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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JACOB McKEEHAN and ROBERT MARSLEK, individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

JETSUITEX, INC.; SUPERIOR AIR CHARTER, LLC; DELUX PUBLIC CHARTER, LLC; and DOES 1 through 20, inclusive,

Defendants.

Case No. 22STCV24435

Assigned for all purposes to:
Hon. Elihu M. Berle
Dept. 6

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT

Date:	September 19, 2025
Time:	11:00 a.m.
Dept:	6

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I. INTRODUCTION

Pursuant to California Rules of Court 3.769 (d) and (e), Plaintiffs Jacob McKeehan and Robert Marslek ("Plaintiffs") request that the Court grant preliminary approval of a class action settlement of wage and hour claims, including approval of a representative action settlement under the California Private Attorneys General Act of 2004, codified at Labor Code §§ 2698, *et seq.* ("PAGA"), entered into with Defendants Superior Air Charter, LLC, JetSuiteX, Inc., and Delux Public Charter, LLC (collectively, "Defendants"). The settlement releases claims on behalf of a Class of all current and former persons employed by Defendants in California as a non-exempt employee at any time between May 15, 2020 through June 30, 2025 (the "Class Period"). The basic terms of the CLASS ACTION AND PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AND RELEASE AGREEMENT ("Settlement Agreement" or "Settlement")[1] provide for the following:

(1) A non-reversionary Gross Settlement Amount of $599,000.00 allocated to approximately 370 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 $199,666.67) and up to $40,000.00 in reimbursement of costs to Plaintiff's Counsel for services rendered as counsel on this matter;

(3) Enhancement Payment of up to $10,000.00 to each Plaintiff ($20,000 total);

(4) Settlement Administration fees and costs of up to $6,950; and

(5) Allocation of $30,000.00 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 paid to

[1] A true and correct copy of the fully-executed "CLASS ACTION AND PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AND RELEASE AGREEMENT" is attached as **Exhibit 1** to the Declaration of Kristy R. Connolly in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Connolly Decl."), filed concurrently herewith. Unless otherwise defined herein, all capitalized terms in this Motion will be used as such terms are defined and used in the Settlement.

Class Members who worked for Defendants during the PAGA Period (the "PAGA Group Members").

With each Class Member allocated an average recovery of approximately $817 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, arms-length bargaining at and after mediation between experienced attorneys with the assistance of a neutral mediator. As such, Plaintiffs request that the Court grant preliminary approval of the Settlement, conditionally certify the Class for settlement purposes only, appoint Plaintiffs as the Class Representatives, appoint Plaintiffs' Counsel as Class Counsel, appoint ILYM Group 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

a. McKeehan Actions

On July 28, 2022, Plaintiff McKeehan filed this putative class action against Defendant JetSuiteX 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 provide accurate itemized wage statements; (6) failure to pay wages timely during employment; (7) failure to pay all wages due upon separation of employment; and (8) violation of Business and Professions Code §§ 17200, *et seq.*; for the preceding claims (the "McKeehan Class Action"). Connolly Decl., ¶ 3.

On July 28, 2022, Plaintiff McKeehan also provided written notice to the LWDA and JetSuiteX regarding the alleged Labor Code violations asserted in the McKeehan Class Action, as required by Labor Code section 2699.3(a). Connolly Decl., ¶ 4; Exhibit 2. The LWDA did not respond to this notice, indicating it did not intend to investigate, thus allowing Plaintiff McKeehan to bring a PAGA claim against JetSuiteX. *Id.* Therefore, on October 6, 2022, Plaintiff McKeehan filed a separate action in the Los Angeles Superior Court alleging a single PAGA claim. *Id.* Plaintiff McKeehan's PAGA-only case is captioned *McKeehan v. Jetsuitex, Inc., et al.*, Case No.

22STCV32816 (the "McKeehan PAGA Action").

On September 27, 2022, JetSuiteX removed the McKeehan Class Action to the United States District Court, Central District of California. Connolly Decl., ¶ 5. Plaintiff McKeehan then brought a Motion to Remand on the grounds that Defendant failed to allege that the amount in controversy exceeds $5 million as required by the Class Action Fairness Act of 2005. *Id.* After briefing by both Parties, the District Court granted Plaintiff's motion and remanded the action back to the Los Angeles Superior Court. *Id.*

Following remand, JetSuiteX brought a Motion to Compel Arbitration of Plaintiff McKeehan's individual claims in the McKeehan Class Action. Connolly Decl., ¶ 6. On June 21, 2023, the Court granted Defendant's motion and compelled Plaintiff to arbitrate his individual claims pending in the McKeehan Class Action. *Id.* On September 6, 2023, Plaintiff McKeehan submitted his demand for arbitration and the Parties agreed to stay the McKeehan PAGA Action pending arbitration. *Id.*

b. <u>Marslek Action</u>

On June 9, 2023, Plaintiff Marslek provided written notice to the LWDA and Defendant Superior Air Charter, LLC regarding his intention to seek penalties under PAGA. Declaration of Dennis Hyun in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement (Hyun Decl.") ¶ 7. After the LWDA did not respond to this notice, on July 26, 2023, Plaintiff Marslek filed a PAGA-only action complaint against Defendant Superior Air Charter, LLC in the Alameda Superior Court, bearing Case No. 23CV039463, in which he alleged claims for PAGA civil penalties for alleged failure to timely pay all wages (the "Marslek Action"). *Id.* On June 7, 2024, Plaintiff Marslek filed an amended complaint in the Marslek Action, adding class claims for failure to pay all wages due, failure to provide meal periods, failure to provide rest periods, and violations of California's unfair competition law on behalf of non-exempt employees of Defendant Superior Air Charter, LLC. *Id.*

c. <u>Global Mediation</u>

The Parties agreed to attend global mediation for the above-described actions and to an informal exchange of discovery. Connolly Decl., ¶ 7. Joint mediation was conducted because of the overlap in the claims, parties, counsel, and courts where the actions are pending. [cite] Prior to mediation, Defendants produced a significant amount of documents and information, including Plaintiffs' personnel files, relevant policy documents, and a 20% sample of class members' timekeeping and pay records. *Id.* To prepare for mediation, Plaintiffs' counsel worked with experts to analyze timekeeping and payroll data related to the claims in order to evaluate the potential damages and penalties. *Id.*

On November 19, 2024, the Parties attended a mediation session with Kevin Barnes, a respected mediator. Connolly Decl., ¶ 8. 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.* The Parties reached a settlement of the actions and subsequently finalized the Settlement Agreement in May 2025. *Id.*

Pursuant to the terms of the settlement, and in the interest of efficiency, the Parties agreed to seek approval of the settlement before one court and to consolidate all of the parties and claims raised in connection with the three actions into the McKeehan Class Action. To effectuate the Parties' intent, on May 9, 2025, Plaintiffs submitted an amended PAGA notice to the LWDA to add Delux Public Charter, LLC as a named defendant and to add the following claims raised at mediation: failure to pay overtime wages due to an invalid alternative workweek schedule and failure to reimburse business expenses. *Id.* at ¶ 10; Exhibit 3. After the exhaustion period ran, the Parties submitted a stipulation to grant Plaintiff McKeehan leave to file a First Amended Complaint to Marslek as a second named plaintiff and Delux Public Charter LLC as a named defendant, and to consolidate into a single complaint all of the claims asserted and legal theories discussed at mediation in the three pending actions. *Id.* at ¶ 11. The First Amended Complaint will be the Operative Complaint in the McKeehan Class Action. *Id.* The Marslek Action and McKeehan PAGA Action have been stayed. *Id.*

On July 31, 2025, Plaintiffs submitted the Settlement and this Motion to the LWDA pursuant to Labor Code section 2699(l)(2). Connolly Decl. ¶ 12, Exhibit 4.

III. SUMMARY OF THE SETTLEMENT

A. Material Terms of Settlement

Plaintiffs and Defendants agreed to settle the actions in exchange for a Gross Settlement Amount of $599,000.00. Settlement Agreement, § III(B). 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 $40,000.00; (4) an Enhancement Payment to each Plaintiff of up to $10,000.00 (for a total of $20,000.00); (5) Settlement Administration fees and costs of $6,950; and (6) an allocation of $30,000 to penalties under PAGA. *Id.* at §§ III(B) – (G).

Class Members do not need to submit a claim form to participate in the Settlement. Settlement Agreement, § VIII(C). Pursuant to the Settlement Agreement, Defendants will fully fund the Gross Settlement Amount within 30 days of the date the Court grants final approval of the settlement and enters judgment and the time to appeal any judgment has expired (the "Effective Date") by sending a wire to the Settlement Administrator. *Id.* at § XI(A). The Settlement Administrator will then have 45 days from the Effective Date to mail payments to Class Members and/or PAGA Group Members. *Id.* at § XI(A). Individual Settlement Payments will be calculated proportionally by dividing the Net Settlement Amount by the total number of workweeks worked by all Class Members and then multiplying that rate by each individual Class Member's number of Workweeks. *Id.* at § VIII(D). The Settlement Administrator will calculate each Class Member's estimated share of the settlement to include in the Class Notice, and will provide the estimated low and high range of possible recovery at final approval. *Id.*

The Individual Settlement Payments to Class Members will be allocated for tax purposes as follows: 20% to wages; 80% to penalties and interest. Settlement Agreement, § IX(A). The employer-side payroll taxes on the portion allocated to wages will be paid by Defendants separately from, and in addition to the Gross Settlement Amount. *Id.* No portion of the Gross Settlement Amount will revert to Defendant. *Id* at § III(B). Funds from uncashed or undeliverable checks will be tendered by the Settlement Administrator to the California State Controller's Unclaimed Property Fund in the name of the Class Member for whom the funds are designated. *Id*. at § XI(C)(1).

B. Proposed Notice, Opt-Out and Objection Process

Once the Court grants preliminary approval, Defendants will have 30 days to deliver the Class Data to the Settlement Administrator. Settlement Agreement, § V(A). The Settlement Administrator will then have 14 days to send Class Members the Class Notice by first-class mail after checking for updated addresses through the National Change of Address database. *Id.* at § V(C). The proposed Class Notice provides information regarding the nature of the lawsuit, a summary of the material terms of the settlement, 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. A true and correct copy of the proposed Class Notice is attached to the Connolly Decl. as Exhibit 5.

The Class Notice provides instructions for Class Members who choose to exclude themselves from the class portion of the Settlement. *See* Connolly Decl; Ex. 5 at pp. 2, 9. 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.* at pp. 2, 9. Class Members do not need to submit a claim form to participate in the Settlement. *Id.* at p. 2. Class Members are also 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 if they wish. *Id.* at pp. 2, 9. 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.* at p. 8. Accordingly, the content of the Class Notice complies with the requirements of California Rules of Court Rule 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. Class Members who are provided a re-mailed Class Notice have an extended deadline, to opt out or object, of 14 days from the original Response Deadline. Settlement Agreement, § VI(A). 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* California Rules of Court Rule 3.766 (d)-(f).

C. Proposed Release

The release to be given by Participating Class Members is limited to Superior Air Charter, LLC, JetSuiteX, Inc., Delux Public Charter, LLC, and each of their former and present employees, directors, partners, shareholders, officers, owners, attorneys, agents, insurers, brands, dba's, concepts, predecessors, successors, assigns, parents, subsidiaries, affiliates, administrators, legal representatives, estates, powers-of-attorney, and any individual or entity which could be jointly liable with Defendants and all persons or entities acting by, through, under, or in concert with any of them (the "Released Parties"). Settlement Agreement, § XV(A)(1). Upon the date Defendants fully fund the entire Gross Settlement Amount, Participating Class Members will be deemed to have released the Released Parties from:

> any and all claims, rights, demands, liabilities, and causes of action of any kind arising from the alleged violation of any provision of common law, California law and/or federal law which was alleged or could have been alleged based on the facts or theories alleged in any of Plaintiffs' complaints filed in the Actions or letters to the LWDA, and that arose at any time during the Class Period (the "Settled Claims"), including but not limited to claims for off-the-clock work, unpaid wages, unpaid overtime wages, failure to timely pay all wages earned every pay period, failure to pay all compensation at the regular rate of pay or the correct regular rate of pay, failure to provide meal periods or rest periods, unpaid premium wages for meal periods or rest periods (including with respect to the rate at which premiums were paid), untimely payment of wages, inaccurate wage statements, recordkeeping violations, failure to timely pay all wages owed upon termination, unfair competition (Bus. & Prof. Code § 17200), unlawful deductions from wages, failure to pay wages due to an invalid alternative workweek schedule, failure to reimburse business expenses, and

> claims under Labor Code sections 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, and 2802 and applicable sections of the relevant Order of the Industrial Welfare Commission.

Id.

In addition, pursuant to the "PAGA Release of Claims" under the Settlement, upon the funding of the GSA, all PAGA Group Members will release the Released Parties from "all claims under PAGA that were alleged, or reasonably could have been alleged, based on the facts or theories alleged in any of Plaintiffs' complaints filed in the Actions or letters to the LWDA, and that arose at any time during the PAGA Period." *Id.* at § XV(B)(1).

Only Plaintiffs will agree to a general release of any and all claims, whether known or unknown, which exist or may exist on their behalf as of the date of the Settlement, and a waiver of Civil Code section 1542. Settlement Agreement, § XV(c).

IV. LEGAL ARGUMENTS SUPPORTING PRELIMINARY APPROVAL

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. Superior Court*, 53 Cal. 4th 1004, 1021 (2012). As explained below, each of these requirements is met here.

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*, 196 Cal. App. 3d 1263, 1271 (1987). Here, the Class consists of all current and former persons employed by Defendants in California as a non-exempt employee at any time from May 15, 2020 through the date of preliminary approval or June 30, 2025, whichever is earlier. Settlement Agreement, § I(A). Defendants' records show the Class consists of approximately 370 individuals, making joinder of all Class Members impracticable. Connolly Decl., ¶ 13. Further, the Class is readily ascertainable from Defendants' business records because all Class Members are current or former employees of Defendant. *Id.*

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

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

a. Common Questions Predominate

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

Plaintiffs alleged that Defendants maintained uniform employment policies and/or practices that illegally deprived Class Members of lawful wages, expense reimbursements, meal periods, rest breaks, accurate wage statements, and waiting time pay. Connolly Decl., ¶ 14. Plaintiffs' allegations present common legal and factual questions of, *inter alia*, whether Defendants applied the same scheduling, timekeeping, compensation, meal period, and rest break policies to all Class Members; whether these policies and practices resulted in Labor Code violations; whether Defendants' 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, Defendants' corporate representative's testimony, written communications between Defendants 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. Plaintiffs' Claims are Typical of the Class Claims

The typicality requirement is satisfied when the legal theories and facts supporting

Plaintiff's claims are substantially similar to other class members. *See Classen v. Weller*, 145 Cal. App. 3d 27, 46 (1983). Here, Plaintiffs allege that they and other Class Members were employed by Defendants and injured by Defendants' common wage and hour policies and practices, including Defendants' scheduling, timekeeping, compensation, meal period, and rest break practices and policies. Connolly Decl., ¶ 15. Through documents and information exchanged in discovery, Plaintiffs confirmed that these common policies and practices similarly affected Plaintiffs and the Class. *Id.* Thus, Plaintiffs' 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 Plaintiffs' exposure analysis below.

c. *<u>Plaintiffs and Plaintiffs' Counsel Will Adequately Represent the Interests of the Proposed Class</u>*

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 Dep't of Developmental Servs.*, 155 Cal. App. 4th 676, 696-697 (2007). Here, Plaintiffs' interests are coextensive with the interests of the Class. Plaintiffs 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 their attorneys on several occasions to understand the claims and theories of liability at issue, assisting their attorneys in preparing for mediation, 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. Connolly Decl., ¶ 27.

Likewise, Plaintiffs' Counsel has expended considerable time and effort on this case and will continue to do so through final approval. *See generally,* Connolly Decl. Accordingly, Plaintiffs should be appointed Class Representatives, and Plaintiffs' 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.*, 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 370 Class Members had shown any interest in bearing the expense and burden of litigating their own claims. Connolly Decl., ¶ 27. 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. Plaintiffs will analyze the fourth factor at the final approval stage.

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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 analyzing extensive discovery. Connolly Decl., ¶¶ 7-8. 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 ¶ 8. The amount of Plaintiffs' requested Enhancement Awards was not negotiated until after the Parties agreed to the Gross Settlement Amount and many other terms. *Id.* at ¶ 28.

b. Plaintiffs' Counsel Conducted Sufficient Investigation and Discovery

Plaintiffs' Counsel thoroughly investigated the class claims, applicable law, and potential defenses. *See generally,* Connolly Decl. In particular, Plaintiffs' Counsel assessed the value of the class claims using Defendants' data and documents produced through informal discovery. Connolly Decl., ¶ 15. Plaintiffs' counsel extensively reviewed policy documents and Class Members' time and pay records to perform a thorough analysis. *Id*. Further, Plaintiffs' 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, Plaintiffs' Counsel fully understood the strengths and weaknesses of the claims before the Parties reached a settlement. *Id*.

c. Plaintiffs' Counsel is Experienced in Similar Litigation

Plaintiffs are represented by Kashif Haque, Samuel Wong, Jessica Campbell, and Kristy Connolly of Aegis Law Firm; Larry Lee of Diversity Law Group; William Marder of Polaris Law Group; and Dennis Hyun of Hyun Legal, APC (collectively, "Class Counsel"). Class Counsel prosecute wage and hour class actions on behalf of employees and others who have had their rights violated. Connolly Decl. ¶¶ 29-42; Hyun Decl. ¶¶ 3-6; Declaration of Larry W. Lee in Support of Plaintiffs' Motion for Preliminary Approval ("Lee Decl.") ¶¶ 6-8; Declaration of

Simon Lee Yang ("Yang Decl.") ¶¶ 3-5. The attorneys working on this case have been appointed class counsel in many cases, through both contested motions and settlement approval motions. *Id.* Thus, Plaintiffs' Counsel has extensive experience in similar litigation and should be appointed as Class Counsel.

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

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

While Plaintiffs 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. Connolly Decl., ¶ 17. To determine if the amount offered at mediation was reasonable, Plaintiffs' Counsel weighed that figure against many risk factors. *Id.* at ¶ 18. If Plaintiffs continued to prosecute the claims rather than accept a settlement, Plaintiffs would have faced deadlines to file a motion for class certification, had to have engaged in 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.* An adverse ruling at any one of these stages could have prevented the Class from obtaining any recovery. *Id.*

a. <u>Exposure Analysis</u>

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

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

> by a voluntary settlement in which each side gives ground in the interest of avoiding litigation."

Wershba v. Apple Computer, Inc., 91 Cal. App. 4th 224, 250 (2001) (citation omitted). Here, Plaintiffs contend that their claims are based on Defendants' common, class-wide policies and procedures, and that liability could be determined on a class-wide basis without dependence on individual assessments of liability. Connolly Decl., ¶ 16. Defendants, by contrast, have consistently maintained that Defendants have properly paid Plaintiffs and Class Members all wages due and owing and have fully complied with the Labor Code provisions at issue in the actions, and deny that class treatment is appropriate for any of Plaintiffs' claims. *Id.* Although the amount of Defendants' potential exposure – if proven – is substantial, the legitimate and serious risks of succeeding at class certification and trial compelled a serious consideration of the benefit of a settlement. *Id.* at ¶ 18.

Arbitration Agreements: First and foremost, Plaintiffs considered that Defendants obtained arbitration agreements signed by nearly the entire Class. Connolly Decl., ¶ 19. This Court already found that Plaintiff McKeehan's arbitration agreement was enforceable and dismissed his class claims. *Id.* While mediation was pending, the court in the Marslek Action had taken the Motion to Compel Arbitration filed in that action under submission and the Parties were awaiting a ruling before that action was stayed. *Id.* If the Court found these to be enforceable, then the Class would be foreclosed on collecting any damages and this action would be limited to seeking civil penalties under PAGA. *Id.*

Overtime Claim: Plaintiffs' overtime claim was primarily premised on the theory that Defendants instituted an unlawful alternative workweek schedule that failed to pay Class Members overtime wages when they worked shifts over 8 hours. Connolly Decl., ¶ 20. Specifically, Plaintiffs alleged that Defendants failed to register an election with the Department of Industrial Relations and therefore, the alternative workweek schedule was invalid. *Id.* Plaintiffs calculated that this claim was worth approximately $92,066. However, Defendants provided evidence that only those Class Members who worked for Defendant JetSuiteX in the role of Guest Services were subject to an alternative workweek schedule, which could impact Plaintiffs' ability to prove commonality and numerosity. *Id.* With an assumed 70% chance of success at class certification and a 50% chance at trial, the realistic value of the claim was worth about $32,223 for settlement purposes. *Id.*

<u>Unpaid Wages Claim:</u> Plaintiffs also asserted a claim for Defendants' alleged failure to pay Class Members for all time worked by requiring them to finish post-shift duties, such as tending to clients, even though they were clocked out. Connolly Decl., ¶ 21. Assuming unpaid wages of 30-minutes per week, Plaintiffs' expert calculated a maximum exposure of $277,942. *Id.* However, because any of this time worked was not recorded, and Defendants maintained written policies promising to pay for all time worked and prohibiting off-the-clock work, this theory would be largely dependent on competing testimonial evidence about Defendants' practices. *Id.* Plaintiffs would need supportive testimony through depositions and declarations (which will likely be countered with Defendants' own testimony received by Class Members) to support that wages were unpaid in every pay period. *Id.* The reliance on supportive testimony through depositions and declarations and the potential individualized facts and circumstances renders the value of this claim uncertain. *Id.* As such, Plaintiff assumed there was a 20% chance of success at class certification and 20% chance of success on the merits at trial, rendering the claim worth approximately $11,118. *Id.*

<u>Meal Period Claim</u>: Plaintiffs' meal period claim was potentially worth about $1,098,011 in light of the potential violations shown in the records. Connolly Decl., ¶ 22. However, Defendants argued that they maintained compliant written policies providing for timely and fully compliant meal periods. *Id.* Further, Defendants argued that employees were provided the opportunity to take compliant meal periods and, to the extent they did not do so, that was due to individual personal choices of the employees, not conduct attributable to Defendants. *Id.* Defendants also provided evidence of meal period premiums paid to Class Members during the Class Period. *Id.* Thus, Plaintiffs 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. *Id.* As such,

Plaintiff counsel believed there was a 40% chance succeeding at class certification and a 40% chance at trial, resulting in a value of $175,682. *Id.*

Rest Break Claim: Plaintiffs alleged that Defendants failed to provide duty-free rest breaks by requiring Class Members to remain on-premises during their breaks. Connolly Decl., ¶ 23. If Plaintiffs could prove a 100% violation rate for each shift over 3.5 hours, then damages could reach up to $2,433,726. *Id.* In support of this claim, Plaintiffs pointed to Defendants' written policies which required Class Members to remain on work premises. *Id.* However, Defendants argued that despite this policy, in practice Class Members were instructed to and did leave their workstations in order to take a duty-free break. *Id.* As such, this claim would have relied on Class Member testimony, making it a riskier claim at class certification and liability stages. *Id.* Plaintiffs' counsel believed there was a 50% chance succeeding at class certification and a 20% chance at trial, resulting in a value of $243,373. *Id.*

Business Expense Reimbursement Claim: Plaintiffs alleged that Defendants failed to reimburse Class Members for business expenses incurred in carrying out their job duties, including expenses incurred for the allegedly required use of personal cell phones for work purposes, mileage expenses for necessary work travel, and expenditures for personal protective equipment, tools, uniforms, supplies and other equipment. Connolly Decl., ¶ 24. Defendants denied that Plaintiffs and Class Members incurred any necessary business expenses in connection with carrying out their job duties that were not reimbursed and also argued that their practice was to provide employees with all necessary tools and equipment needed to do their jobs. *Id.* To this end, Defendants provided written policies agreeing to reimburse travel expenses, cell phone devices up to $25/month, and other approved expenses. *Id.* As such, to the extent any expenses were not reimbursed, this claim would have relied on Class Member testimony and the individualized circumstances surrounding this claim presented significant risks at the class certification and liability stages. *Id.* For example, even if class members did resort to their personal vehicles/cell phones for work, there is no source of common proof as to who incurred expenses, whether those expenses were necessary in light of the other transportation/communication devices offered, and whether they sought reimbursement, making the claim difficult to prove at trial. *Id.* Therefore, Plaintiffs ultimately did not allocate any value to this claim. *Id.*

<u>Waiting Time and Wage Statement Penalties</u>: Plaintiffs' Counsel also considered the arguable presence of various derivative penalties, and weighed the potential recoveries against probable defenses. Connolly Decl., ¶ 25. Specifically, Defendants could argue that Plaintiffs could not prove the "willful" prong needed to obtain waiting time penalties under Labor Code section 203. *Id.* Additionally, Defendants could argue that Plaintiffs could not show that Class Members suffered an "injury" as a result of wage statement violations, as required by Labor Code section 226, or that the wage statements correctly reflected the wages paid and owed. *Id.* Moreover, Plaintiffs would not recover any of these derivative penalties if they failed to prove the underlying claims. *Id.* Although the Class arguably could have seen a payout of approximately $1.5 million for waiting time penalties and $916,800 for wage statement penalties, Plaintiffs would not recover any of these derivative penalties if they failed to prove the underlying claims. *Id.* Thus, Plaintiffs discounted these claims assuming a 20% chance of class certification and 20% chance at the merits for both claims, resulting in a realistic value of $58,758 for the waiting time claim and $36,672 for the wage statement claim. *Id.*

C. The PAGA Settlement Is Fair and Reasonable

Settlements of PAGA claims require court approval. (Labor Code § 2699(l)(2)).[2] PAGA civil penalties recovered on the State's behalf are intended to "remediate present violations and deter future ones, not to redress employees' injuries." *Amaro v. Anaheim Arena Management, LLC,* 69 Cal.App.5th 521, 542 (2021). The standard for evaluating a PAGA settlement is not whether the employees are fully compensated for their injuries, but "whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." *Moniz v. Adecco USA, Inc.,* 72 Cal.App.5th 56, 77 (2021), *disapproved of on other grounds by Turrieta v. Lyft, Inc.*, 16 Cal. 5th 664 (2024).

[2] Further, in accordance with the statutory requirement, Plaintiffs provided a copy of the Settlement to the LWDA on the same day they filed this Motion. Connolly Decl., ¶ 12.

PAGA was initiated to ensure compliance with the Labor Code in light of the government's limited enforcement resources. *Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal.4th 348, 379 (2014). Where, as here, the parties reach a substantial settlement providing employees with monetary compensation for underlying Labor Code violations, many of PAGA's underlying policy objectives are satisfied. The amount allocated to the PAGA claims is fair to those affected because it accounts for a realistic assessment of the PAGA exposure on the claims as well as the significant possibility of the Court not awarding the PAGA penalties even if Plaintiffs prevailed on the merits due to the Court's discretion to substantially reduce PAGA penalties under Labor Code § 2699(e)(2). Lab. Code § 2699(2); *Thurgood v. Bayshore Transit Mgmt., Inc*. 203 Cal. App. 4th 1112, 1135 (2012). Specifically, although Plaintiffs' Counsel found Defendants' exposure could potentially reach approximately $916,800 under Labor Code section 2699(f), assuming the initial penalty rate of $100 for each pay period, Plaintiffs would have to prove a violation in all 9,168 pay periods. Connolly Decl., ¶ 26. 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." Labor Code § 2699(e)(2). In theory, the Court could reduce the award by 99% if it so wished. Plaintiffs were doubtful they could recover any PAGA penalties, especially in light of any good faith defense of Defendants. Connolly Decl., ¶ 26.

Here, the $30,000.00 PAGA allocation is well within the range approved by California courts and therefore should be approved. Indeed, PAGA settlements for as little as $0 have been approved. *See, e.g., Nordstrom Comm'n Cases,* 186 Cal. App. 4th 576, 589 (2010) (approving PAGA settlement and release that allocated $0 to PAGA claim). Courts have also approved settlements for $20,000 or less. *See, e.g., Hicks v. Toys 'R' Us–Delaware, Inc*., 2014 WL 4703915, at *1 (C.D. Cal. Sept. 2, 2014) (approving $5,000 PAGA payment in $4 million settlement); *Chu v. Wells Fargo Invest. LLC*, 2011 WL 672645, at *1 (N.D. Cal. Feb. 16, 2011) (approving PAGA payment of $10,000 in $6.9 million settlement); *Williams v. Brinderson Constructors*, 2017 WL 490901, at *5 (C.D. Cal. Feb. 6, 2017) ($10,000 PAGA settlement in $300,000 settlement).

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D. The Requested Enhancement Award for Plaintiffs

Plaintiffs seek an Enhancement Award of up to $10,000.00 each 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. A named plaintiff is eligible for payment that reasonably compensates him or her for undertaking and fulfilling a fiduciary duty to represent absent class members. *See Cellphone Termination Fee Cases*, *supra,* 186 Cal. App. 4th at 1393; *Bell v. Farmers Ins. Exch.*, 115 Cal. App. 4th 715, 726 (2004).

Here, Plaintiffs had the option to pursue their claims individually, but instead chose to pursue this class and representative action, delaying individual recovery until approval of this Class Settlement. Connolly Decl., ¶ 27. Throughout the case, Plaintiffs assisted counsel in gathering the evidence necessary to prosecute the class claims, maintained regular contact with counsel, were available on the day of mediation and communicated with their attorneys during the day of mediation to answer critical questions, and reviewed the Settlement to make sure it was fair to the Class. *Id.* No action would likely have been taken by Class Members individually, and no compensation would have been recovered for them, but for Plaintiffs' services on behalf of the Class. *Id.*

By actively pursuing this action, Plaintiffs 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 Enhancement Award for Plaintiffs' service as the class representatives and for a general release of all employment claims is reasonable and should be preliminarily approved. At the final approval stage, Plaintiffs will further support the request for the Enhancement Award by declarations addressing the factors for the award. Connolly Decl., ¶ 29.

E. 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.*, 162 Cal. App. 4th 43, 66, n.11 (2008) ("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").

Plaintiffs seek appointment of Kashif Haque, Samuel Wong, Jessica Campbell, and Kristy Connolly of Aegis Law Firm; Larry Lee of Diversity Law Group; William Marder of Polaris Law Group; and Dennis Hyun of Hyun Legal, APC as Class Counsel[3]. The attorneys performed significant work and expended litigation costs in prosecuting the matter with no guarantee of any payment. Connolly Decl., ¶ 43. Plaintiffs' Counsel seeks preliminary approval for $199,666.67 in attorneys' fees, which is up to one-third of the Gross Settlement Amount, and up to $40,000.00 in reimbursement of litigation costs. Given the work performed in this matter, the extensive information exchange, and substantial recovery obtained on behalf of Plaintiffs and the Class, Plaintiffs' Counsel achieved a settlement through efficient and diligent work. *See generally,* Connolly Decl. At final approval, Plaintiffs' Counsel will fully brief the merits of its request for the award of attorneys' fees and litigation costs. *Id.* at ¶ 44.

V. CONCLUSION

The Parties have negotiated a fair and reasonable Settlement of the class claims in light of the risks present in this case. Plaintiffs 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: July 31, 2025

AEGIS LAW FIRM, PC

By: *_/s/ Kristy R. Connolly_*
Kristy R. Connolly
Attorneys for Plaintiffs

[3] Plaintiffs have signed a fee-split agreement with their counsel for purposes of sharing any fees awarded by this Court. The fee-split is as follows: 75% to Aegis Law Firm, PC and 25% collectively to Diversity Law Group, Polaris Law Group, and Hyun Legal, APC. Connolly Decl., ¶ 45.