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

14 **FOR THE COUNTY OF LOS ANGELES**

15 ANDREW ARAGON and ALICE
16 TRIPLETT, individually and on behalf of all
17 others similarly situated,

18 Plaintiffs,

19 vs.

20 STREETPLUS CA, LLC; and DOES 1
21 through 20, inclusive,

22 Defendants.

Case No. 22STCV28593

*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 ACTION SETTLEMENT**

Date: August 16, 2024

Time: 9:00 a.m.

Dept: 6

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1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court 3.769 (d) and (e), Plaintiffs Andrew Aragon, Alice Triplett,
3 and Dondero Fox (“Plaintiffs”) request that the Court grant preliminary approval of a class action
4 settlement of wage and hour claims, including a claim under the California Private Attorneys General
5 Act of 2004, codified at Lab. Code § 2698, *et seq.* (“PAGA”), against Defendant Streetplus CA, LLC
6 (“Defendant”) (collectively, Plaintiffs and Defendant referred to as the “Parties”). The putative class
7 consists of approximately 809 employees, and is defined as anyone who was employed by Defendant
8 as a non-exempt employee in the State of California (individually, “Class Member”; collectively, “Class
9 Members”) from October 1, 2020 to April 23, 2024. (the “Class Period”). The basic terms of the Class
10 Action and PAGA Settlement Agreement and Class Notice (“Settlement Agreement” or “Settlement”)¹
11 provide for the following:

- 12 (1) A non-reversionary Gross Settlement Amount of \$625,000.00 allocated to
13 approximately 809 Class Members on a pro rata basis according to the number of
14 weeks each Class Member worked during the Class Period;
- 15 (2) An award of up to one-third of the Gross Settlement Amount (currently
16 \$208,333.33) and up to \$30,000.00 in reimbursement of costs to Plaintiffs’
17 Counsel for services rendered as counsel on this matter;
- 18 (3) Service Payments of up to \$7,500.00 for each of the Named Plaintiffs;
- 19 (4) Settlement Administration fees and costs of up to \$11,890.00; and
- 20 (5) Allocations of \$40,000.00 for resolution of civil penalties under PAGA. Seventy-
21 five percent (75%) of this payment will be paid to the California Labor and
22 Workforce Development Agency (“LWDA Payment”), and twenty-five percent
23 (25%) will be paid to Class Members who worked for Defendant during the PAGA
24 Period.

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 Kristy R. Connolly in Support of Plaintiffs’
28 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.

1 With each Class Member allocated an average recovery of approximately \$400 from the Net
2 Settlement Amount, the Settlement satisfies the criteria for preliminary approval and falls well within
3 the range of reasonableness given the risks and costs of continued litigation. The Settlement was reached
4 through informed, arm's-length bargaining at and after a mediation between experienced attorneys. As
5 such, Plaintiffs request that the Court grant preliminary approval of the Settlement, conditionally certify
6 the Class for settlement purposes only, appoint Plaintiffs as the Class Representatives, appoint
7 Plaintiffs' Counsel as Class Counsel, appoint Apex Class Action Administration as the Settlement
8 Administrator, authorize the Settlement Administrator to send notice of the Settlement, and set a final
9 approval hearing date.

10 **II. SUMMARY OF THE LITIGATION**

11 On September 1, 2022, Plaintiff Andrew Aragon filed a putative class action on behalf of
12 Defendant's non-exempt employees alleging the following causes of action: (1) failure to pay minimum
13 wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to permit rest
14 breaks; (5) failure to reimburse business expenses; (6) failure to provide accurate itemized wage
15 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. Connolly Decl., ¶ 3, Ex. 3. On September 1, 2022, Plaintiff Andrew Aragon's provided
18 written notice to the LWDA and Defendant regarding Defendant's alleged Labor Code violations, as
19 required by Lab. Code § 2699.3(a). *Id.* at ¶ 4. The LWDA did not respond to this notice, indicating it did
20 not intend to investigate, thus allowing Plaintiff to bring a PAGA claim against Defendant. *Id.* Therefore,
21 on November 14, 2022, Plaintiff filed a First Amended Complaint adding a cause of action for
22 enforcement of Labor Code § 2698 *et seq.* ("PAGA") and to add Plaintiff Alice Triplett as a second named
23 plaintiff and class representative. *Id.* On June 14, 2023, Plaintiffs filed a Second Amended Complaint to
24 add Dondero Fox as a third named plaintiff and class representative. *Id.*

25 The Parties agreed to attend early private mediation. Connolly Decl., ¶ 5. In advance of mediation,
26 Defendant informally produced Plaintiffs' personnel files, relevant policy documents, and a sample of
27 timekeeping and payroll records. *Id.* To prepare for mediation, Plaintiff's counsel worked with experts to
28 analyze time-keeping and payroll data related to the claims in order to evaluate the potential damages and

penalties. *Id.* Additionally, Defendant produced tax returns from the past few years for Plaintiff to analyze Defendant's financial condition. *Id.* To this end, Plaintiff's counsel worked with a forensic accounting expert to analyze Defendant's financial position and ability to fund a large class settlement. *Id.*

On April 23, 2024, the Parties attended a mediation session with Alan Berkowitz, a respected mediator. Connolly Decl., ¶ 6. 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 full terms of the Settlement, which was finalized in June of 2024. *Id.* On June 24, 2024, Plaintiffs submitted the Settlement to the LWDA pursuant to Lab. Code § 2699(1)(2). *Id.* at ¶ 7. Ex. 2.

III. SUMMARY OF THE SETTLEMENT

A. Terms of Settlement

Plaintiffs and Defendant agreed to settle the class claims in exchange for a Gross Settlement Amount of \$625,000.00. Settlement Agreement, § 3.1. The Gross Settlement Amount will be used to make payments for the following: (1) Individual Settlement Payments to Participating Class Members; (2) attorneys' fees to Class Counsel of up to one-third of the Gross Settlement Amount; (3) reimbursement of Class Counsel's litigation costs of up to \$30,000.00; (4) a Service Payment to each of the Plaintiffs of up to \$7,500.00; (5) Settlement Administration fees and costs of \$11,890; and (6) a payment of \$30,000.00 to the LWDA for PAGA penalties. *Id.* at §§ 3.2.1–3.2.5. Class Members' Individual Settlement Payments will be distributed after final approval of the Settlement and Defendant fully funds the Gross Settlement Amount. *Id.* at §§ 4.3–4.4. Individual Settlement Payments will be calculated by comparing the total Qualifying Workweeks for the Class to each individual Class Member's Qualifying Workweeks. *Id.* at § 3.2.4. The Settlement Administrator will calculate the actual estimated recovery to include in the Notice of Class Action Settlement ("Class Notice") and provide the estimated low and high range of possible recovery at final approval. *Id.* at § 7.4.2; Ex. A (Class Notice). Once the Court grants final approval and enters judgment, the Settlement Administrator will post the Class Notice on its website. Settlement Agreement, § 7.8.1.

The Individual Settlement Payments will be allocated 25% to wages; 75% to interest and penalties for tax purposes. *Id.* at § 3.2.4.1. Defendant will pay the employer-side payroll taxes on the portion

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

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

6 Once the Court grants preliminary approval, Defendant will have 21 days to deliver the Class Data
7 to the Settlement Administrator. Settlement Agreement, § 4.2. The Settlement Administrator will then
8 have fourteen days to send Class Notice by first-class mail after checking for updated addresses through
9 the National Change of Address database. *Id.* at § 7.4.2. The Class Notice provides information regarding
10 the nature of the lawsuit, a summary of the substance of the settlement terms, the formula for calculating
11 Individual Settlement Payments, the individual's estimated payout, a statement that Class Members who
12 take no action will release their claims and receive settlement checks, instructions regarding how to
13 dispute the calculations, instructions regarding how to request exclusion or object to the Settlement, the
14 date for the final approval hearing, the amounts sought for attorneys' fees and costs, the Settlement
15 Administration Costs, the Class Representative's Service Payment, and the PAGA allocation. *See*
16 Settlement Agreement, Ex. A.

17 The Class Notice provides instructions for Class Members who choose to exclude themselves
18 from the Settlement. *See* Settlement Agreement, Ex. A. To opt out, Class Members are instructed to
19 submit a Request for Exclusion to the Settlement Administrator by a specified date (60 days after the date
20 of mailing of the Class Notice). *See* Settlement Agreement, § 7.5.1 & Ex. A. Class Members do not need
21 to submit a claim form to participate in the Settlement. *See* Settlement Agreement, Ex. A. The Class
22 Notice informs Class Members of how they can object to the Settlement, and of the date, time, and
23 location of the final fairness and approval hearing so that they can appear at the hearing in person. *Id.* The
24 Class Notice also informs Class Members to check the Administrator's website or contact Class Counsel
25 to verify the date and time of the Final Approval Hearing. *Id.* Accordingly, the content of the Class Notice
26 complies with the requirements of Cal. R. Ct. 3.766, subd. (d).

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

14 days from the date of mailing or the original deadline, whichever is later. Settlement Agreement, §§ 7.5.1 – 7.5.3. The initial 60-day notice period and extension process ensures the notice program provides due process by giving Class Members enough time to determine whether they want to participate in the Settlement. This means of notice is reasonably calculated to apprise Class Members of the pendency of the action. (*See* Cal. R. Ct. 3.766, subds. (d)–(f).)

6 C. Proposed Release

7 The release to be given by Class Members is limited to Defendant, Defendant’s respective present,
8 former, and future controlling persons, parent companies, affiliates, subsidiaries, successors-in-interest,
9 assigns, predecessors, benefit plans sponsored by such companies, owners, members, shareholders,
10 officers, directors, principals, employees, agents, attorneys, accountants, auditors, consultants, insurers
11 and reinsurers, managers, trustees, fiduciaries, heirs, representatives, and divisions, including, but not
12 limited to, Streetplus Corporation and Streetplus Company, LLC. (the “Released Parties”). Settlement
13 Agreement, § 1.41. Under the proposed release, Class Members who do not exclude themselves from
14 the Settlement will be deemed to have released the following:

15 All Participating Class Members, on behalf of themselves and their respective former and
16 present representatives, agents, attorneys, heirs, administrators, successors, and assigns,
17 release Released Parties from all claims that were alleged, or reasonably could have been
18 alleged, based on the facts stated in the Operative Complaint or ascertained in the course
19 of the Action and arising during the Class Period. Except as set forth in Section 5.3 of this
20 Agreement, Participating Class Members do not release any other claims, including claims
21 for vested benefits, wrongful termination, violation of the Fair Employment and Housing
22 Act, unemployment insurance, disability, social security, workers’ compensation, or claims
23 based on facts occurring outside the Class Period.

24 *Id.* at § 5.2. Aggrieved Employees (regardless of whether they exclude themselves from the Settlement)
25 will be deemed to have released the following:

26 all claims for PAGA penalties that were alleged, or reasonably could have been alleged,
27 based on the facts stated in the Operative Complaint, Plaintiff’s PAGA Notice, or
28 ascertained during the Action and arising during the PAGA Period.

Id. at § 5.3.

25 Additionally, Plaintiffs will be deemed to have released all potential claims. Settlement
26 Agreement, § 5.1. Plaintiffs also releases all known or unknown claims under Civil Code § 1542. *Id.*

27 IV. LEGAL ARGUMENTS SUPPORTING PRELIMINARY APPROVAL

28 A. Provisional Certification of the Class is Appropriate

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

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

6 Whether a class is “ascertainable” is “determined by examining (1) the class definition, (2) the
7 size of the class, and (3) the means available for identifying class members.” *Reyes v. Bd. of Supervisors*
8 (1987) 196 Cal. App. 3d 1263, 1271. Here, the Class consists of anyone who was employed by Defendant
9 in California as a non-exempt or hourly-paid employee at any time from October 1, 2020 to April 23,
10 2024. Settlement Agreement, §§ 1.5 & 1.12. Defendant’s records show the Class consists of
11 approximately 809 individuals, making joinder of all Class Members impracticable. Connolly Decl., ¶
12 8. Further, the Class is readily ascertainable from Defendant’s business records because all Class
13 Members are current or former employees of Defendant. *Id.*

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

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

19 *a. Common Questions Predominate*

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

25 Plaintiffs alleged that Defendant maintained employment policies and/or practices that illegally
26 deprived Class Members of lawful wages, meal periods, rest breaks, accurate wage statements, payment
27 of all wages upon separation from employment, and waiting time pay. Connolly Decl., ¶ 9. Plaintiffs’
28 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. Plaintiffs' Claims are Typical of the Class Claims

The typicality requirement is satisfied when the legal theories and facts supporting Plaintiffs' claims are substantially similar to other class members. (*See Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46.) Here, Plaintiffs allege that they and other Class Members were employed by Defendant and injured by Defendant's common wage and hour policies and practices, including Defendant's scheduling, timekeeping, minimum wage pay, overtime pay, meal period, and rest break practices and policies. Connolly Decl., ¶ 10. Through documents and information exchanged in formal discovery, including production of policy documents by Defendant, 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. Plaintiffs and Plaintiffs' 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 Plaintiffs 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, 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, 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., ¶ 20.

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*, 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.* (2000) 23 Cal. 4th 429, 435, 446; *Ghazaryan v. Diva Limousine, Ltd.*, (2008) 169 Cal. App. 4th 1524, 1537-1538.) Here, none of the other 809 Class Members had shown any interest in bearing the expense and burden of litigating their own claims. Connolly Decl., ¶ 22. Thus, a class action is the superior method for seeking relief.

B. The Settlement Meets the Standards for Preliminary Approval

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

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

1. The Settlement is Entitled to a Presumption of Fairness

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

Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered. Thus, there is a presumption that settlement negotiations are conducted in good faith. Here, the Settlement was the product of extensive investigation and a full day mediation session with a respected mediator after extensively reviewing informal discovery. Connolly Decl., ¶¶ 5-6. The negotiations were adversarial, conducted at arm's-length, and tempered by the efforts of both sides to serve the interests of their clients. *Id.* at ¶ 6. The amounts of Plaintiffs' requested Service Awards were not negotiated until after the Parties agreed to the Gross Settlement Amount and many other terms. *Id.* at ¶ 22.

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 Defendant's data and documents produced through informal discovery. Connolly Decl., ¶¶ 11, 13-14. Plaintiffs' counsel extensively reviewed policy documents and time and pay records to perform a thorough analysis. *Id.* at ¶¶ 5, 10. 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 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. Connolly Decl., ¶¶ 23-35. 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 Further Litigation

Courts have discretion to approve class settlements by assessing several factors, including the "strength of plaintiffs' case, risk, expense, complexity and likely duration of further litigation and risk

1 of maintaining the class action through trial.” *Munoz v. BCI Coca-Cola Bottling Co. of L.A.* (2010) 186
2 Cal. App. 4th 399, 407; *see also Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, 129.

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

12 *a. Exposure Analysis*

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

16 Compromise is inherent and necessary in the settlement process . . . even if “the relief afforded
17 by the proposed settlement is substantially narrower than it would be if the suits were to be
18 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.”

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

25 Plaintiffs investigated and evaluated direct and derivative claims for failure to maintain accurate
26 itemized wage statements. Connolly Decl., ¶ 15. Specifically, Plaintiffs alleged that Defendant was liable
27 for facial wage statement violations by including Class Members’ entire social security number provided
28 on their wage statements, rather than just the last four digits, as required by Labor Code section

226(a)(7). *Id.* However, Plaintiffs could have difficulty proving that Class Members suffered an “injury” as a result of the “knowing and intentional” wage statement violations as required by Labor Code section 226. *Id.* Plaintiffs’ expert calculated wage statement penalties assuming a violation in every pay period. *Id.* Using the start and end dates of employment and capping the penalties at \$4,000 per person, Plaintiff calculated a maximum of \$2,396,200. *Id.* In light of the above, Plaintiffs estimated a 70% chance at class certification and a 30% chance at trial, valuing the wage statement claim at roughly \$227,336. *Id.*

Plaintiffs additionally alleged that Defendant failed to pay weekly wages as required by Labor Code section 201.3, which requires employers in the security services industry to pay temporary services workers on a weekly basis. Connolly Decl., ¶ 16. Assuming all Class Members were owed waiting time penalties, then damages could reach \$3,035,640. *Id.* However, Defendant argued that this claim would only apply to, at most, those who worked in a security guard position. *Id.* Further, Defendant provided evidence that Plaintiff, like other Class Members, were on long-term client assignments and Labor Code section 201.3(b)(6) provides an exception for employees assigned to work for a client for over 90 consecutive days. *Id.* Additionally, Plaintiffs considered that they could not be able to prove the “willful” prong needed to obtain waiting time penalties under Labor Code section 203. *Id.* Therefore, Plaintiffs estimated a 40% chance at class certification and a 20% chance at trial, making this claim worth about \$242,851. *Id.*

Plaintiffs’ meal and rest break claims were premised on the theory that Defendant failed to relieve Class Members from duty by requiring them to monitor their cell phones and radios at all times and respond to any calls that come through. Connolly Decl., ¶ 17. If Plaintiffs could prove a 100% violation rate, then the damages could reach \$3,257,001, assuming a premium was owed for each shift worked. *Id.* However, Defendant argued that a 100% violation rate is unrealistic especially given that in practice, it did provide Class Members with compliant breaks and provided evidence of facially compliant written policies providing for the same. *Id.* Given the compliant policy language, this claim would have mainly relied on Class Member testimony, making it a riskier claim at class certification and liability stages. *See, e.g., Ordonez v. Radio Shack, Inc.*, 2013 WL 210223, at *11 (C.D. Cal. Jan. 17, 2013) (“Because of the competing testimony before the Court, plaintiff’s evidence that defendant may have an illegal, written rest break policy is insufficient for this Court to find that common issues predominate.”); *Villa*

1 *v. United Site Servs. Of California, Inc.*, 2012 WL 5503550, at *8 (N.D. Cal. Nov. 13, 2012) (“Indeed,
2 Plaintiff’s own evidence confirms that the written policy does not generate uniform practices.”). As
3 such, Plaintiffs’ Counsel believed there was a 30% chance at class certification and a 20% chance at
4 trial, resulting in a value of approximately \$195,420. Connolly Decl., ¶ 17.

5 The PAGA claim presented even higher hurdles. Connolly Decl., ¶ 18. Plaintiffs’ expert analyzed
6 the employment data provided by Defendant and found that Defendant’s exposure could potentially
7 reach approximately \$1,115,600 under Lab. Code § 2699(f), assuming the initial penalty rate of \$100
8 for the 11,156 pay periods. *Id.* However, to recover that amount, Plaintiffs would have to prove a
9 violation in every pay period. *Id.* Most importantly, the Court would have discretion to reduce the PAGA
10 award based on whether the amount of the award would be “unjust, arbitrary and oppressive, or
11 confiscatory.” Lab. Code § 2699(e)(2). In theory, the Court could reduce the award by 99% if it so
12 wished. Plaintiffs were doubtful they could recover any PAGA penalties, especially if a large class
13 judgment was entered for the same violations. Accordingly, Plaintiffs could not place a high value on
14 the PAGA penalties, and therefore allocated \$30,000 of the Gross Settlement Amount to settle these
15 claims. *See Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) 2009 U.S. Dist. LEXIS 33900 at *24
16 (finding amount of PAGA penalties reasonable where the amounts are negotiated in good faith and
17 “there is no indication that [the] amount was the result of self-interest at the expense of other Class
18 Members”); *Nordstrom Comm’n Cases* (2010) 186 Cal.App.4th 576, 579 (“trial court did not abuse its
19 discretion in approving a settlement which does not allocate any damages to the PAGA claims”).

20 Thus, given the realistic exposure to Defendant and the risks involved in litigation, the settlement
21 amount of \$625,000 is reasonable, fair, and proper.

22 23 **C. The Requested Service Awards for Plaintiffs**

24 Plaintiffs seeks Service Award of up to \$7,500.00 each for accepting the responsibilities of
25 representing the interests of the Class and assuming risks and potential costs that were not borne by any
26 other Class Members. Settlement Agreement, § 3.2.1. A named plaintiff is eligible for payment that
27 reasonably compensates him or her for undertaking and fulfilling a fiduciary duty to represent absent
28 class members. *See Cellphone Termination Fee Cases, supra*, 186 Cal. App. 4th at 1393-94 (“The

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

11 Plaintiffs had the option to pursue their claims individually, but instead chose to pursue this class
12 action, delaying individual recovery until approval of a class action settlement. Connolly Decl., ¶ 22.
13 Throughout the case, Plaintiffs assisted counsel in gathering the evidence necessary to prosecute the
14 class claims, maintained regular contact with counsel, were available on the day of mediation and
15 communicated with their attorneys during the day of mediation to answer critical questions, reviewed
16 the Settlement to make sure it was fair to the Class, and otherwise assisted the action as needed since
17 this action was filed over three years ago. *Id.* No action would likely have been taken by Class Members
18 individually, and no compensation would have been recovered for them, but for Plaintiffs’ services on
19 the Class’s behalf. *Id.*

20 By actively pursuing this action, Plaintiffs also furthered the California public policy goal of
21 enforcing the State’s wage and hour laws. *See Sav-On Drug Stores, Inc., supra*, 34 Cal. 4th at 340. The
22 requested Service Awards for Plaintiffs’ service as the class representative and for a general release of
23 all employment claims is reasonable and should be preliminarily approved. At the final approval stage,
24 Plaintiffs will further support the request for the Service by declarations addressing the factors for the
25 award. Connolly Decl., ¶ 24.

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

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

1 Attorneys' fees are awarded as a matter of equity. California courts routinely award attorneys' fees
2 equaling one-third or more of the potential value of the common fund. *See Chavez v. Netflix, Inc.* (2008)
3 162 Cal. App. 4th 43, 66, n.11 ("Empirical studies show that, regardless of whether the percentage
4 method or the lodestar method is used, fee awards in class actions average around one-third of the
5 recovery").

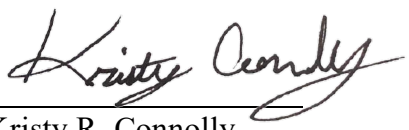
6 Plaintiffs seek appointment of Aegis Law Firm, PC as Class Counsel. The attorneys performed
7 significant work and expended litigation costs in prosecuting the matter with no guarantee of any
8 payment. Connolly Decl., ¶ 39. Plaintiffs' Counsel seeks preliminary approval for \$208,333.33 in
9 attorneys' fees, which is up to one-third of the Gross Settlement Amount, and up to \$30,000.00 in
10 reimbursement of litigation costs. Settlement Agreement § 3.2.2. Given the work performed in this
11 matter, the extensive information exchange, and substantial recovery obtained on behalf of Plaintiffs
12 and the Class, Plaintiffs' Counsel achieved a settlement through efficient and diligent work. *See*
13 *generally*, Connolly Decl. At final approval, Plaintiffs' Counsel will fully brief the merits of its request
14 for the award of attorneys' fees and litigation costs. *Id.* at ¶ 38.

15 **V. CONCLUSION**

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

20
21 Dated: June 24, 2024

AEGIS LAW FIRM, PC

22
23 By: 
24 Kristy R. Connolly
25 Attorneys for Plaintiffs
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