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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

MARLO WILL, individually and on behalf of all others similarly situated, Plaintiffs, vs. SACRAMENTO NATIVE AMERICAN HEALTH CENTER, INC.; and DOES 1 through 20, inclusive, Defendants.	Case No. 34-2022-00325298 *Assigned for All Purposes to:* *Hon. Jill Talley* *Dept. 23* **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** Date: January 3, 2025 Time: 9:00 a.m. Dept: 23 Reservation ## A-325298-001

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I. INTRODUCTION

Pursuant to California Rules of Court 3.769 (d) and (e), Plaintiff Marlo Will ("Plaintiff") requests 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 Sacramento Native American Health Center, Inc. ("Defendant") (collectively, Plaintiff and Defendant referred to as the "Parties"). The putative class consists of approximately 578 employees currently or formerly employed by Defendant as a non-exempt in the State of California (individually, "Class Member"; collectively, the "Class") from February 21, 2018 to June 24, 2024 (the "Class Period"). The basic terms of the Class Action and PAGA Settlement Agreement and Class Notice ("Settlement Agreement" or "Settlement")[1] provide for the following:

(1) A non-reversionary Gross Settlement Amount of $1,050,000.00 allocated to approximately 578 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 $350,000.00) and up to $30,000.00 in reimbursement of costs to Plaintiff's Counsel for services rendered as counsel on this matter;

(3) Class Representative Service Payment of up to $10,000.00 to Plaintiff Marlo Will;

(4) Settlement Administration fees and costs of up to $8,500.00; and

(5) Allocation of $50,000.00 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 Class Members who worked for Defendant during the PAGA Period.

With each Class Member allocated an average recovery of approximately $1,000.00 from the Net

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[1] 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 Jamie Loos in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Loos Decl."), filed concurrently herewith. Unless otherwise defined herein, all capitalized terms in this Motion will be used as such terms are defined and used in the Settlement.

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. As such, Plaintiff requests that the Court grant preliminary approval of the Settlement, conditionally certify the Class for settlement purposes only, appoint Plaintiff as the Class Representative, appoint Plaintiff's Counsel as Class Counsel, appoint ILYM Group, 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 August 17, 2022, Plaintiff'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). Loos Decl., ¶¶ 3, 45 Ex. 2. 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.* at ¶ 3. On August 17, 2022, Plaintiff Marlo Will 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 provide accurate itemized wage statements; (6) failure to pay timely wages 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. *Id.* ¶ 4. On February 24, 2023, Plaintiff filed a First Amended Complaint alleging an additional cause of action against Defendant for Enforcement of Labor Code § 2698 *et seq.* ("PAGA"). *Id.* at ¶ 5. The First Amended Complaint is the operative complaint in the Action (the "Operative Complaint.") Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint and denies any and all liability for the causes of action alleged.

The Parties proceeded with formal discovery. Loos Decl., ¶ 6. Plaintiff Marlo Will served her first set of written discovery, seeking, *inter alia*, her personnel file, wage and hour policy documents, the class members' contact information, and class members' timekeeping and pay records. *Id.* After meeting and conferring regarding Plaintiff's discovery requests, the Parties agreed to attend a private mediation. *Id.* ¶ 7.

On April 25, 2024 the Parties participated in an all-day mediation presided over by Lynn Frank. Loos Decl., ¶ 8. After a full day of negotiating, the Parties agreed to a settlement amount and executed a Memorandum of Understanding with the material terms the parties had agreed to. *Id.* The Parties spent the next few months negotiating the terms of the Settlement, which was finalized in October of 2024. *Id.*

On December 6, 2024, Plaintiff submitted the Settlement to the LWDA pursuant to Lab. Code § 2699(l)(2). Loos Decl., ¶¶ 9, 46, Ex. 3 (Confirmation of Submission of Settlement to LWDA).

III. SUMMARY OF THE SETTLEMENT

A. Terms of Settlement

Plaintiff and Defendant agreed to settle the class claims in exchange for a Gross Settlement Amount of $1,050,000.00. Settlement Agreement, § 3.1. The Gross Settlement Amount will be used to make payments for the following: (1) Individual Class Payments to Participating Class Members; (2) attorneys' fees to Class Counsel of up to one-third of the Gross Settlement Amount; (3) reimbursement of Class Counsel's litigation costs of up to $30,000.00; (4) a Class Representative Service Payment to Plaintiff of up to $10,000.00; (5) Settlement Administration fees and costs of $8,500.00; and (6) a payment to the LWDA of $37,500.00 pursuant to PAGA. *Id.* at § 3.2.1 – 3.2.5. Class Members' Individual Class Payments will be distributed after final approval of the Settlement and Defendant funds the Gross Settlement Amount. *Id.* at § 4.3. Individual Class 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. Defendant has estimated there are approximately 35,436 Workweeks. *Id.* at § 4.1. The Settlement Administrator will calculate the actual estimated recovery to include in the Class Notice and provide the estimated low and high range of possible recovery at final approval. *Id.* at § 7.4.2; Settlement Agreement, Ex. A (Notice of Class Action Settlement). The Parties agreed to use ILYM Group, Inc. for settlement administration because after obtaining bids from other administrators, ILYM Group, Inc. had the lowest bid. Loos Decl. ¶ 27. The class notice will only be provided in English; Defendant communicated with its employees in English, therefore the Parties agreed that English-only notice will be sufficient. *See* Settlement Agreement, § 1.11. The Parties have agreed on the content of the class notice. Loos Decl. ¶ 28.

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, § 3.2.4.1. The employer-side payroll taxes on the portion allocated to wages will be paid by Defendant separately from, and in addition to the Gross Settlement Amount. *Id.* at § 4.2. No portion of the Gross Settlement Amount will revert to Defendant. *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 name of the Class Member for whom the funds are designated. *Id.* at § 4.4.3.

B. Proposed Opt-Out and Objection Process

Once the Court grants preliminary approval, Defendant will have fifteen days to deliver the Class Data to the Settlement Administrator. Settlement Agreement, § 4.2. The Settlement Administrator will then have fourteen days to send Class Members the Notice of Class Action Settlement ("Class Notice") by first-class mail after checking for updated addresses through the National Change of Address database. *Id.* at § 7.4.2. 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 Class Payments, the individual's estimated payout, a statement that Class Members who take no action will release their claims and receive settlement checks, instructions regarding how to dispute the calculations, instructions regarding how to request exclusion or object to the Settlement, the date for the final approval hearing, the amounts sought for attorneys' fees and costs, the Settlement Administration Costs, the Class Representative's Service Payment, and the PAGA allocation. *See* Settlement Agreement, Ex. A (Class Notice).

The Class Notice provides instructions for Class Members who choose to exclude themselves from the Settlement. *See* Settlement Agreement § 7.5.1. 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, Ex. A (Class Notice), p. 2. Class Members do not need to submit a claim form to participate in the Settlement. *Id.* at p. 2. Class Members are informed of how they can object to the Settlement, and the Class Notice informs Class Members of the date, time, and location of the final fairness and approval hearing so that they can appear in person. *Id.* at pp. 2, 8. The Class Notice also informs Class Members to check the with the Administrator 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 Cal. R. Ct. 3.766(d).

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

C. Proposed Release

The release to be given by Class Members is limited to Defendant and each of its former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates (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 claims arising during the Class Period that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint. Except as set forth in Section 5.3 of [the Settlement Agreement], Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period."

Id at § 5.2.

PAGA Group Members release the Released Parties from all claims for PAGA penalties arising during the PAGA Period that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint, and the PAGA Notice. *Id*. at § 5.3.

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

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).

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 non-exempt employees who are or were employed by Defendant in California at any time from February 21, 2018 to June 24, 2024. Settlement Agreement, §§ 1.5, 1.12. Defendant's records show the Class consists of approximately 578 individuals, making joinder of all Class Members impracticable. Loos Decl., ¶ 10. 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. 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.

Plaintiff alleged that Defendant maintained uniform employment policies and/or practices that illegally deprived Class Members of lawful wages, meal periods, rest breaks, accurate wage statements, and waiting time pay. Loos Decl., ¶ 11. 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. *<u>Plaintiff's Claims are Typical of the Class Claims</u>*

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, 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. Loos Decl., ¶ 12. Through documents and information exchanged in formal and informal discovery, including production of hundreds of pages of 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. *<u>Plaintiff and Plaintiff's 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 Dept of Developmental Servs.*, 155 Cal. App. 4th 676, 696-697 (2007). 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, assisting 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. Loos Decl. ¶ 23.

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

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 578 Class Members had shown any interest in bearing the expense and burden of litigating their own claims. Loos 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.*, 27 Cal. App. 4th 1085, 1089-90 (1994); Conte & Newberg, *Newberg on Class Actions*, § 11.26 (4th ed. 2002). In reviewing the fairness of a class action settlement, due regard should be given to what is "'otherwise a private consensual agreement between the parties.'" *Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380, 1389 (2010). The inquiry "must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Id.*

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

1. The Settlement is Entitled to a Presumption of Fairness

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

Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered. Thus, there is a presumption that settlement negotiations are conducted in good faith. Here, the Settlement was the product of extensive investigation and a full day mediation session with a respected mediator after extensive formal and informal discovery. Loos Decl. ¶¶ 6-8. 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 Plaintiff's requested Service Award was 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,* Loos Decl. In particular, Plaintiff's Counsel assessed the value of the class claims using Defendant's data and documents produced through formal and informal discovery. Loos Decl., ¶ 12. Plaintiff's counsel extensively reviewed policy documents and Class Members' time and pay records to perform a thorough analysis. *Id.* Further, Plaintiff's Counsel engaged an expert to quantify the potential exposure using the time and payroll records, and then assessed the risks associated with each of the claims meriting reductions in the likely recovery at trial. *Id.* Accordingly, Plaintiff's Counsel fully understood the strengths and weaknesses of the claims before the Parties reached a settlement. *Id.*

c. Plaintiff's Counsel is Experienced in Similar Litigation

Plaintiff is represented by Aegis Law Firm, PC ("Class Counsel"). Class Counsel prosecute wage and hour class actions on behalf of employees and others who have had their rights violated. *See generally,* Loos Decl. 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 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 Plaintiff and her 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. Loos Decl., ¶ 14. To determine if the amount offered at mediation was reasonable, Plaintiff's Counsel weighed that figure against many risk factors. Loos Decl., ¶ 15. 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.* 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, 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. Loos Decl., ¶ 13. 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 a serious consideration of the benefit of a settlement. *Id.* at ¶¶ 13-22.

<u>Unpaid Wages - Regular Rate Claim</u>: Plaintiff's unpaid wages claims was partially premised on the theory that Defendant failed to incorporate non-discretionary annual bonuses into the regular rate of

pay, thereby resulting in an underpayment of overtime wages. Loos Decl., ¶ 16. Plaintiff's expert calculated that the regular rate claims were worth $4,945.00 due to unpaid overtime wages and $33,315.00 for unpaid sick pay, for a maximum total of $38,260.00, excluding interest. *Id.* To assess the maximum value of these claims, Plaintiff's expert used the Class Members' time and pay records to calculate the amount of unpaid overtime or sick pay in each pay period based on the number of overtime hours worked or number of sick hours used and the bonuses paid in each pay period to each employee. *Id.* The formula to calculate these damages is the total compensation (*i.e.*, the total hours worked in the pay period, multiplied by the employee's base rate of pay, plus the amount of the bonus paid), divided by the total hours worked to obtain the true regular rate, multiplied by 1.5x the true regular rate of pay to get the true overtime rate, further multiplied by the number of overtime hours worked to calculate the total amount of overtime paid to then find the wages owed. *Id.* Based on the sample data provided which represents approximately 68% of the Class, Plaintiff's expert found that there were approximately 143 employees who worked 3,824 pay periods with overtime and additional annual compensation. *Id.* Plaintiff's expert also calculated Class Members' average rate of pay to be $27.43 and the average number of hours worked per shift to be 8.2 hours. *Id.* However, Defendant argued that the bonuses were discretionary and that it only affected a portion of the Class. *Id.* As such, Plaintiff believed there was a 40% chance of success at class certification, and a 30% chance of prevailing at trial, discounting this claim to be worth approximately $4,591.00. *Id.*

<u>Unpaid Wages – Miscalculated Overtime Claim:</u> Plaintiff's unpaid wages claim was also partially premised on the theory that Defendant failed to compensate class members for all time worked by failing to include overtime hours that were reflected in the time records and by improperly calculating Class Members' overtime when converting it from minutes into decimal figures in other instances. Loos Decl., ¶ 17. Plaintiff's expert compared Class Members' corresponding time and pay records and calculated $28,786.00 of unpaid overtime due to Defendant's calculation errors and omissions. *Id.* However, Defendant provided evidence that it's miscalculation of Class Members' time sometimes resulted in an overpayment of wages. *Id.* As such, Plaintiff assumed there was a 50% chance of success at class certification and 40% chance of success on the merits at trial, rendering this claim to be worth approximately $5,757.00. *Id.*

Unpaid Wages - AWS: Plaintiff's claim for unpaid overtime wages was also premised on the theory that Defendant failed to implement a proper Alternative Workweek Schedule for employees who worked ten-hour shifts for four days a week. *Id.* at ¶ 18. Plaintiff's expert estimated approximately 48,644 unpaid overtime hours assuming an improper AWS election, making this claim potentially worth as much as approximately $667,152.00, excluding interest (48,644 unpaid overtime hours * 0.5 for the additional overtime half-rate not paid * $27.43 average rate of pay = $667,152.46). However, the AWS was not in effect until 2021 and Defendant provided documentation in regard to implementing the Alternative Workweek Schedule, which it submitted to the DIR. *Id.* As such, Plaintiff believed there was an approximate 20% chance of success at class certification and about a 10% chance of prevailing at trial, thereby discounting this claim to approximately $13,343.00. *Id.*

Meal Period Claims: Plaintiff's meal period claim was based on the 22.4% violation rate shown in the records. *Id.* at ¶ 19. Plaintiff's expert also found there were approximately 564 meal period premiums paid during the liability period and offset the violation rate to account for these premiums, thereby resulting in a 22% net violation rate. *Id.* Based on an average rate of pay of $27.43 and approximately 31,562 shifts with at least one late, short, or missed meal period without a premium paid, this results in a total of approximately $865,746.00 of unpaid meal period premiums, not including interest ($27.43 average rate of pay * 31,562 shifts with at least one meal period violation = $865,745.66). *Id.* However, Defendant argued that it maintained compliant written policies, paid some meal period premiums, and that it had enforceable meal period waivers. *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. *Id.* As such, Plaintiff's counsel believed there was a 70% chance succeeding at class certification and a 60% chance at trial, resulting in a value of approximately $363,613.00. *Id.*

Rest Break Claim: Plaintiff alleged that Defendant failed to authorize timely rest breaks due to the productivity requirements imposed on Class Members. *Id.* at ¶ 20. If Plaintiff could prove a 100% violation rate for each shift over 3.5 hours, then damages could reach up to approximately $4,032,868.00 (not including interest) based on approximately 147,024 shifts and an average rate of pay of $27.43 ($27.43 average rate of pay * 147,024 shifts with at least one rest break violation = $4,032,868.32). *Id.*

However, Defendant argued that it maintained compliant written rest break policies, that class members could again choose to waive their rest breaks, and that a 100% violation rate was unlikely. *Id*. As such, this claim would have relied on Class Member testimony, making it a riskier claim at class certification and liability stages. *Id*. Plaintiff's counsel believed there was a 30% chance succeeding at class certification and a 20% chance at trial, resulting in a value of approximately $241,972.00. *Id*.

<u>Waiting Time and Wage Statement Penalties</u>: Plaintiff's Counsel also considered the arguable presence of various derivative penalties, and weighed the potential recoveries against probable defenses. *Id*. at ¶ 21. Specifically, Defendant could argue that Plaintiff could not prove the "willful" prong needed to obtain waiting time penalties under Labor Code § 203. *Id*. Additionally, 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*. Moreover, Plaintiff would not recover any of these derivative penalties if she failed to prove the underlying claims. *Id.* Although the Class arguably could have seen a payout of approximately $1.6 million for waiting time penalties (250 terminated employees * average shift of 8.2 hours * average rate of pay of $27.43 * 30 days = $1,686,945.00, excluding interest) and $1.9 million for wage statement penalties (400 initial pay periods during the liability period * $50 initial penalty = $20,000.00 for initial penalties, plus 19,420 subsequent pay periods * $100 subsequent penalty = $1,942,000, combining initial and subsequent penalties equals $1,962,000, excluding interest), 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 40% chance of class certification and 30% chance at the merits for both claims, resulting in a realistic value of approximately $202,433.00 for the waiting time claim and $235,440.00 for the wage statement claim. *Id.*

<u>PAGA Claim</u>: The PAGA claim presented even higher hurdles. *Id*. at ¶ 22. Although Plaintiff's Counsel found Defendant's exposure could potentially reach approximately $958,900.00 under Lab. Code § 2699(f), assuming the initial penalty rate of $100 for each PAGA pay period, 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); *Id*. In theory, the Court could reduce the award

by 99% if it so wished. *Id*. Plaintiff was doubtful she could recover any PAGA penalties, especially if a large class judgment was entered for the same violations. *Id*. Accordingly, Plaintiff could not place a high value on the PAGA penalties, and therefore allocated $50,000.00 of the Gross Settlement Amount to settle these claims. *Id*.

C. The Requested Service Award for Plaintiff

Plaintiff seeks a Class Representative Service Award of up to $10,000.00 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; *Bell v. Farmers Ins. Exch.*, 115 Cal. App. 4th 715, 726 (2004).

Here, Plaintiff had the option to pursue her claims individually, but instead chose to pursue this class action, delaying individual recovery until approval of a class action settlement. Loos Decl., ¶ 23. Throughout the case, Plaintiff assisted counsel in gathering the evidence necessary to prosecute the class claims, maintained regular contact with counsel, was available on the day of mediation and communicated with her 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 Plaintiff's services on behalf of the Class. *Id.*

By actively pursuing this action, Plaintiff 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 Award 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. Loos 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.*, 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").

Plaintiff seeks 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. *See generally,* Loos Decl. Plaintiff's Counsel seeks preliminary approval for $350,000.00 in attorneys' fees, which is up to one-third of the Gross Settlement Amount, and up to $30,000.00 in reimbursement of litigation costs. Given the work performed in this matter, the extensive information exchange, and substantial recovery obtained on behalf of Plaintiff and the Class, Plaintiff's Counsel achieved a settlement through efficient and diligent work. *See generally,* Loos Decl. At final approval, Plaintiff's Counsel will fully brief the merits of its request for the award of attorneys' fees and litigation costs.

V. CONCLUSION

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

Dated: December 6, 2024

AEGIS LAW FIRM, PC

By: ______________________________
Jamie Loos
Attorneys for Plaintiff