Medlock filed a First Amended Complaint adding a cause of action for enforcement of Labor Code § 2698 *et seq* ("PAGA"). (*Id.* at ¶ 4.)

After serving Plaintiff's first set of written discovery and preliminary discussions about this action, the Parties agreed to explore early mediation. (Campbell Decl., ¶ 5.) In advance of mediation, Defendant informally produced significant discovery, including Plaintiff's personnel file, written wage and hour policies, and a 38% sample of Class Members' timekeeping and pay records. (*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 January 25, 2024, the Parties attended a mediation session with Lynn Frank, a respected wage and hour mediator. (Campbell Decl., ¶ 6.) After a full day of negotiations, the mediator made a mediator's proposal, which was later accepted by the Parties. (*Id.*) The Parties spent the next few months negotiating the full terms of the Settlement, which was finalized in June of 2024. (*Id.*)

On June 11, 2024, Plaintiff submitted the Settlement and this Motion to the LWDA pursuant to Lab. Code § 2699(l)(2). (Campbell Decl., ¶ 7. Ex. 2.)

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 $230,000.00. (Settlement Agreement, § 3.1.) The Gross Settlement Amount will be used to make payments for the following: (1) Individual Settlement Payments to Participating Class Members; (2) attorneys' fees to Class Counsel of up to one-third of the Gross Settlement Amount; (3) reimbursement of Class Counsel's litigation costs of up to $15,000; (4) a Service Payment to Plaintiff of up to $10,000; (5) Settlement Administration fees and costs of $7,250; and (6) a payment of $15,000 for PAGA penalties. (*Id.* at §§ 3.2.1–3.2.5.) Class Members' Individual Settlement Payments will be distributed after final approval of the Settlement and Defendant fully funds the Gross Settlement Amount. (*Id.* at §§ 4.3–4.4.) Individual Settlement Payments will be calculated by comparing the total Qualifying Workweeks for the Class to each individual Class Member's Qualifying Workweeks. (*Id.* at § 3.2.4.) The Settlement Administrator will calculate the actual estimated recovery to include in the Notice of Class Action Settlement ("Class Notice") and provide the estimated low and high range of possible recovery at final approval. (*Id.* at § 8.4.2 & Ex. A (Class Notice).) Once the Court grants final approval and enters judgment, the Settlement Administrator will post the Class Notice on its website. (Settlement Agreement, § 8.8.1.)

The Individual Settlement Payments will be allocated 10% to wages; 90% to interest and penalties for tax purposes. (*Id.* at § 3.2.4.1.) Defendant will pay the employer-side payroll taxes on the portion allocated to wages separately from, and in addition to, the Gross Settlement Amount. (*Id.* at § 3.1.) Funds from uncashed or undeliverable checks will be tendered by the Settlement Administrator to the

State Controller Unclaimed Property Fund in the Class Member's name for whom the funds are designated. (*Id*. at § 4.4.3.) No amount of the Gross Settlement Amount will revert to Defendant. (*Id.* at § 3.1.)

B. Proposed Opt-Out and Objection Process

Once the Court grants preliminary approval, Defendant will have 15 days to deliver the Class Data to the Settlement Administrator. (Settlement Agreement, § 4.2.) The Settlement Administrator will then have 14 days to send Class Notice by first-class mail after checking for updated addresses through the National Change of Address database. (*Id.* at § 8.4.2.) 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 Settlement 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 Service Payment, and the PAGA allocation. (*See* Settlement Agreement, Ex. A.)

The Class Notice provides instructions for Class Members who choose to exclude themselves from the Settlement. (*See* Settlement Agreement, Ex. A.) 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). (*See* Settlement Agreement, § 8.5.1 & Ex. A.) Class Members do not need to submit a claim form to participate in the Settlement. (*See* Settlement Agreement, Ex. A.) The Class Notice informs Class Members of how they can object to the Settlement, and of the date, time, and location of the final fairness and approval hearing so that they can appear at the hearing in person. (*Id.*) The Class Notice also informs Class Members to check the Administrator's website or contact Class Counsel to verify the date and time of the Final Approval Hearing. (*Id.*) Accordingly, the content of the Class Notice complies with the requirements of Cal. R. Ct. 3.766, subd. (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 to opt out or object, of 14 days from the date of mailing or the original deadline, whichever is later. (Settlement Agreement, §§

8.4.3–8.4.4.) 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, subds. (d)–(f).)

C. Proposed Release

The release to be given by Class Members is limited to Defendant and its former, present, and/or future, direct and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, placement/client employers including but not limited to the following (Blue Shield of CA, Sony, Sempra Energy, San Ysidro Health, Mayo Clinic, Intel, Biomarin Pharmaceutical, Bank of the West/MBO, Amerihealth, and Cargil), parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers (the "Released Parties"). (Settlement Agreement, § 1.41.) Under the proposed release, Class Members who do not exclude themselves from the Settlement will be deemed to have released the following:

> all causes of action and claims that were alleged in the Action or reasonably could have been alleged based on the facts and legal theories contained in the Operative Complaint, including all of the following claims for relief: (i) Failure to Pay Minimum Wages; (ii) Failure to Pay Overtime Wages; (iii) Failure to Provide Meal Periods; (iv) Failure to Permit Rest Breaks; (v) Failure to Reimburse Business Expenses; (vi) Failure to Provide Accurate Itemized Wage Statements; (vii) Failure to Pay Wages Timely during Employment; (viii) Failure to Pay all Wages Due Upon Separation of Employment; and (ix) Violation of Business and Professions Code sections 17200 *et seq*. that could have been premised on the claims, causes of action or legal theories of relief pleaded in the operative complaint. The Participating Class Members who cash their Settlement Checks further acknowledge they are releasing any claims they have against Defendant under the Fair Labor Standards Act.

(*Id.* at § 6.2.) Aggrieved Employees (regardless of whether they exclude themselves from the Settlement) will be deemed to have released the following:

> all causes of action and claims for civil penalties under the California Labor Code Private Attorneys General Act of 2004 that were alleged in the Operative Complaint in the Action

> or reasonably could have been alleged based on the facts and legal theories contained in the Operative Complaint and the PAGA Notice in the Action, including claims for civil penalties based on the following: (i) failure to pay all regular rate wages, minimum wages, straight time wages, an d overtime wages due; (ii) failure to provide compliant meal periods; (iii) failure to provide complaint rest breaks; (iv) failure to timely pay wages during employment; (v) failure to provide complete, accurate wage statements; (vi) failure to pay wages timely at time of termination or resignation; (vii) failure to reimburse or indemnify necessary business expenses; (viii) failure to maintain records in accordance with Labor Code Section 1174; and/or (ix) claims, cause of action or legal theories of relief seeking civil penalties under the California Labor Code Private Attorneys General Act of 2004 plead in the operative complaint and underlying LWDA exhaustion letter.

(*Id.* at § 6.3.) Only Plaintiff will be deemed to have released all known or unknown claims under Civil Code § 1542. (*Id.* at § 6.1.1.)

IV. <u>LEGAL ARGUMENTS SUPPORTING PRELIMINARY APPROVAL</u>

A. Provisional Certification of the Class is Appropriate

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

1. The Proposed Class is Numerous and Ascertainable

Whether a class is "ascertainable" is "determined by examining (1) the class definition, (2) the size of the class, and (3) the means available for identifying class members." (*Reyes v. Bd. of Supervisors* (1987) 196 Cal. App. 3d 1263, 1271.) Here, the Class consists of anyone who was employed by Defendant in California as current and former non-exempt employees who worked for Defendant from February 1, 2018 through March 25, 2024. (Settlement Agreement, §§ 1.5 & 1.12.) Defendant's records show the Class consists of approximately 130 individuals, making joinder of all Class Members impracticable. (Campbell Decl., ¶ 8.) Further, the Class is readily ascertainable from Defendant's business records because all Class Members are current or former employees of Defendant. (*Id.*)

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

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

a. Common Questions Predominate

To assess whether common questions predominate, courts focus on whether the theories of recovery advanced are likely to prove amenable to class treatment. (*See Sav-On Drug Stores, Inc. v. 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, 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 allege that they 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. (Campbell Decl., ¶ 10.) Through documents and information exchanged in informal discovery, including production of policy documents by Defendant, Plaintiff confirmed that these common policies and practices similarly affected Plaintiff and the Class. (*Id.*) Thus, Plaintiff's claims arise from the same employment practices and are based on the same legal theories as those applicable to other Class Members, as further explained in Plaintiff's exposure analysis below.

c. *Plaintiff and Plaintiff's Counsel Will Adequately Represent the Class*

Certification requires adequacy of both the proposed class representative(s) and proposed class counsel. With respect to the class representative, a Plaintiff must adequately represent and protect the interests of other members of the class and demonstrate that his or her claim is not inconsistent with the claims of other members of the class. (*See Capitol People First v. State Dept. of Developmental Servs.* (2007) 155 Cal. App. 4th 676, 696-697.) Here, Plaintiff's interests are coextensive with the interests of the Class. The original plaintiff, Lisa Medlock, initiated this litigation, explained her experiences to counsel, and produced all of her relevant records to counsel. (Campbell Decl. ¶ 23). After her death, Nimota Jimoh, Ms. Medlock's successor-in-interest, demonstrated an ability to advocate for the interests of the Class by substituting into the case as the class representative, speaking with her 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. (*See* Declaration of Nimota Jimoh ("Nimota Decl.")).

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 Representatives, 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

130 Class Members had shown any interest in bearing the expense and burden of litigating their own claims. (Campbell Decl., ¶ 23.) 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 extensively reviewing informal discovery. (Campbell Decl., ¶¶ 6, 7.) 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 amounts of Plaintiff's requested Service Awards were not negotiated until after the Parties agreed to the Gross Settlement Amount and many other terms. (*Id.* at ¶ 24.)

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 informal discovery. (Campbell Decl., ¶¶ 5, 9-10 Plaintiff's counsel extensively reviewed policy documents and Class Members' time and pay records to perform a thorough analysis. (*Id.* at ¶ 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. <u>Plaintiff's Counsel is Experienced in Similar Litigation</u>

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., ¶¶ 26–39.) 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 Plaintiff's 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 their counsel believed and continue to believe this is a strong case for certification, the significant risks and expenses associated with class certification and liability proceedings were taken into account. (Campbell Decl., ¶ 12.) To determine if the amount negotiated was reasonable, Plaintiff's Counsel weighed that figure against many risk factors. (*Id.* at ¶ 13). If Plaintiff continued to prosecute the claims rather than accept a settlement, Plaintiff would have faced deadlines to file a motion for class certification, had to have engaged in more formal written discovery and taken depositions, expended time and resources to resolve disputes, prepared and filed potential dispositive motions and/or discovery motions, and engaged in extensive trial preparation. (*Id.* at ¶ 14.) An adverse ruling at any one of these stages could have prevented the Class from obtaining any recovery. (*Id.*)

a. *Exposure Analysis*

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

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

(*Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 250 (citation omitted).) Here, Plaintiff contends that her claims are based on Defendant's common, class-wide policies and procedures, and that liability could be determined on a class-wide basis without dependence on individual assessments of liability. (Campbell Decl., ¶ 11.) Although the amount of Defendant's potential exposure—if proven—is substantial, the legitimate and serious risks of succeeding at class certification and trial compelled consideration of the benefit of a settlement. (*Id.* at ¶ 14.)

Plaintiff's minimum wage claim was premised on the theory that Defendant failed to comply with the applicable local minimum wage of its remote workers. (Campbell Decl., ¶ 15.) For example, Plaintiff worked remotely from her home in Richmond, California where the local minimum wage for 2021 was $15.21 per hour. (*Id.*) However, Plaintiff alleged that she was inaccurately paid only $15 per hour. (*Id.*) Using Class Members' employment data, Plaintiff's expert calculated a maximum potential exposure of approximately $10,878. (*Id.*) However, the records showed many class members did not live in Richmond making this claim at risk for being highly individualized and difficult to prove on a class-wide basis. (*Id.*) Accordingly, Plaintiff's counsel believed there was a 60% chance of success at class certification and a 50% chance of success on the merits at trial, rendering the claim worth approximately $3,263. (*Id.*)

Plaintiff additionally alleged that Defendant failed to compensate class members for all time worked by requiring them to finish pre-shift duties before they were allowed to clock in, including time spent loading their computers and checking emails. (Campbell Decl., ¶ 16.) Assuming unpaid wages of five minutes per shift, Plaintiff's expert calculated a maximum exposure of $14,012. (*Id.*) However, Defendant did maintain written policies directing class members to accurately record their time worked and provided evidence that it paid for all recorded work. (*Id.*) Additionally, there was no common evidence that Defendant required all class members to start work before clocking in. (*Id.*) As such, this claim could become highly individualized and difficult to certify. (*Id.*) As such, Plaintiff assumed there was a 40% chance of success at class certification and 30% chance of success on the merits at trial, rendering the claim worth approximately $1,681. (*Id.*)

Plaintiff alleged that Defendant failed to pay weekly wages as required by Labor Code section 201.3, which requires employers in the security services industry to pay temporary services workers on a weekly basis. (Campbell Decl., ¶ 17.) Plaintiff alleged that Defendant's failure to do so subjected it to potential liability for additional waiting time penalties under Labor Code § 210. (*Id.*) Assuming all Class Members were owed waiting time penalties, then damages could reach $353,245. (*Id.*) However, Defendant argued that it did not qualify as a temporary services provider and provided evidence that Plaintiff, like other Class Members, were on long-term client assignments and Labor Code section 201.3(b)(6) provides an exception for employees assigned to work for a client for over 90 consecutive days. (*Id.*) Additionally, Plaintiff considered that she could not be able to prove the "willful" prong needed to obtain waiting time penalties under Labor Code section 203. (*Id.*) Therefore, Plaintiff estimated a 40% chance at class certification and a 20% chance at trial, making this claim worth about $28,260.

Plaintiff's meal period claim was potentially worth about $99,693 in light of the violations shown in the records. (Campbell Decl., ¶ 18.) However, Defendant argued that it maintained compliant written policies, that it had no obligation to "police" meal periods, and that employees could voluntarily waive their meal periods. (*Id.*) Thus, Plaintiff discounted this claim for the risk that the damages could at least be reduced, and that the claim would be hard to certify with a compliant policy and the existence of meal period waivers. (*Id.*) As such, Plaintiff's counsel believed there was a 60% chance succeeding at class certification and a 40% chance at trial, resulting in a value of $12,329. (*Id.*)

Plaintiff's rest break claim was premised on the theory that class members were not relieved from duty for all rest breaks, especially when Class Members worked shifts over 10 hours. (Campbell Decl., ¶ 19.) If Plaintiff could prove a 100% violation rate, then damages would reach up to $113,769. (*Id.*)

However, Defendant argued that a 100% violation rate is unrealistic especially given that in practice, it did provide Class Members with compliant breaks and provided evidence of facially compliant written policies providing for the same. (*Id.*) Given the compliant policy language, this claim would have mainly relied on Class Member testimony, making it a riskier claim at class certification and liability stages. *See, e.g., Ordonez v. Radio Shack, Inc.,* 2013 WL 210223, at *11 (C.D. Cal. Jan. 17, 2013) ("Because of the competing testimony before the Court, plaintiff's evidence that defendant may have an illegal, written rest break policy is insufficient for this Court to find that common issues predominate."); *Villa v. United Site Servs. Of California, Inc.,* 2012 WL 5503550, at *8 (N.D. Cal. Nov. 13, 2012) ("Indeed, Plaintiff's own evidence confirms that the written policy does not generate uniform practices."). As such, Plaintiffs' Counsel believed there was a 40% chance at class certification and a 20% chance at trial, resulting in a value of approximately $9,102. (Campbell Decl., ¶ 19.)

Plaintiff's failure to reimburse business expenses claim was premised on the theory that Defendant required the class to incur necessary business expenses without reimbursement by requiring class members to download multiple mobile applications on their personal cellphones to record their time and access their wage statements. (Campbell Decl., ¶ 20.) Plaintiff's expert calculated unreimbursed business expenses to be valued at around $7,595 assuming $5 of unreimbursed expenses per workweek. (*Id.*) However, Defendant argued that use of their personal cell phones was for convenience of the employees, and thus was not a necessary expenditure or loss, as required by Labor Code Section 2802. (*Id.*) Further, even if Class Members did have to resort to their cell phones, there was no source of common proof as to who incurred expenses and whether they sought reimbursement, making the claim difficult to prove at trial. (*Id.*) Accordingly, Plaintiff estimated an 870% chance of success at class certification and a 50% chance of prevailing at trial, thereby reducing the value of the claim to approximately $6,848.8$2,658. (*Id.*)

Plaintiff's Counsel considered the arguable presence of derivative wage statement penalties, and weighed the potential recoveries against probable defenses. (Campbell Decl., ¶ 21.) Specifically, Defendant could argue that Plaintiff could not show that Class Members suffered an "injury" as a result of wage statement violations, as required by Labor Code § 226; or that the wage statements correctly reflected the wages paid and owed. *Id*. Although the Class could have seen a potential payout of approximately $74,600 for wage statement penalties, Plaintiff would not recover any of these derivative penalties if she failed to prove the underlying claims. *Id*. Thus, Plaintiff discounted this claim assuming a 30% chance of class certification and 20% chance at the merits, resulting in a realistic value of $5,968 for the wage statement claim. *Id*.

The PAGA claim presented even higher hurdles. (Campbell Decl., ¶ 22.) Plaintiffs' expert analyzed the employment data provided by Defendant and found that Defendant's exposure could potentially reach $76,100 under Lab. Code § 2699(f), assuming the initial penalty rate of $100 for the estimated 761 pay periods in the PAGA liability period. (*Id.*) However, to recover that amount, Plaintiff would have to prove a violation in every pay period. (*Id.*) 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 against such a small employer who maintained mostly compliant written policies. Accordingly, Plaintiff could not place a high value on the PAGA penalties, and therefore allocated $15,000 of the Gross Settlement Amount to settle these claims. (*See Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) 2009 U.S. Dist. LEXIS 33900 at *24 (finding amount of PAGA penalties reasonable where the amounts are negotiated in good faith and "there is no indication that [the] amount was the result of self-interest at the expense of other Class Members"); *Nordstrom Comm'n Cases* (2010) 186 Cal.App.4th 576, 579 ("trial court did not abuse its discretion in approving a settlement which does not allocate any damages to the PAGA claims").)

Thus, given the realistic exposure to Defendant, the settlement amount of $230,000.00 is reasonable, fair, and proper.

C. The Requested Service Awards for Plaintiffs

Plaintiff seeks a Service Award of up to $10,000 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, § 3.2.1.) 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 1393-94 ("The rationale for making enhancement or incentive awards to named Plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a benefit to other members of the class"); *Bell v. Farmers Ins. Exch.* (2004) 115 Cal. App. 4th 715, 726.) In evaluating the propriety of enhancement awards, courts consider the following relevant factors, including: (1) the time and effort put into the litigation and the degree to which the class has benefitted from those actions, (2) the duration of the litigation, (3) a comparison between the service awards range of monetary recovery available to the class, (4) whether the litigation will further the public policy underling the statutory scheme, and (5) risks to the class representatives in participating in the lawsuit, including financial exposure, retaliation, and negative notoriety related to the lawsuit. (*See, e.g.*, *Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 977; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 301 F.Supp. 294, 299.)

Here, the original Plaintiff had the option to pursue her claims individually, but instead chose to pursue this class action, delaying individual recovery and seeking recovery for her class members through a class action settlement. (Campbell Decl., ¶ 23) Plaintiff and successor in interest, Nimota Jimoh, have maintained regular contact with counsel, advocated for the interests of the Class by substituting into this class as a class representative, and reviewed the Settlement to make sure it was fair to the Class. (*Id.*) Successor in interest and Ms. Medlock's estate should get the enhancement Ms. Medlock would have received if she was here today. (Campbell Decl., ¶ 23) No action would likely have been taken by Class Members individually, and no compensation would have been recovered for them, but for Plaintiff's services on behalf of the Class. *Id*.

By actively pursuing this action, Plaintiff also furthered the California public policy goal of enforcing the State's wage and hour laws. (*See Sav-On Drug Stores, Inc.*, *supra*, 34 Cal. 4th at 340.) The requested Service Awards for Plaintiff's service as the class representative and for a general release of all employment claims is reasonable and should be preliminarily approved. At the final approval stage, Plaintiff will further support the request for the Service by declarations addressing the factors for the award. (Campbell Decl., ¶ 25.)

D. The Requested Attorneys' Fees and Costs

The purpose of an attorneys' fee award in class action litigation is to reward counsel who invested in a case despite the risk of non-payment and achieved a substantial positive result for the class.

Attorneys' fees are awarded as a matter of equity. California courts routinely award attorneys' fees equaling one-third or more of the potential value of the common fund. (*See Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 66, n.11 ("Empirical studies show that, regardless of whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery").)

Plaintiff seek appointment of Aegis Law Firm, PC as Class Counsel. The attorneys performed significant work and expended litigation costs in prosecuting the matter with no guarantee of any payment. (Campbell Decl., ¶ 37.) Plaintiff's Counsel seeks preliminary approval for $76,666.67 in attorneys' fees, which is up to one-third of the Gross Settlement Amount, and up to $15,000.00 in reimbursement of litigation costs. (Settlement Agreement § 3.2.2.) Given the work performed in this matter, the extensive information exchange, and substantial recovery obtained on behalf of Plaintiff and the Class, Plaintiff's Counsel achieved a settlement through efficient and diligent work. (*See generally,* Campbell Decl.) At final approval, Plaintiff's Counsel will fully brief the merits of its request for the award of attorneys' fees and litigation costs. (*Id.* at ¶ 38.)

V. <u>CONCLUSION</u>

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

Dated: June 10, 2024

AEGIS LAW FIRM, PC

By: <u>*/s/ Jessica L. Campbell*</u>
Jessica L. Campbell
Attorneys for Plaintiff