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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BENITO

LEO HERNANDEZ SR., LEO HERNANDEZ
JR., CURTIS LUPTON, GILBERTO DEDIOS,
ALEJANDRO GARCIA, JUSTIN ROBINSON,
JOSE GARCIA MARTINEZ, ERIC VALADEZ,
DAVID BERGERON, JORGE GONZALEZ,
individually and on behalf of all others similarly
situated,

Plaintiffs,

vs.

WGS GROUP, INC., a Nevada corporation, and
DOES 1 through 10, inclusive,

Defendants.

Case No. CU-22-00225

*Assigned to the Honorable Patrick K. Palacios,
Dept. 3*

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

Date: March 6, 2024
Time: 3:30 p.m.
Dept: 3

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1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court 3.769 (d) and (e), Plaintiffs Leo Hernandez Sr., Leo
3 Hernandez Jr., Curtis Lupton, Gilberto Dedios, Alejandro Garcia, Justin Robinson, Jose Garcia Martinez,
4 Eric Valadez, David Bergeron, Jorge Gonzalez, and Julian Okiwelu (“Plaintiffs”) request that the Court
5 grant preliminary approval of a class action settlement of wage and hour claims, including a claim under
6 the California Private Attorneys General Act of 2004, codified at Lab. Code § 2698, *et seq.* (“PAGA”),
7 against Defendant WGS Group, Inc. (“Defendant”) (collectively, Plaintiffs and Defendant are referred
8 to as the “Parties”). The putative class consists of approximately 465 non-exempt, hourly employees
9 who worked for Defendant in California (individually, “Class Member”; collectively, the “Class”) from
10 September 13, 2018, through November 15, 2023 (the “Class Period”). The basic terms of the Class
11 Action and PAGA Settlement Agreement and Class Notice (“Settlement Agreement” or “Settlement”)¹
12 provide for the following:

- 13 (1) A non-reversionary Gross Settlement Amount of \$300,000.00 allocated to
14 approximately 465 Class Members on a pro rata basis according to the number of
15 weeks each Class Member worked during the Class Period;
- 16 (2) An award of up to thirty-five percent of the Gross Settlement Amount (currently
17 \$105,000.00) and up to \$30,000.00 in reimbursement of costs to Plaintiffs’
18 Counsel for services rendered as counsel on this matter;
- 19 (3) Service Payment of up to \$5,000.00 to each Plaintiff;
- 20 (4) Settlement Administration fees and costs of up to \$20,000.00; and
- 21 (5) Allocation of \$10,000 for resolution of civil penalties under PAGA. Seventy-five
22 percent (75%) of which will be paid to the California Labor and Workforce
23 Development Agency (“LWDA Payment”), and twenty-five percent (25%) of
24 which will be paid to Class Members who worked for Defendant during the
25 PAGA Period.

26 ¹ A true and correct copy of the fully executed Settlement Agreement is attached as **Exhibit 1** to the
27 Declaration of Joseph Szilagyi in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action
28 Settlement (“Szilagyi 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.

As discussed below, the proposed Settlement satisfies all criteria for preliminary approval under California law and falls well within the range of reasonableness. The Settlement was reached through informed, arms-length bargaining at and after private mediation. Accordingly, Plaintiffs request that the Court (a) grant preliminary approval of the settlement, (b) conditionally grant certification of the proposed Settlement Class solely for the purposes of settlement, (c) approve the appointment of Phoenix Settlement Administrators as Settlement Administrator, (d) authorize the Settlement Administrator to send the Notice of Class Action Settlement to the Class Members, (e) appoint Plaintiffs as the Class Representatives and Plaintiffs' Counsel as Class Counsel, and (f) schedule a final fairness and approval of settlement hearing.

II. SUMMARY OF THE LITIGATION

On September 1, 2022, October 6, 2022, and December 15, 2022, notices were provided to the Labor & Workforce Development Agency ("LWDA") by Plaintiffs Leo Hernandez Sr., Leo Hernandez Jr., Curtis Lupton, Gilberto Dedios, Alejandro Garcia, Justin Robinson, Jose Garcia Martinez, Eric Valadez, David Bergeron, and Jorge Gonzalez outlining the facts and theories underlying their claims against Defendant. Szilagyi Decl., ¶ 3. On November 10, 2022, this action was filed as a representative action pursuant to the Private Attorneys General Act ("PAGA") based on allegations set forth in letters to the LWDA for (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to permit rest breaks; (5) failure to reimburse business expenses; (6) failure to provide accurate itemized wage statements; and (7) failure to pay all wages due during and upon separation of employment. Szilagyi Decl., ¶ 4.

On September 13, 2022, Plaintiff Okiwelu filed a putative class action complaint against Defendant in the Alameda County Superior Court, Case Number 22CV017766, alleging (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; and (6) failure to pay all wages due during and upon separation of employment. Szilagyi Decl., ¶ 5. On January 13, 2023, Plaintiff Okiwelu's complaint was amended to additionally allege violations of PAGA. Szilagyi Decl., ¶ 6.

Upon discovery of the actions filed against Defendant, the Parties' counsel met and conferred and agreed to schedule private mediation. Szilagyi Decl., ¶ 7. The Parties agreed to an informal production of

records in preparation of mediation, including time-punch records and wage statements for the group of Class Members, and written work policies concerning the wage and hour allegations by Plaintiffs. Szilagyi Decl., ¶ 8. Following Defendant's production and Plaintiffs' review of the substantive production of evidence for mediation, the Parties attended private mediation with Hon. Steven R. Denton (Ret.) on October 24, 2023. Szilagyi Decl., ¶ 10. The Parties agreed the mediation would be global and inclusive of both actions brought against Defendant. *Ibid.* Based on the evidence received through formal discovery, Plaintiffs' expert was able to formulate a damages analysis of all claims. Szilagyi Decl., ¶ 11. A resolution was reached in principle at mediation, and the Parties' settlement was fully executed on or about February 2, 2024. Szilagyi Decl., ¶ 12.

On February 9, 2024, Plaintiffs submitted a copy of the Settlement to the LWDA pursuant to Lab. Code § 2699(l)(2). Szilagyi Decl., ¶ 13; Exhibit 2 (Confirmation of Submission of Settlement to LWDA).

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 \$300,000.00. Settlement Agreement, Art. 1(x); § 3.06(a). The Gross Settlement Amount will be funded in two installment payments: the first \$100,000.00 will be funded to the administrator no later than fourteen calendar days after the final approval order, and the remaining \$200,000.00 funded no later than one year after the final approval order. *Id.* at § 3.06(a). Payments will be issued to Class Members no later than fourteen business days upon receipt of the entire Gross Settlement Amount. *Id.* at 3.06(f).

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 thirty-five percent of the Gross Settlement Amount; (3) reimbursement of Class Counsel's litigation costs of up to \$30,000; (4) a Service Payment to Plaintiffs of up to \$5,000 each; (5) Settlement Administration fees and costs of up to \$20,000; and (6) a payment to the LWDA of \$7,500 pursuant to PAGA. *Id.* at § 3.06(b) – 3.06(e). Class Members' Individual Settlement Payments will be distributed after final approval of the Settlement and Defendants fund the Gross Settlement Amount. *Id.* at § 3.06(f). Individual Settlement Payments will be calculated by comparing the total weeks worked for the Class to each individual Class Member's weeks worked. *Ibid.* The Settlement Administrator will calculate the

1 actual estimated recovery to include in the Class Notice and provide the estimated low and high range
2 of possible recovery at final approval. *Id.* at § 3.03(c); Settlement Agreement, Ex. A (Notice of Class
3 Action Settlement). The class notice will be provided in English and Spanish. *See* Settlement
4 Agreement, Art. 1(j); § 3.02.

5 The Settlement provides that if the actual number of weeks worked by Class Members exceeds
6 13,876 by more than 10%, then the Gross Settlement Amount will be increased on a pro rata basis per
7 additional pay period that exceeds 10%. *See* Settlement Agreement, § 3.04(e). If more than 10% of Class
8 Members opt out of the Settlement, Defendant may terminate the Settlement Agreement. *Id.* at § 2.02.

9 The Individual Settlement Payments to Class Members will be allocated for tax purposes as
10 follows: 10% to wages; 90% to penalties and interest. Settlement Agreement, § 3.06(f). The employer-
11 side payroll taxes on the portion allocated to wages will be paid by Defendant separately from, and in
12 addition to the Gross Settlement Amount. *Id.* at § 3.06(a). No portion of the Gross Settlement Amount
13 will revert to Defendant. *Ibid.* Funds from uncashed or undeliverable checks will be tendered by the
14 Settlement Administrator to the State Controller Unclaimed Property Fund in the name of the Class
15 Member for whom the funds are designated. *Id.* at § 3.06(f).

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

17 Class members are entitled to the best practical notice under the circumstances. *Kass v. Young*,
18 67 Cal.App.3d 100, 106 (1977). The purpose of the notice is to give class members sufficient
19 information to decide whether they should accept the benefits offered, opt-out and pursue their own
20 remedies, or object to the settlement. *Trotsky v. Los Angeles Fed. Sav. & Loan Ass'n.*, 48 Cal.App.3d
21 143, 151-152 (1975).

22 Once the Court grants preliminary approval, Defendant will have fifteen (15) calendar days to
23 deliver the Class Data to the Settlement Administrator. Settlement Agreement, § 3.03(a). The Settlement
24 Administrator will then have fourteen (14) calendar days to send Class Members the Notice of Class
25 Action Settlement (“Class Notice”) by first-class mail after checking for updated addresses through the
26 National Change of Address database. *Id.* at § 3.03(c). The Class Notice provides information regarding
27 the nature of the lawsuit, a summary of the substance of the settlement terms, the formula for calculating
28 Individual Settlement Payments, the individual’s estimated payout, a statement that Class Members who

1 take no action will release their claims and receive settlement checks, instructions regarding how to
2 dispute the calculations, instructions regarding how to request exclusion or object to the Settlement, the
3 date for the final approval hearing, the amounts sought for attorneys' fees and costs, the Settlement
4 Administration Costs, the Class Representatives' Service Payments, and the PAGA allocation. *See*
5 Settlement Agreement, Ex. A (Class Notice).

6 The Class Notice provides instructions for Class Members who choose to exclude themselves
7 from the Settlement. *See* Settlement Agreement § 3.04(b). To opt out, Class Members are instructed to
8 submit a Request for Exclusion to the Settlement Administrator by a specified date (within 60 days after
9 the date of mailing of the Class Notice). *Id.* at § Art. 1(uu); *see* Settlement Agreement, Ex. A. Class
10 Members do not need to submit a claim form to participate in the Settlement. *Id.* Class Members are
11 informed of how they can object to the Settlement, and the Class Notice informs Class Members of the
12 date, time, and location of the final fairness and approval hearing so that they can appear in person. *Id.* at
13 § 3.04(c). The Class Notice also informs Class Members to check the Administrator's website or contact
14 Class Counsel to verify the date and time of the Final Approval Hearing. *See* Settlement Agreement, Ex.
15 A. Accordingly, the content of the Class Notice complies with the requirements of Cal. R. Ct. 3.766(d).

16 If Class Notice packets are returned as undeliverable, the Settlement Administrator will perform a
17 skip-trace or other search, and re-mail the Class Notice with an extended deadline, to opt out or object, of
18 14 days from the date of mailing or the original deadline. *See* Settlement Agreement § 3.03(f). The initial
19 60-day notice period and extension process ensures the notice program provides due process by giving
20 Class Members enough time to determine whether they want to participate in the Settlement. This means
21 of notice is reasonably calculated to apprise Class Members of the pendency of the action. *See* Cal. R. Ct.
22 3.766 (d)-(f).

23 C. Proposed Release

24 The settlement provides that Settlement Class Members who do not opt out of the Settlement
25 Agreement will release certain claims against Defendants. The release to be given by Class Members is
26 limited to Defendant and "Defendant's owners, officers, directors, managers, board members,
27 shareholders, owners, members, employees, agents, representatives, subsidiaries, parents, affiliates,
28 predecessors, successors, joint venturers, attorneys, insurers, and reinsurers" (the "Released Parties").

1 Settlement Agreement, § Art. 1(ss). Under the proposed release, Class Members who do not exclude
2 themselves from the Settlement will be deemed to have released the following:

3 “[A]ll causes of action and factual or legal theories that were alleged, or reasonably could
4 have been alleged, based on facts stated in the Operative Complaint which occurred during
5 periods of employment in a non-exempt position in California during the Class Period, for
6 violations of the California Labor Code including inter alia sections 201, 202, 203, 204,
7 226, 226.7, 510, 512, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802 and Industrial
8 Welfare Commission Wage Orders including inter alia, Wage Orders 4-2001, 5-2001, and
9 10-2001 including all of the following claims for relief: (a) failure to pay all overtime wages
10 due; (b) failure to provide proper meal periods, and to properly provide premium pay in lieu
11 thereof; (c) failure to provide proper rest periods, and to properly provide premium pay in
12 lieu thereof; (d) failure to pay all minimum wages due; (e) failure to pay all wages timely
13 during employment; (f) failure to pay all wages timely at the time of termination; (g) failure
14 to provide complete, accurate or properly formatted wage statements; (h) failure to keep
15 complete and accurate payroll records; (i) failure to reimburse business expenses; (j) unfair
16 business practices that could have been premised on the claims, causes of action or legal
17 theories of relief described above or any of the claims, causes of action, or legal theories of
18 relief pleaded in the Operative Complaint; (k) any other claims or penalties under the wage
19 and hour laws pleaded in the Action; and (l) all damages, penalties, interest, and other
20 amounts recoverable under said claims, causes of action or legal theories of relief. Except
21 as expressly set forth in this Agreement, Participating Class Members do not release any
22 other claims, including claims for vested benefits, wrongful termination, violation of the
23 Fair Employment and Housing Act, unemployment insurance, disability, social security,
24 workers’ compensation, or California class claims based on facts occurring outside the Class
25 Period.”

17 Settlement Agreement, § Art. 1(qq). Moreover, all Class Members, whether or not they opt out
18 of the Settlement, will be deemed to have released and waived the following PAGA claims against the
19 Released Parties during the period from September 1, 2021, through November 15, 2023:

20 “[A]ll causes of action or factual or legal theories for civil penalties under the California Labor
21 Code Private Attorneys General Act of 2004 against any of the Release Parties that were alleged,
22 or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the
23 PAGA Notice, which occurred during periods of employment in a non-exempt position in
24 California during the PAGA Period, for violations of the California Labor Code, including inter
25 alia sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197,
26 1197.1, 1198, 2800, and 2802, and Industrial Welfare Commission Wage Orders including inter
27 alia, Wage Orders 4-2001, 5-2001, and 10-2001, including all of the following: (a) failure to pay
28 all and overtime wages due; (b) failure to provide proper meal periods, and to properly provide
premium pay in lieu thereof; (c) failure to provide proper rest periods, and to properly provide
premium pay in lieu thereof; (d) failure to pay all minimum wages due; (e) failure to pay all wages
timely during employment; (f) failure to pay all wages timely at the time of termination; (g) failure
to provide complete, accurate or properly formatted wage statements; (h) failure to keep complete
and accurate payroll records; and (i) failure to reimburse business expenses The Released PAGA
Claims do not include other PAGA claims, underlying wage and hour claims, claims for wrongful

1 termination, discrimination, unemployment insurance, disability and worker's compensation, and
2 claims outside of the PAGA Period."

3 Settlement Agreement, § Art. 1(rr). Only Plaintiffs will agree to a general release of any and all
4 claims, whether known or unknown, which exist or may exist on Plaintiffs' behalf as of the date of the
5 Settlement, and a waiver of Civ. Code § 1542. Settlement Agreement, § 5.03.

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

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

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

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

13 Whether a class is "ascertainable" is "determined by examining (1) the class definition, (2) the
14 size of the class, and (3) the means available for identifying class members." *Reyes v. Bd. of Supervisors*,
15 196 Cal. App. 3d 1263, 1271 (1987). Here, the Class consists of all current and former non-exempt,
16 hourly employees who are or were employed by Defendant in California at any time between September
17 13, 2018 through November 15, 2023. Settlement Agreement, §§ Art. 1(i),(l). Defendant's records show
18 the Class consists of approximately 465 individuals, making joinder of all Class Members impracticable.
19 Szilagyi Decl., ¶ 8. The Class is readily ascertainable from Defendant's business records because all
20 Class Members are current or former non-exempt employees of Defendant. *Ibid*.

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

22 "[T]he 'community of interest requirement embodies three factors: (1) predominant common
23 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3)
24 class representatives who can adequately represent the class.'" *Fireside Bank v. Superior Court*, 40 Cal.
25 4th 1069, 1089 (2007) (quoting *Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 470 (1981)).

26 **a. Common Questions Predominate**

27 To assess whether common questions predominate, courts focus on whether the theories of
28 recovery advanced are likely to prove amenable to class treatment. *See Sav-On Drug Stores, Inc. v.*

1 *Superior Court*, 34 Cal. 4th 319, 327 (2004). In other words, courts determine whether the elements
2 necessary to establish liability are susceptible of common proof, even if the class members must
3 individually prove their damages. *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1024
4 (2012).

5 Plaintiffs alleged that Defendant maintained uniform employment policies and/or practices that
6 illegally deprived Class Members of lawful wages, meal periods, rest breaks, unpaid reimbursements,
7 accurate wage statements, and waiting time pay. Szilagyi Decl., ¶¶ 4-5. Plaintiffs' allegations present
8 common legal and factual questions of, *inter alia*, whether Defendant applied the same scheduling,
9 timekeeping, minimum and overtime pay, meal period, rest break, and reimbursement policies to all Class
10 Members; whether these policies and practices resulted in Labor Code violations; whether Defendant's
11 conduct was intentional; and whether Class Members are entitled to penalties. Szilagyi Decl., ¶ 9. These
12 common questions could be resolved using Class Members' schedules, time punches, and payroll records,
13 Defendant's corporate representative's testimony, written communications between Defendants and Class
14 Members, and Class Member declarations. *Ibid.* Thus, the Court can and should exercise its discretion to
15 grant conditional class certification for settlement purposes.

16 b. Plaintiffs' Claims are Typical of the Class Claims

17 The typicality requirement is satisfied when the legal theories and facts supporting Plaintiffs'
18 claims are substantially similar to other class members. *See Classen v. Weller*, 145 Cal. App. 3d 27, 46
19 (1983). Here, Plaintiffs allege that they and other Class Members were employed by Defendant and
20 injured by Defendant's common wage and hour policies and practices, including Defendant's
21 scheduling, timekeeping, minimum wage pay, overtime pay, meal period, rest break, and reimbursement
22 practices and policies. Szilagyi Decl., ¶¶ 4-5. Through documents and information exchanged for
23 mediation, Plaintiffs confirmed that these common policies and practices similarly affected Plaintiffs
24 and the Class. Szilagyi Decl., ¶¶ 8-9, 11. For example, Plaintiffs' counsel was provided the written
25 policies provided to Plaintiff and other employees employed as non-exempt employees, which included
26 the same policies related to timekeeping, payment of wages, meal periods, rest breaks, and other issues
27 pertinent to this action. *Ibid.* Accordingly, Plaintiffs' claims arise from the same employment practices
28 and are based on the same legal theories as those applicable to other Class Members, as further explained

1 in Plaintiffs’ exposure analysis below.

2 c. Plaintiffs’ and Plaintiffs’ Counsel Will Adequately Represent the Interests
3 of the Proposed Class

4 Certification requires adequacy of both the proposed class representative(s) and proposed class
5 counsel. With respect to the class representative, a plaintiff must adequately represent and protect the
6 interests of other members of the class and demonstrate that his or her claim is not inconsistent with the
7 claims of other members of the class. *See Capitol People First v. State Dept of Developmental Servs.*,
8 155 Cal. App. 4th 676, 696-697 (2007). Here, Plaintiffs’ interests are coextensive with the interests of
9 the Class. Plaintiffs demonstrated an ability to advocate for the interests of the Class by litigating actions
10 against Defendant, meeting with their attorneys to discuss the claims and theories of liability at issue,
11 gathering documents and information, assisting their attorneys in preparing for mediation, being
12 available on the day of mediation, reviewing the proposed settlement agreement to understand its legal
13 effect, and obtaining a fair settlement on behalf of Class Members who stand to recover a substantial
14 amount under the Settlement. Szilagyi Decl., ¶ 15.

15 Likewise, Aegis Law Firm, PC and Gaines & Gaines, APLC have expended considerable time
16 and effort on this case and will continue to do so through final approval. *See generally*, Szilagyi Decl.;
17 Declaration of Daniel F. Gaines (“Gaines Decl.”). Accordingly, Plaintiffs should be appointed Class
18 Representatives, and Plaintiffs’ Counsel should be appointed Class Counsel.

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

20 Class treatment is superior to other methods of adjudication when the probability is small that
21 each class member will come forward to prove his or her claim and when the class approach would deter
22 and redress the alleged wrongdoing. *See Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 435, 446 (2000);
23 *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524, 1537-1538 (2008). Here, none of the other
24 estimated 465 Class Members had shown any interest in bearing the expense and burden of litigating
25 their own claims other than Plaintiffs. Szilagyi Decl. ¶ 14. Thus, a class action is the superior method
26 for seeking relief.

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

28 Preliminary approval is warranted if the settlement falls within a “reasonable range.” *See North*

1 *County Contractor's Ass'n., Inc. v. Touchstone Ins. Servs.*, 27 Cal. App. 4th 1085, 1089-90 (1994);
2 Conte & Newberg, *Newberg on Class Actions*, § 11.26 (4th ed. 2002). In reviewing the fairness of a
3 class action settlement, due regard should be given to what is “otherwise a private consensual
4 agreement between the parties.” *Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380, 1389
5 (2010). The inquiry “must be limited to the extent necessary to reach a reasoned judgment that the
6 agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties,
7 and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Id.*

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

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

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

15 Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless
16 evidence to the contrary is offered. Thus, there is a presumption that settlement negotiations are
17 conducted in good faith. Here, the Settlement was the product of extensive investigation and a full day
18 mediation session with a respected mediator after an extensive exchange of evidence. Szilagyi Decl. ¶¶
19 8-12. The negotiations were adversarial, conducted at arm's length and tempered by the efforts of both
20 sides to serve the interests of their clients. *Id.* at ¶ 12. The amount of Plaintiffs' requested Service
21 Awards was not negotiated until after the Parties agreed to the Gross Settlement Amount and many
22 other terms. *Id.* at ¶ 25.

23 **b. Plaintiffs' Counsel Conducted Sufficient Investigation and Discovery**

24 Plaintiffs' Counsel thoroughly investigated the class claims, applicable law, and potential
25 defenses. *See generally*, Szilagyi Decl. In particular, Plaintiff's Counsel assessed the value of the class
26 claims using Defendant's data and documents produced informal in preparation for mediation, including
27 Class Member time-punch data and wage statements, and written work policies concerning the claims
28 and allegations at issue. Szilagyi Decl. ¶ 8. Plaintiffs' counsel extensively reviewed these records to

perform a thorough analysis of all claims for mediation. *Ibid.* 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.* at ¶ 11. Accordingly, Plaintiff’s Counsel fully understood the strengths and weaknesses of the claims before the Parties reached a settlement.

c. Plaintiffs’ Counsel is Experienced in Similar Litigation

Plaintiffs are represented by Aegis Law Firm, PC and Gaines & Gaines, APLC (“Class Counsel”). Class Counsel prosecutes wage and hour class actions on behalf of employees and others who have had their rights violated. Szilagyi Decl. ¶¶ 27-39; Gaines Decl. at ¶ 5-6. The attorneys working on this case have been appointed class counsel in many cases, through both contested motions and settlement approval motions. *Ibid.* Thus, Plaintiffs’ Counsel have extensive experience in similar litigation and should be appointed as Class Counsel.

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

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

While Plaintiffs and their counsel believed and continue to believe this is a strong case for certification, the significant risks and expenses associated with class certification and liability proceedings were taken into account. Szilagyi Decl., ¶ 16. To determine if the amount offered at mediation was reasonable, Plaintiffs’ Counsel weighed that figure against many risk factors. *Ibid.* If Plaintiffs continued to prosecute their claims rather than accept a settlement, Plaintiffs would have faced deadlines to file a motion for class certification, had to have engaged in formal written discovery and taken depositions, expended time and resources to resolve disputes, prepared and filed potential dispositive motions and/or discovery motions, and engaged in extensive trial preparation. *Ibid.* An adverse ruling at any one of these stages could have prevented the Class from obtaining any recovery. *Ibid.*

1 a. Exposure Analysis

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

5 Compromise is inherent and necessary in the settlement process . . . even if “the relief afforded
6 by the proposed settlement is substantially narrower than it would be if the suits were to be
7 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.”

8 *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 250 (2001) (citation omitted). Here, Plaintiffs
9 contend that their claims are based on Defendant’s common, class-wide policies and procedures, and
10 that liability could be determined on a class-wide basis without dependence on individual assessments
11 of liability. Szilagyi Decl., ¶¶ 4-5. Although the amount of Defendant’s potential exposure – if proven
12 – is considerable, the legitimate and serious risks of succeeding at class certification and trial compelled
13 a serious consideration of the benefit of a settlement.

14 Minimum Wage and Overtime Claims: Plaintiffs’ minimum wage and overtime claims were
15 premised on the theory that Defendant failed to compensate class members for all time worked,
16 including not paying for work performed while off-the-clock. Szilagyi Decl., ¶ 17. Assuming unpaid
17 wages for thirty minutes of time per workweek, Plaintiffs’ expert calculated exposure to be
18 approximately \$525,050. *Id.* However, Plaintiffs considered Defendant’s argument that it maintained
19 written policies and practices for paying for all recorded work and that it did not require class members
20 to start work before clocking in or continue working after clocking-out without compensation. *Id.*
21 Plaintiffs further considered evidentiary hurdles in providing sufficient Class Member testimony
22 describing similar circumstances of being required to work while off-the-clock and regarding the
23 amount of time estimate to be worked off-the-clock, which Defendant may seek to counter with its own
24 testimony from Class Members. *Ibid.* Accordingly, Plaintiffs’ counsel heavily discounted this claim at
25 a 10% success rate (\$52,505) given the lack of written evidence of the precise amount of worked off-
26 the-clock by Class Members. *Ibid.*

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1 Meal Period Claims: Plaintiffs' meal period claim was potentially worth approximately \$1.4
2 million in light of the violations shown in the records and the meal premiums that appear to have been
3 occasionally paid. Szilagyi Decl., ¶ 18. In analyzing this claim, Plaintiffs considered Defendant's
4 argument that it maintained compliant written policies and that employees could waive their meal
5 periods. *Ibid.* Thus, Plaintiffs discounted this claim for the risk that the damages could at least be
6 reduced, and that the claim would be hard to certify if the Court agreed Defendant maintained a
7 compliant policy. *Ibid.* As such, Plaintiffs' counsel believed there was a 50% chance succeeding at class
8 certification and a 40% chance at trial, resulting in a value of \$280,000. *Ibid.*

9 Rest Break Claim: Plaintiffs alleged that Defendant failed to authorize timely rest breaks due to
10 the productivity requirements imposed on class members. Szilagyi Decl., ¶ 19. If Plaintiffs could prove
11 a 100% violation rate for each shift over 3.5 hours, then damages could reach up to approximately \$1.4
12 million. *Ibid.* However, rest breaks were unrecorded and Defendant argued that it maintained compliant
13 written rest break policies permitting breaks at all required intervals. *Ibid.* As such, this claim would
14 have relied on Class Member testimony, making it a riskier claim at class certification and liability
15 stages. *Ibid.* Plaintiffs' counsel believed there was a 50% chance succeeding at class certification and a
16 20% chance at trial, resulting in a value of \$140,000. *Ibid.*

17 Reimbursement Claim: For Plaintiffs' reimbursement claim, Plaintiffs alleged they and Class
18 Members were not fully reimbursed for the costs incurred, including costs related to work uniforms and
19 to use personal vehicles. Szilagyi Decl., ¶ 20. Plaintiffs estimated damages could reach about \$23,250,
20 assuming approximately \$50 owed in unpaid reimbursements to each Class Member. *Ibid.* However,
21 Plaintiff considered arguments that not all Class Members incurred expenses related to uniforms and
22 using their personal vehicle, and arguments that these costs were actually reimbursed. *Ibid.* Supporting
23 this claim would rely on Class Member testimony affirming the amount of costs paid for put-of-pocket
24 and proof of unpaid reimbursements still owed. *Ibid.* Accordingly, Plaintiffs' counsel believed there
25 was a 10% chance succeeding at class certification and a 20% chance at trial, resulting in a value of
26 \$465. *Ibid.*

27 Waiting Time and Wage Statement Penalties: Plaintiffs' Counsel also considered the arguable
28 presence of various penalties, and weighed the potential recoveries against probable defenses. Szilagyi

Decl., ¶ 21. Specifically, Defendant may argue that Plaintiffs could not prove the “willful” prong needed to obtain waiting time penalties under Labor Code § 203. *Ibid.* Moreover, though Plaintiffs allege derivative wage statement penalties, Defendant may argue that Plaintiffs 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 actually paid. *Ibid.* Moreover, Plaintiffs would not recover any derivative penalties if they failed to prove the underlying claims. Although the Class arguably could have seen a payout of approximately \$1.2 million for waiting time penalties and \$346,300 for wage statement penalties, Plaintiffs would not recover any of these derivative penalties if they failed to prove the underlying claims. *Ibid.* Thus, Plaintiffs discounted these claims assuming a 30% chance of class certification and 20% chance at the merits for both claims, resulting in a realistic value of \$72,000 for the waiting time claim and \$20,778 for the wage statement claim. *Ibid.*

PAGA Claim: The PAGA claim presented even higher hurdles. Although Plaintiffs’ Counsel found Defendant’s exposure could potentially reach approximately \$1.2 million under Lab. Code § 2699(f), assuming the initial penalty rate of \$100 for each pay period, Plaintiffs would have to prove a violation in every pay period. Szilagyi Decl., ¶ 22. 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. Plaintiffs were doubtful they could recover any PAGA penalties, especially if a large class judgment was entered for the same violations. *Ibid.* Accordingly, Plaintiffs could not place a high value on the PAGA penalties, and therefore allocated \$10,000 of the Gross Settlement Amount to settle these claims. *Ibid.*

Financial Concerns: Plaintiff’s counsel further considered the likelihood of Defendant’s inability to pay a substantial judgment or continue to finance the defense of this Action. Szilagyi Decl., ¶ 23. The settlement’s amount and payment plan are attributed to the concern that Defendant has financial difficulties to navigate. *Ibid.*

C. The Requested Service Award for Plaintiffs

Plaintiffs seek a Service Award of up to \$5,000 each for accepting the responsibilities of representing the interests of the Class and assuming risks and potential costs that were not borne by any

1 other Class Members. Settlement Agreement, § Art. 1(o). A named plaintiff is eligible for a payment
2 that reasonably compensates him or her for undertaking and fulfilling a fiduciary duty to represent
3 absent class members. *See Cellphone Termination Fee Cases, supra*, 186 Cal. App. 4th at 1393; *Bell v.*
4 *Farmers Ins. Exch.*, 115 Cal. App. 4th 715, 726 (2004).

5 Here, Plaintiffs had the option to pursue their claims individually, but instead chose to pursue this
6 class action, delaying individual recovery until approval of a class action settlement. Szilagyi Decl., ¶
7 24. Throughout the case, Plaintiffs assisted counsel in gathering the evidence necessary to prosecute
8 their claims, maintained regular contact with counsel, was available on the day of mediation, and
9 reviewed the settlement to make sure it was fair to the Class. *Ibid.* No action would likely have been
10 taken by Class Members individually, and no compensation would have been recovered for them, but
11 for Plaintiffs' services on behalf of the Class. *Ibid.*

12 By actively pursuing this action, Plaintiffs furthered the California public policy goal of enforcing
13 the State's wage and hour laws. *See Sav-On Drug Stores, Inc., supra*, 34 Cal. 4th at 340. The requested
14 Service Award for Plaintiffs' services as the class representatives and for a general release of all
15 employment claims is reasonable and should be preliminarily approved. At the final approval stage,
16 Plaintiffs will further support the request for the Service by declarations addressing the factors for the
17 award. Szilagyi Decl., ¶ 26.

18 **D. The Requested Attorneys' Fees and Costs**

19 The purpose of an attorneys' fee award in class action litigation is to reward counsel who invested
20 in a case despite the risk of non-payment and achieved a substantial positive result for the class.
21 Attorneys' fees are awarded as a matter of equity.

22 Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions will
23 "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v. Beneficial Cal., Inc.*, 82 Cal.
24 App 4th 19, 41 (2000). Indeed, it is long settled that the experienced trial judge is the best judge of the
25 value of professional services rendered in his court." *Ketchum v. Moses*, 24 Cal. 4th 1122, 1132 (2001).
26 California law provides that attorney fee awards should be equivalent to fees paid in the legal marketplace
27 to compensate for the result achieved and risk incurred. *Laffitte v. Robert Half Int'l, Inc.*, 1 Cal. 5th 480,
28 503 (2016) (citing *Lealao*, 82 Cal. App 4th at 48-49). In *Lealao*, the court held that when an action leads

1 to a recovery that can be "monetized" with a reasonable degree of certainty, the trial court should ensure
2 that the fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable
3 litigation." *Id.* at p. 50. Fee awards that are too small will "chill the private enforcement essential to the
4 vindication of many legal rights and obstruct the representative actions that often relieve the courts of the
5 need to separately adjudicate numerous claims." *Lealao*, 82 Cal.App.4th at 53. Therefore, fees in class
6 and representative actions should approximate the probable terms of a contingent fee contract negotiated
7 by a sophisticated attorney and client in comparable litigation. *Id.* at 48.

8 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement, depending
9 on the circumstances of the case. Conte & Newberg, *Newberg on Class Actions* (4th Ed., 2002) § 14.03,
10 *see also In re Ampicillin Antitrust Litig.*, 526 F. Supp. 494 (D.D.C. 1981) (awarding attorneys' fees in the
11 amount of 45% of the settlement amount of \$7.3 million), *Beech Cinema, Inc. v. Twentieth-Century Fox*
12 *Film Corp.*, 480 F. Supp. 1195 (S.D.N.Y. 1979) (awarding approximately 53% of the settlement amount
13 as attorneys' fees). California courts routinely approve class action attorneys' fees awards "average[ing]
14 around one-third of the recovery." *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, Fn.11 (2008) (lower
15 court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class actions),
16 *see also Lafitte*, Cal. 5th at 488, 506 (approving fee award of 1/3 of common fund of \$19 million).

17 Here, Plaintiffs seek appointment of Aegis Law Firm, PC and Gaines & Gaines, APLC as Class
18 Counsel, who performed significant work and expended litigation costs in prosecuting the matter with
19 no guarantee of any payment. Plaintiff's Counsel seeks preliminary approval for \$105,000 in attorneys'
20 fees, which is up to thirty-five percent of the Gross Settlement Amount, and up to \$30,000 in
21 reimbursement of litigation costs. Settlement Agreement, § 3.06(b).

22 Given the work performed in this matter, the extensive information exchange, and substantial
23 recovery obtained on behalf of Plaintiffs and the Class, Plaintiffs' Counsel achieved a settlement through
24 efficient and diligent work. *See generally*, Szilagyi Decl. and Gaines Decl. at ¶¶ 6-8. At final approval,
25 Plaintiffs' Counsel will fully brief the merits of the requested attorneys' fees and costs.

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1 **E. Costs of Notice and Administration Should be Provisionally Approved**

2 All administration costs incurred by the Settlement Administrator shall be paid out of the Gross
3 Settlement Amount. Settlement Agreement, § 3.06(c). An application will be submitted to the Court to
4 approve the allocation of Settlement Administration Costs for no greater than \$20,000.00. *Ibid.*

5 **V. CONCLUSION**

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

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12 Dated: February 9, 2024

AEGIS LAW FIRM, PC

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14 By: _____

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16 Joseph Szilagyi
17 Attorneys for Plaintiff
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