

1 **AEGIS LAW FIRM, PC**

2 SAMUEL A. WONG, State Bar No. 217104

3 KASHIF HAQUE, State Bar No. 218672

4 JESSICA L. CAMPBELL, State Bar No. 280626

5 ALEX J. VALLE, State Bar No. 334263

6 avalle@aegislawfirm.com

7 9811 Irvine Center Drive, Suite 100

8 Irvine, California 92618

9 Telephone: (949) 379-6250

10 Facsimile: (949) 379-6251

11 Attorneys for Plaintiff Kristin Janell Wright, individually,
12 and on behalf of all others similarly situated.

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

14 **FOR THE COUNTY OF ALAMEDA**

15 KRISTIN JANELL WRIGHT, individually
16 and on behalf of all others similarly situated,

17 Plaintiffs,

18 v.

19 WORK RIGHT NW, INC.; and DOES 1
20 through 20, inclusive,

21 Defendants.

Case No. 22CV014224

Assigned for all purposes to:

Hon. Evelio Grillo

Dept. 21

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

27 Date: August 11, 2023

28 Time: 9:00 a.m.

Dept: 21

Res ID: 048099722705

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1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court 3.769 (d) and (e), Plaintiff Kristin Janell Wright (“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 Work Right NW, Inc. (“Defendant”) (collectively, Plaintiff
6 and Defendant referred to as the “Parties”). The putative class consists of approximately 50 employees
7 employed by Defendant in California as Injury Prevention Specialists and/or in similar positions
8 (individually, “Class Member”; collectively, “Class Members”) from January 15, 2018 through June 26,
9 2023 (the “Class Period”). The basic terms of the Class Action and PAGA Settlement Agreement and
10 Class Notice (“Settlement Agreement” or “Settlement”)¹ provide for the following:

- 11 (1) A non-reversionary Gross Settlement Amount of \$350,000.00 allocated to
12 approximately 50 Class Members on a pro rata basis according to the number of
13 weeks each Class Member worked during the Class Period;
14 (2) An award of up to one-third of the Gross Settlement Amount (currently
15 \$116,666.67) and up to \$20,000.00 in reimbursement of costs to Plaintiff’s
16 Counsel for services rendered as counsel on this matter;
17 (3) Service Payment of up to \$7,500.00 to Plaintiff Kristin Janell Wright;
18 (4) Settlement Administration fees and costs of up to \$5,850.00; and
19 (5) Allocations of \$15,000 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 \$4,000 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 ILYM 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 July 11, 2022, Plaintiff's counsel provided written notice to the LWDA and Defendant regarding
9 Defendant's alleged Labor Code violations, as required by Lab. Code § 2699.3(a). (Campbell Decl., ¶ 3,
10 Ex. 3.) The LWDA did not respond to this notice, indicating it did not intend to investigate, thus allowing
11 Plaintiff to bring a PAGA claim against Defendant. (*Id.*) On July 12, 2022, Plaintiff filed a putative class
12 action on behalf of Defendant's non-exempt employees alleging the following causes of action: (1) failure
13 to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure
14 to permit rest breaks; (5) failure to reimburse business expenses; (6) failure to provide accurate itemized
15 wage statements; (7) failure to pay wages timely during employment; (8) failure to pay all wages due upon
16 separation of employment; and (9) violation of Business and Professions Code § 17200, *et seq.* for the
17 preceding claims. (*Id.*)

18 On March 21, 2023, Plaintiff filed a First Amended Complaint adding a cause of action for
19 enforcement of Labor Code § 2698 *et seq.* ("PAGA"). (Campbell Decl., ¶ 4.)

20 The Parties proceeded with informal discovery. Defendant informally produced its employee
21 handbooks and Class Members' timekeeping and pay records. (Campbell Decl., ¶ 5.)

22 On April 27, 2023, the Parties attended a mediation session with Michael Loeb, a respected
23 mediator. (Campbell Decl., ¶ 6.) After a full day of negotiating, the Parties agreed to a settlement amount
24 and executed a Memorandum of Understanding, with the material terms to which the Parties had agreed.
25 (*Id.*) The Parties spent the next few months negotiating the full terms of the Settlement, which was
26 finalized in July of 2023. (*Id.*) On July 18, 2023, Plaintiff submitted the Settlement to the LWDA
27 pursuant to Lab. Code § 2699(l)(2). (Campbell Decl., ¶ 7. Ex. 4.)

28 //

1 **III. SUMMARY OF THE SETTLEMENT**

2 **A. Terms of Settlement**

3 Plaintiff and Defendant agreed to settle the class claims in exchange for a Gross Settlement
4 Amount of \$350,000. (Settlement Agreement, § 3.1.) The Gross Settlement Amount will be used to
5 make payments for the following: (1) Individual Settlement Payments to Participating Class Members;
6 (2) attorneys' fees to Class Counsel of up to one-third of the Gross Settlement Amount; (3)
7 reimbursement of Class Counsel's litigation costs of up to \$20,000; (4) a Service Payment to Plaintiff
8 of up to \$7,500; (5) Settlement Administration fees and costs of \$5,850; and (6) a payment to the LWDA
9 of \$15,000 pursuant to PAGA. (*Id.* at §§ 3.2.1–3.2.5.) Class Members' Individual Settlement Payments
10 will be distributed after final approval of the Settlement and Defendant fully funds the Gross Settlement
11 Amount. (*Id.* at §§ 4.3–4.4.) Individual Settlement Payments will be calculated by comparing the total
12 Qualifying Workweeks for the Class to each individual Class Member's Qualifying Workweeks. (*Id.* at
13 § 3.2.4.) The Settlement Administrator will calculate the actual estimated recovery to include in the
14 Notice of Class Action Settlement ("Class Notice") and provide the estimated low and high range of
15 possible recovery at final approval. (*Id.* at § 7.4.2 & Ex. A (Class Notice).) The Class Notice will only
16 be provided in English. (*See* Settlement Agreement, § 1.11; Declaration of Nicolas Patee, ¶ 3.) Once the
17 Court grants final approval and enters judgment, the Settlement Administrator will post the Class Notice
18 on its website. (Settlement Agreement, § 7.8.1.)

19 The Individual Settlement Payments will be allocated one-third to wages; two-thirds to interest
20 and penalties for tax purposes. (*Id.* at § 3.2.4.1.) Defendant will pay the employer-side payroll taxes on
21 the portion allocated to wages separately from, and in addition to, the Gross Settlement Amount. (*Id.* at
22 § 3.1.) Funds from uncashed or undeliverable checks will be tendered by the Settlement Administrator to
23 the Cy Pres Recipient, East Bay Community Law Center, pursuant to Code of Civil Procedure § 384,
24 subd. (b). (*Id.* at § 4.4.3.) The Gross Settlement Amount will not revert to Defendant. (*Id.* at § 3.1.)

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

26 Once the Court grants preliminary approval, Defendant will have fifteen days to deliver the Class
27 Data to the Settlement Administrator. (Settlement Agreement, § 4.2.) The Settlement Administrator will
28 then have fourteen days to send Class Notice by first-class mail after checking for updated addresses

1 through the National Change of Address database. (*Id.* at § 8.4.2.) The Class Notice provides information
2 regarding the nature of the lawsuit, a summary of the substance of the settlement terms, the formula for
3 calculating Individual Settlement Payments, the individual's estimated payout, a statement that Class
4 Members who take no action will release their claims and receive settlement checks, instructions
5 regarding how to dispute the calculations, instructions regarding how to request exclusion or object to
6 the Settlement, the date for the final approval hearing, the amounts sought for attorneys' fees and costs,
7 the Settlement Administration Costs, the Class Representative's Service Payment, and the PAGA
8 allocation. (*See* Settlement Agreement, Ex. A.)

9 The Class Notice provides instructions for Class Members who choose to exclude themselves
10 from the Settlement. (*See* Settlement Agreement, Ex. A.) To opt out, Class Members are instructed to
11 submit a Request for Exclusion to the Settlement Administrator by a specified date (60 days after the date
12 of mailing of the Class Notice). (*See* Settlement Agreement, § 8.5.1 & Ex. A.) Class Members do not
13 need to submit a claim form to participate in the Settlement. (*See* Settlement Agreement, Ex. A.) The
14 Class Notice informs Class Members of how they can object to the Settlement, and of the date, time, and
15 location of the final fairness and approval hearing so that they can appear at the hearing in person. (*Id.*)
16 The Class Notice also informs Class Members to check the Administrator's website or contact Class
17 Counsel to verify the date and time of the Final Approval Hearing. (*Id.*) Accordingly, the content of the
18 Class Notice complies with the requirements of Cal. R. Ct. 3.766, subd. (d).

19 If Class Notice packets are returned as undeliverable, the Settlement Administrator will perform a
20 skip-trace or other search, and re-mail the Class Notice with an extended deadline to opt out or object, of
21 14 days from the date of mailing or the original deadline, whichever is later. (Settlement Agreement, §§
22 8.4.3–8.4.4.) The initial 60-day notice period and extension process ensures the notice program provides
23 due process by giving Class Members enough time to determine whether they want to participate in the
24 Settlement. This means of notice is reasonably calculated to apprise Class Members of the pendency of
25 the action. (*See* Cal. R. Ct. 3.766, subds. (d)–(f).)

26 **C. Proposed Release**

27 The release to be given by Class Members is limited to Defendant and each of its former and
28 present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors,

1 assigns, subsidiaries, and affiliates (the “Released Parties”). (Settlement Agreement, § 1.41.) Under the
2 proposed release, Class Members who do not exclude themselves from the Settlement will be deemed
3 to have released the following:

4 “all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts
5 stated in the Operative Complaint, the related LWDA notice, and mediation discussions, which
6 arose during the Class Period, as well as any and all damages, restitution, disgorgement, civil
7 penalties, statutory penalties, interest, or attorneys’ fees resulting therefrom.”

8 (*Id.* at § 6.2.)

9 The State of California (including the LWDA) will be deemed to have released the following:

10 “all claims for civil penalties under Labor Code § 2698 *et seq.* exhausted in Plaintiff’s notice(s)
11 sent to the LWDA and alleged in the Action by Plaintiff individually and on behalf of all others
12 similarly situate[ed], which arose or occurred during the PAGA Period.”

13 (*Id.* at § 6.3.)

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

15 “(a) all claims that were, or reasonably could have been alleged, based on the facts contained or
16 otherwise related to or arising from events relating to Plaintiff’s employment with the Defendant
17 and Released Parties or occurring up to the execution of this Agreement and (b) all PAGA claims
18 that were, or reasonably could have been, alleged based on facts contained in the Operative
19 Complaint, Plaintiff’s PAGA Notice, or ascertained during the Action and released under
20 [Paragraph] 6.2.”

21 (*Id.* at § 6.1.) Plaintiff also releases all known or unknown claims under Civil Code § 1542. (*Id.* at §
22 6.1.1.)

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

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

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

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

2 Whether a class is “ascertainable” is “determined by examining (1) the class definition, (2) the
3 size of the class, and (3) the means available for identifying class members.” (*Reyes v. Bd. of Supervisors*
4 (1987) 196 Cal. App. 3d 1263, 1271.) Here, the Class consists of all employees employed by Defendant
5 in California as Injury Prevention Specialists, and/or in similar positions, from January 15, 2018 through
6 June 26, 2023. (Settlement Agreement, §§ 1.5 & 1.12.) Defendant’s records show the Class consists of
7 approximately 50 individuals, making joinder of all Class Members impracticable. (Campbell Decl., ¶
8 8.) Further, the Class is readily ascertainable from Defendant’s business records because all Class
9 Members are current or former employees of Defendant. (*Id.*)

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

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

15 a. Common Questions Predominate

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

21 Plaintiff alleged that Defendant maintained employment policies and/or practices that illegally
22 deprived Class Members of lawful wages, meal periods, rest breaks, business expense reimbursement,
23 accurate wage statements, payment of all wages upon separation from employment, and waiting time pay.
24 (Campbell Decl., ¶ 9.) Plaintiff’s allegations present common legal and factual questions of, *inter alia*,
25 whether Defendant applied the same scheduling, timekeeping, minimum and overtime pay, meal period,
26 and rest break policies to all Class Members; whether these policies and practices resulted in Labor Code
27 violations; whether Defendant’s conduct was intentional; and whether Class Members are entitled to
28 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 she 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. 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 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. (Declaration of Kristin Janell Wright (“Wright Decl.”) ¶¶ 4–8; Campbell Decl., ¶ 21.)

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

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

5 Class treatment is superior to other methods of adjudication when the probability is small that
6 each class member will come forward to prove his or her claim and when the class approach would deter
7 and redress the alleged wrongdoing. (*See Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 435, 446;
8 *Ghazaryan v. Diva Limousine, Ltd.*, (2008) 169 Cal. App. 4th 1524, 1537-1538.) Here, none of the other
9 50 Class Members had shown any interest in bearing the expense and burden of litigating their own
10 claims. (Campbell Decl., ¶ 21.) Thus, a class action is the superior method for seeking relief.

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

12 Preliminary approval is warranted if the settlement falls within a "reasonable range." (*See North*
13 *County Contractor's Ass'n., Inc. v. Touchstone Ins. Servs.*, (1994) 27 Cal. App. 4th 1085, 1089-90;
14 *Conte & Newberg, Newberg on Class Actions*, § 11.26 (4th ed. 2002).) In reviewing the fairness of a
15 class action settlement, due regard should be given to what is "otherwise a private consensual
16 agreement between the parties." (*Cellphone Termination Fee Cases*, (2010) 186 Cal. App. 4th 1380,
17 1389.) The inquiry "must be limited to the extent necessary to reach a reasoned judgment that the
18 agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties,
19 and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." (*Id.*)

20 Reasonableness and fairness are presumed where (1) the settlement is reached through "arm's-
21 length bargaining"; (2) investigation and discovery are "sufficient to allow counsel and the court to act
22 intelligently"; (3) counsel is "experienced in similar litigation"; and (4) the percentage of objectors "is
23 small." (*Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1802.) The Settlement satisfies the first
24 three factors. Plaintiff will analyze the fourth factor at the final approval stage.

25 **1. The Settlement is Entitled to a Presumption of Fairness**

26 **a. The Settlement is the Result of Arm's-Length Negotiations**

27 Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless
28 evidence to the contrary is offered. Thus, there is a presumption that settlement negotiations are

1 conducted in good faith. Here, the Settlement was the product of extensive investigation and a full day
2 mediation session with a respected mediator after extensively reviewing discovery, as well as several
3 negotiations in the months the followed the mediation. (Campbell Decl., ¶¶ 5–6.) The negotiations were
4 adversarial, conducted at arm’s-length, and tempered by the efforts of both sides to serve the interests
5 of their clients. (*Id.* at ¶ 6.) The amount of Plaintiff’s requested Service Award was not negotiated until
6 after the Parties agreed to the Gross Settlement Amount and many other terms. (*Id.* at ¶ 22.)

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

8 Plaintiff’s Counsel thoroughly investigated the class claims, applicable law, and potential
9 defenses. (*See generally*, Campbell Decl.) In particular, Plaintiff’s Counsel assessed the value of the
10 class claims using Defendant’s data and documents produced through formal and informal discovery.
11 (Campbell Decl., ¶¶ 10, 12–13.) Plaintiff’s counsel extensively reviewed policy documents and Class
12 Members’ time and pay records to perform a thorough analysis. (*Id.* at ¶ 10.) Further, Plaintiff’s Counsel
13 engaged an expert to quantify the potential exposure using the time and payroll records, and then
14 assessed the risks associated with each of the claims meriting reductions in the likely recovery at trial.
15 (*Id.*) Accordingly, Plaintiff’s Counsel fully understood the strengths and weaknesses of the claims
16 before the Parties reached a settlement. (*Id.*)

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

18 Plaintiff is represented by Aegis Law Firm, PC (“Class Counsel”). Class Counsel prosecute wage
19 and hour class actions on behalf of employees and others who have had their rights violated. (Campbell
20 Decl., ¶¶ 24–37.) The attorneys working on this case have been appointed class counsel in many cases,
21 through both contested motions and settlement approval motions. (*Id.*) Thus, Plaintiff’s Counsel has
22 extensive experience in similar litigation and should be appointed as Class Counsel.

23 **2. The Settlement is Reasonable Given the Strengths of Plaintiff’s Claims and**
24 **the Risks and Expense of Further Litigation**

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

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

10 a. Exposure Analysis

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

14 Compromise is inherent and necessary in the settlement process . . . even if "the relief afforded
15 by the proposed settlement is substantially narrower than it would be if the suits were to be
16 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."

17 (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 250 (citation omitted).) Here, Plaintiff
18 contends that her claims are based on Defendant's common, class-wide policies and procedures, and
19 that liability could be determined on a class-wide basis without dependence on individual assessments
20 of liability. (Campbell Decl., ¶ 11.) Although the amount of Defendant's potential exposure—if
21 proven—is substantial, the legitimate and serious risks of succeeding at class certification and trial
22 compelled consideration of the benefit of a settlement. (*Id.* at ¶ 13.)

23 Minimum Wage and Overtime Claims: Plaintiff's minimum wage and overtime claims are
24 premised on the following theories: (1) Defendant required Class Members to complete work duties
25 before and after their shifts without compensation; and (2) Defendant failed to pay Class Members at
26 one and one-half times their regular rate of pay for overtime worked. (Campbell Decl., ¶ 15.) An expert
27 retained by Plaintiff's Counsel calculated a potential exposure of approximately \$475,000. (*Id.*)
28 However, Defendant argued it complied with overtime and minimum wage requirements under an

1 exemption in Industrial Welfare Commission Wage Order No. 4-2001, which applies to executive,
2 administrative, and professional employees. (*Id.*) In response, Plaintiff argued that Wage Order No. 4-
3 2001 did not apply because Defendant's payment to class members did not qualify as a "predetermined
4 amount" of salary. (*Id.*) Accordingly, Plaintiff's counsel believed there was a 50% chance of success at
5 class certification and 50% chance of success on the merits at trial, rendering the claim worth \$118,750.
6 (*Id.*)

7 Meal Period Claims: Plaintiff's meal period claim was premised on the theories that (1) Defendant
8 maintained facially illegal meal period policies; (2) Defendant failed to pay meal period premiums; (3)
9 Defendant interrupted Class Members' meal periods by forcing them to work through their meal period
10 to complete their work; and (4) Defendant routinely denied Class Members meal periods during their
11 shifts. (Campbell Decl., ¶ 16.) Plaintiff's expert analyzed the employment data received from Defendant,
12 and calculated that the meal period claim was potentially worth approximately \$350,000. (*Id.*) After
13 analyzing Defendant's argument that employees were exempt from meal period requirements under the
14 "Professional Exemption," Plaintiff's Counsel again estimated that there was a 50% chance at class
15 certification and a 50% chance at trial on this claim, resulting in a realistic value of \$87,500. (*Id.*)

16 Rest Period Claim: Plaintiff's rest period claim was premised on the theories that (1) Defendant
17 maintained illegal rest period policies denying Class Members' rest breaks until they worked four hours,
18 rather than three and one-half under "major fraction thereof," and (2) Defendant interrupted Class
19 Members' rest breaks by forcing them to remain on Defendant's premises. (Campbell Decl., ¶ 17.) After
20 analyzing Class Members' time and pay records, Plaintiff's expert concluded that the rest break claim
21 was potentially worth approximately \$360,000. (*Id.*) Plaintiff's Counsel again analyzed the applicability
22 of the Professional Exemption, and estimated that there would be a 50% chance of succeeding at class
23 certification and a 30% chance at trial on Plaintiff's rest break claim, resulting in a value of \$54,000.
24 (*Id.*)

25 Reimbursement for Business Expenses Claims: Plaintiff's claim for reimbursement of business
26 expenses was premised on Defendant requiring Class Members to use their personal cell phones to
27 communicate with Defendant throughout the work day and on days when they were not scheduled to
28 work, and to communicate with Defendant regarding assignments and job duties. (Campbell Decl., ¶

18.) Additionally, during the COVID-19 pandemic, Defendant allegedly required Class Members to provide their own personal protective equipment, and did not reimburse them for the expenses. (*Id.*) After analyzing employment data, Plaintiff's expert calculated a potential recovery of approximately \$40,000 in unreimbursed business expenses. (*Id.*) However, Defendant argued that Class Members were not required to use personal cell phones for work purposes, and only did so optionally. 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 around \$9,600. (*Id.*)

Waiting Time and Wage Statement Penalties: Plaintiff's Counsel considered the arguable presence of various derivative penalties, and weighed the potential recoveries against probable defenses. (Campbell Decl., ¶ 19.) Specifically, Defendant could argue that Plaintiff could not prove the "willful" prong needed to obtain waiting time penalties under Labor Code § 203; 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 \$255,000 for waiting time penalties and approximately \$60,000 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 these claims assuming a 50% chance of class certification and 50% chance at the merits for both claims, resulting in a realistic value of approximately \$63,750 for the waiting time claim and around \$15,000 for the wage statement claim. (*Id.*)

PAGA Claim: The PAGA claim presented even higher hurdles. (Campbell Decl., ¶ 19.) Plaintiff's expert analyzed the employment data provided by Defendant and found that Defendant's exposure could potentially reach approximately \$61,600 under Lab. Code § 2699(f), assuming the initial penalty rate of \$100 for each pay 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 because the employer is so small. Accordingly, Plaintiff could not place a high value on the PAGA penalties, and therefore allocated \$15,000 of the Gross

1 Settlement Amount to settle these claims. (*See Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009)
2 2009 U.S. Dist. LEXIS 33900 at *24 (finding amount of PAGA penalties reasonable where the amounts
3 are negotiated in good faith and “there is no indication that [the] amount was the result of self-interest
4 at the expense of other Class Members”); *Nordstrom Comm’n Cases* (2010) 186 Cal.App.4th 576, 579
5 (“trial court did not abuse its discretion in approving a settlement which does not allocate any damages
6 to the PAGA claims”).)

7 Thus, given the realistic exposure to Defendant, the settlement amount of \$350,000 is reasonable,
8 fair, and proper.

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

10 Plaintiff seeks a Service Award of up to \$7,500 for accepting the responsibilities of representing
11 the interests of the Class and assuming risks and potential costs that were not borne by any other Class
12 Members. (Settlement Agreement, § 3.2.1.) A named plaintiff is eligible for payment that reasonably
13 compensates him or her for undertaking and fulfilling a fiduciary duty to represent absent class
14 members. (*See Cellphone Termination Fee Cases, supra*, 186 Cal. App. 4th at 1393-94 (“The rationale
15 for making enhancement or incentive awards to named plaintiffs is that they should be compensated for
16 the expense or risk they have incurred in conferring a benefit to other members of the class”); *Bell v.*
17 *Farmers Ins. Exch.* (2004) 115 Cal. App. 4th 715, 726.) In evaluating the propriety of enhancement
18 awards, courts consider the following relevant factors, including: (1) the time and effort put into the
19 litigation and the degree to which the class has benefitted from those actions, (2) the duration of the
20 litigation, (3) a comparison between the service awards range of monetary recovery available to the
21 class, (4) whether the litigation will further the public policy underling the statutory scheme, and (5)
22 risks to the class representatives in participating in the lawsuit, including financial exposure, retaliation,
23 and negative notoriety related to the lawsuit. (*See, e.g., Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d
24 938, 977; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 301 F.Supp. 294, 299.)

25 Plaintiff had the option to pursue her claims individually, but instead chose to pursue this class
26 action, delaying individual recovery until approval of a class action settlement. (Campbell Decl., ¶ 21.)
27 Throughout the case, Plaintiff assisted counsel in gathering the evidence necessary to prosecute the class
28 claims, maintained regular contact with counsel, was available on the day of mediation and

1 communicated with her attorneys during the day of mediation to answer critical questions, reviewed the
2 Settlement to make sure it was fair to the Class, and otherwise assisted the action as needed since this
3 action was filed approximately twelve months ago (July 2022). (*Id.*; Wright Decl., ¶¶ 4–8.) No action
4 would likely have been taken by Class Members individually, and no compensation would have been
5 recovered for them, but for Plaintiff’s services on the Class’s behalf. (Campbell Decl., ¶ 21.)

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

12 **D. The Requested Attorneys’ Fees and Costs**

13 The purpose of an attorneys’ fee award in class action litigation is to reward counsel who invested
14 in a case despite the risk of non-payment and achieved a substantial positive result for the class.
15 Attorneys’ fees are awarded as a matter of equity. California courts routinely award attorneys’ fees
16 equaling one-third or more of the potential value of the common fund. (*See Chavez v. Netflix, Inc.* (2008)
17 162 Cal. App. 4th 43, 66, n.11 (“Empirical studies show that, regardless of whether the percentage
18 method or the lodestar method is used, fee awards in class actions average around one-third of the
19 recovery”).)

20 Plaintiff seeks appointment of Aegis Law Firm, PC as Class Counsel. The attorneys performed
21 significant work and expended litigation costs in prosecuting the matter with no guarantee of any
22 payment. (Campbell Decl., ¶ 38.) Plaintiff’s Counsel seeks preliminary approval for \$116,666.67 in
23 attorneys’ fees, which is up to one-third of the Gross Settlement Amount, and up to \$20,000.00 in
24 reimbursement of litigation costs. (Settlement Agreement § 3.2.2.) Given the work performed in this
25 matter, the extensive information exchange, and substantial recovery obtained on behalf of Plaintiff and
26 the Class, Plaintiff’s Counsel achieved a settlement through efficient and diligent work. (*See generally*,
27 Campbell Decl.) At final approval, Plaintiff’s Counsel will fully brief the merits of its request for the
28 award of attorneys’ fees and litigation costs. (*Id.* at ¶ 39.)

1 **V. CONCLUSION**

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

6
7 Dated: July 17, 2023

AEGIS LAW FIRM, PC

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9 By: /s/ Jessica L. Campbell
10 Jessica L. Campbell
11 Attorneys for Plaintiff
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