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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

16 **FOR THE COUNTY OF MERCED**

17 LUIS NAVARRO, individually and on
18 behalf of all others similarly situated,

19 Plaintiff,

20 vs.

21 RICHWOOD MEAT COMPANY, INC.;;
22 and DOES 1 through 20, inclusive,

23 Defendants.

Case No. 22CV-02964

Assigned for all purposes to:
Hon Brian McCabe
Dept. 8

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

Date: November 14, 2024

Time: 8:15 a.m.

Dept: 8

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1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court 3.769 (d) and (e), Plaintiff Luis Navarro (“Plaintiff”) request
3 that the Court grant preliminary approval of a class action settlement of wage and hour claims, including
4 a claim under the California Private Attorneys General Act of 2004, codified at Lab. Code § 2698, *et*
5 *seq.* (“PAGA”), against Defendant Richwood Meat Company, Inc (“Defendant”) (collectively, Plaintiff
6 and Defendant referred to as the “Parties”). The putative class consists of approximately 430 employees,
7 and is defined as all non-exempt employees employed by Defendant in California (individually, “Class
8 Member”; collectively, “Class Members”) at any time between March 14, 2018 and March 2, 2024. (the
9 “Class Period”). The basic terms of the Class Action and PAGA Settlement Agreement and Class Notice
10 (“Settlement Agreement” or “Settlement”)¹ provide for the following:

- 11 (1) A non-reversionary Gross Settlement Amount of \$1,250,000 allocated to
12 approximately 430 Class Members on a pro rata basis according to the number of
13 weeks each Class Member worked during the Class Period;
- 14 (2) An award of up to one-third of the Gross Settlement Amount (currently
15 \$416,666.67) and up to \$20,000.00 in reimbursement of costs to Plaintiff’s
16 Counsel for services rendered as counsel on this matter;
- 17 (3) Service Payments of up to \$10,000.00 for the Named Plaintiff;
- 18 (4) Settlement Administration fees and costs of up to \$7,500.00; and
- 19 (5) Allocations of \$50,000 for resolution of civil penalties under PAGA. Seventy-five
20 percent (75%) of this payment will be paid to the California Labor and Workforce
21 Development Agency (“LWDA Payment”), and twenty-five percent (25%) will be
22 paid to Class Members who worked for Defendant during the PAGA Period.

23 With each Class Member allocated an average recovery of approximately \$1,750.00 from the Net
24 Settlement Amount, the Settlement satisfies the criteria for preliminary approval and falls well within

25 _____
26 ¹ A true and correct copy of the fully-executed “Class Action and PAGA Settlement Agreement and
27 Class Notice” is attached as **Exhibit 1** to the Declaration of Alex J. Valle in Support of Plaintiff’s Motion
28 for Preliminary Approval of Class Action Settlement (“Valle 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.

the range of reasonableness given the risks and costs of continued litigation. The Settlement was reached through informed, arm's-length bargaining at and after a mediation between experienced attorneys. As such, Plaintiff request that the Court grant preliminary approval of the Settlement, conditionally certify the Class for settlement purposes only, appoint Plaintiff as the Class Representatives, 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 September 7, 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). (Valle Decl., ¶ 4, Ex. 3.) 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.*) On September 7, 2022, Plaintiff 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 Wages Timely During Employment (7) failure to pay all wages due upon separation of employment; and (8) violation of Business and Professions Code § 17200, *et seq.* for the preceding claims. (Valle Decl., ¶ 3.) On November 16, 2022, Plaintiff filed a First Amended Complaint adding a cause of action for enforcement of Labor Code § 2698 *et seq.* ("PAGA"). (Valle Decl., ¶ 4.)

The Parties proceeded with informal discovery. (Valle Decl., ¶ 5.) Defendant produced Defendant's employee handbook and employment policies; Class Members' final hourly rate, dates of employment, and job titles; and Class Members' timekeeping and pay records. (*Id.*) On January 4, 2024, the Parties attended a mediation session with Jeffery Owensby, a respected mediator. (*Id.* at ¶ 6.) After a full day of negotiating and additional correspondence in the weeks following the mediation, the Parties agreed to a settlement amount through their Memorandum of Understanding, with the material terms of the Settlement. (*Id.*) The Parties spent the next several months negotiating the full terms of the Settlement, which was finalized in September of 2024. (*Id.*) Plaintiff submitted the Settlement to the LWDA pursuant to Lab. Code § 2699(1)(2). (*Id.* at ¶ 7. Ex. 2.)

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1 **III. SUMMARY OF THE SETTLEMENT**

2 **A. Terms of Settlement**

3 Plaintiff and Defendant agreed to settle the class claims in exchange for a Gross Settlement
4 Amount of \$1,250,000. (Settlement Agreement, § 3.1.) The Gross Settlement Amount will be used to
5 make payments for the following: (1) Individual Settlement Payments to Participating Class Members;
6 (2) attorneys' fees to Class Counsel of up to one-third of the Gross Settlement Amount; (3)
7 reimbursement of Class Counsel's litigation costs of up to \$20,000; (4) a Service Payment to Plaintiff
8 of up to \$10,000; (5) Settlement Administration fees and costs of \$7,500; and (6) a payment of \$50,000
9 for PAGA penalties. (*Id.* at §§ 3.2.1–3.2.5.) Class Members' Individual Settlement Payments will be
10 distributed after final approval of the Settlement and Defendant fully funds the Gross Settlement
11 Amount. (*Id.* at §§ 4.3–4.4.) Individual Settlement Payments will be calculated by comparing the total
12 Qualifying Workweeks for the Class to each individual Class Member's Qualifying Workweeks. (*Id.* at
13 § 3.2.4.) The Settlement Administrator will calculate the actual estimated recovery to include in the
14 Notice of Class Action Settlement ("Class Notice") and provide the estimated low and high range of
15 possible recovery at final approval. (Ex. A (Class Notice).) Once the Court grants final approval and
16 enters judgment, the Settlement Administrator will post the Class Notice on its website. (Settlement
17 Agreement, § 8.8.1.)

18 The Individual Settlement Payments will be allocated 20% to wages; 80% to interest and penalties
19 for tax purposes. (*Id.* at § 3.2.4.1.) Defendant will pay the employer-side payroll taxes on the portion
20 allocated to wages separately from, and in addition to, the Gross Settlement Amount. (*Id.* at § 3.1.)
21 Funds from uncashed or undeliverable checks will be tendered by the Settlement Administrator to the
22 State Controller Unclaimed Property Fund in the Class Member's name for whom the funds are
23 designated. (*Id.* at § 4.4.3.) The Gross Settlement Amount will not revert to Defendant. (*Id.* at § 3.1.)

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

25 Once the Court grants preliminary approval, Defendant will have fifteen days to deliver the Class
26 Data to the Settlement Administrator. (Settlement Agreement, § 4.2.) The Settlement Administrator will
27 then have fourteen days to send Class Notice by first-class mail after checking for updated addresses
28 through the National Change of Address database. (*Id.* at § 8.4.2.) The Class Notice provides information

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

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

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

25 C. Proposed Release

26 The release to be given by Class Members is limited to Defendant and each of its former and
27 present directors, officers, shareholders, owners, principles, employees, agents, representatives,
28 members, attorneys, insurers, predecessors, successors, assigns subsidiaries and affiliates (sic) (the

1 “Released Parties”). (Settlement Agreement, § 1.39.) Under the proposed release, Class Members who
2 do not exclude themselves from the Settlement will be deemed to have released:

3 “all claims alleged or that could have been alleged based on the facts alleged in the Operative
4 Complaint, which arose during the Class Period. This release also includes claims that could have
5 been brought under the Fair Labor Standards Act. Except as set forth in Section 6.3 (PAGA
6 release) of this Agreement, Participating Class Members do not release any other claims, including
7 claims for vested benefits, unemployment insurance, disability, social security, workers’
8 compensation, or claims based on facts occurring outside the Class Period. The release applies
9 regardless of whether the Class Member deposits his/her settlement check.”

10 (*Id.* at § 6.2.)

11 Aggrieved Employees (regardless of whether they exclude themselves from the Settlement) will
12 be deemed to have released “all claims for PAGA penalties for all claims alleged or that could have
13 been alleged based on the facts alleged in the Operative Complaint, which arose during the PAGA
14 Period.”

15 (*Id.* at § 6.3.)

16 Additionally, Plaintiff will be deemed to have released all potential claims. (*Id.* at § 6.1.) Plaintiff
17 also releases all known or unknown claims under Civil Code § 1542. (*Id.* at § 6.1.1.)

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

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

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

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

25 Whether a class is “ascertainable” is “determined by examining (1) the class definition, (2) the
26 size of the class, and (3) the means available for identifying class members.” (*Reyes v. Bd. of Supervisors*
27 (1987) 196 Cal. App. 3d 1263, 1271.) Here, the Class consists of anyone who was employed by
28 Defendant in California as a non-exempt employee at any time from March 14, 2018 through March 2,
2024. (Settlement Agreement, §§ 1.5 & 1.12.) Defendant’s records show the Class consists of
approximately 430 individuals, making joinder of all Class Members impracticable. (Valle Decl., ¶ 8.)

1 Further, the Class is readily ascertainable from Defendant’s business records because all Class Members
2 are current or former employees of Defendant. (*Id.*)

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

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

8 *a. Common Questions Predominate*

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

14 Plaintiff alleged that Defendant maintained employment policies and/or practices that illegally
15 deprived Class Members of lawful wages, meal periods, rest breaks, accurate wage statements, payment
16 of all wages upon separation from employment, and waiting time pay. (Valle Decl., ¶ 9.) Plaintiff’s
17 allegations present common legal and factual questions of, *inter alia*, whether Defendant applied the same
18 scheduling, timekeeping, minimum and overtime pay, meal period, and rest break policies to all Class
19 Members; whether these policies and practices resulted in Labor Code violations; whether Defendant’s
20 conduct was intentional; and whether Class Members are entitled to penalties. (*Id.*) These common
21 questions could be resolved using Class Members’ schedules, time punches, and payroll records,
22 Defendant’s corporate representative’s testimony, written communications between Defendant and Class
23 Members, and Class Member declarations. (*Id.*) Thus, the Court can and should exercise its discretion to
24 grant conditional class certification for settlement purposes.

25 *b. Plaintiff’s Claims are Typical of the Class Claims*

26 The typicality requirement is satisfied when the legal theories and facts supporting Plaintiff’s
27 claims are substantially similar to other class members. (*See Classen v. Weller* (1983) 145 Cal. App. 3d
28 27, 46.) Here, Plaintiff alleged that he and other Class Members were employed by Defendant and

1 injured by Defendant's common wage and hour policies and practices, including Defendant's
2 scheduling, timekeeping, minimum wage pay, overtime pay, meal period, and rest break practices and
3 policies. (Valle Decl., ¶ 10.) Through documents and information exchanged through informal
4 discovery, including production of policy documents by Defendant, Plaintiff confirmed that these
5 common policies and practices similarly affected Plaintiff and the Class. (*Id.*) Thus, Plaintiff's claims
6 arise from the same employment practices and are based on the same legal theories as those applicable
7 to other Class Members, as further explained in Plaintiff's exposure analysis below.

8 c. Plaintiff and Plaintiff's Counsel Will Adequately Represent the Class

9 Certification requires adequacy of both the proposed class representative(s) and proposed class
10 counsel. With respect to the class representative, a plaintiff must adequately represent and protect the
11 interests of other members of the class and demonstrate that his or her claim is not inconsistent with the
12 claims of other members of the class. (*See Capitol People First v. State Dept. of Developmental Servs.*
13 (2007) 155 Cal. App. 4th 676, 696-697.) Here, Plaintiff's interests are coextensive with the interests of
14 the Class. Plaintiff demonstrated an ability to advocate for the interests of the Class by litigating this
15 action, gathering documents and information, being available on the day of mediation to answer
16 questions, meeting with his attorneys on several occasions to understand the claims and theories of
17 liability at issue, reviewing the proposed settlement agreement to understand its legal effect, and
18 obtaining a fair settlement on behalf of Class Members who stand to recover a significant amount under
19 the Settlement. (Valle Decl., ¶ 21; Declaration of Luis Navarro ("Navarro Decl."), ¶¶ 7-9, 14).)

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

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

24 Class treatment is superior to other methods of adjudication when the probability is small that
25 each class member will come forward to prove his or her claim and when the class approach would deter
26 and redress the alleged wrongdoing. (*See Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 435, 446;
27 *Ghazaryan v. Diva Limousine, Ltd.*, (2008) 169 Cal. App. 4th 1524, 1537-1538.) Here, none of the other
28

1 430 Class Members had shown any interest in bearing the expense and burden of litigating their own
2 claims. (Valle Decl., ¶ 21.) Thus, a class action is the superior method for seeking relief.

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

4 Preliminary approval is warranted if the settlement falls within a “reasonable range.” (See *North*
5 *County Contractor’s Ass’n., Inc. v. Touchstone Ins. Servs.*, (1994) 27 Cal. App. 4th 1085, 1089-90;
6 *Conte & Newberg, Newberg on Class Actions*, § 11.26 (4th ed. 2002).) In reviewing the fairness of a
7 class action settlement, due regard should be given to what is “‘otherwise a private consensual
8 agreement between the parties.’” (*Cellphone Termination Fee Cases*, (2010) 186 Cal. App. 4th 1380,
9 1389.) The inquiry “must be limited to the extent necessary to reach a reasoned judgment that the
10 agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties,
11 and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” (*Id.*)

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

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

18 *a. The Settlement is the Result of Arm’s-Length Negotiations*

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

27 //

28 //

1 *b. Plaintiff's Counsel Conducted Sufficient Investigation and Discovery*

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

11 *c. Plaintiff's Counsel is Experienced in Similar Litigation*

12 Plaintiff is represented by Aegis Law Firm, PC ("Class Counsel"). Class Counsel prosecute wage
13 and hour class actions on behalf of employees and others who have had their rights violated. (Valle
14 Decl., ¶¶ 24–36.) The attorneys working on this case have been appointed class counsel in many cases,
15 through both contested motions and settlement approval motions. (*Id.*) Thus, Plaintiff's Counsel has
16 extensive experience in similar litigation and should be appointed as Class Counsel.

17 **2. The Settlement is Reasonable Given the Strengths of Plaintiff's Claims and**
18 **the Risks and Expense of Further Litigation**

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

23 While Plaintiff and his counsel believed and continue to believe this is a strong case for
24 certification, the significant risks and expenses associated with class certification and liability
25 proceedings were taken into account. (Valle Decl., ¶ 12.) To determine if the amount negotiated was
26 reasonable, Plaintiff's Counsel weighed that figure against many risk factors. (*Id.* at ¶ 13). If Plaintiff
27 continued to prosecute the claims rather than accept a settlement, Plaintiff would have faced deadlines
28 to file a motion for class certification, had to have engaged in formal written discovery and taken

depositions, expended time and resources to resolve disputes, prepared and filed potential dispositive motions and/or discovery motions, and engaged in extensive trial preparation. (*Id.* at ¶ 14.) An adverse ruling at any one of these stages could have prevented the Class from obtaining any recovery. (*Id.*)

a. Exposure Analysis

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* (1991) 220 Cal. App. 3d 1117, 1139.) 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.* (2001) 91 Cal. App. 4th 224, 250 (citation omitted).) Here, Plaintiff contend that their 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. (Valle Decl., ¶ 11.) 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 consideration of the benefit of a settlement. (*Id.* at ¶ 13.)

Meal Period Claim: Plaintiff’s meal period claim was premised on the theories that Defendant illegally rounded employees’ meal periods that were not at least 30 minutes in length; failed to provide second meal periods to employees who worked in excess of 10 hours in one shift; and failed to pay meal period premiums for these violations. (Valle Decl., ¶ 15.) An expert retained by Plaintiff’s counsel analyzed the employment data received from Defendant, and calculated that the meal period claim was potentially worth approximately \$1,700,000. (*Id.*) However, Defendant argued that it began to pay meal period premiums to employees in 2021, employees signed written meal period waivers allowing them to waive second meal periods, Defendant’s written meal period policies complied with the law, and supervisors and managers enforced Defendant’s meal period policies. (*Id.*) Defendant also argued that it had taken steps to reduce violations in recent years, which was supported by a decrease in late meal periods beginning in 2021, and short meal periods beginning in 2022. (*Id.*) As such, Plaintiff’s Counsel believed there was a 70% decrease in chance of success at class certification and a 50% chance of

succeeding at trial on Plaintiff's meal period claim, resulting in a value of approximately \$595,000 for this claim. (*Id.*)

Minimum Wage Claim: Plaintiff's minimum wage claim was premised on the theories that Defendant illegally rounded employees' meal period time, depriving Class Members of minutes worked during their shifts; and failed to compensate them for all hours worked, including time spent donning and doffing. (Valle Decl., ¶ 16.) Plaintiff's expert estimated the potential exposure for this claim at \$130,000. (*Id.*) However, Defendant argued that it could defeat this claim by showing its timekeeping software provided minimal rounding to the fourth decimal place and rounded in the employees' favor; it had taken steps to reduce short meal periods since 2022; and the timeclock was located near the donning and doffing room, which enabled employees to clock-in before putting on their equipment. (*Id.*) As such, Plaintiff's counsel believed that there was a 40% chance of success at class certification and 40% chance of success on the merits at trial, rendering the claim worth approximately \$20,800. (*Id.*)

Unpaid Overtime Claim: Plaintiff's unpaid overtime claim is premised on the theories that Defendant failed to compensate Class Members for the correct number of overtime hours when working in excess of 8 hours in one day; failed to pay doubletime for shifts longer than 12 hours in one day; and failed to include non-discretionary anniversary bonuses and incentives into the regular rates of pay when paying overtime. (Valle Decl., ¶ 17.) The expert calculated a potential exposure of approximately \$290,000.00 for this claim. (*Id.*) However, Defendant argued its overtime calculation was correct under the law because employees worked an alternative workweek schedule, many of the employees that it hired as drivers operated vehicles large enough to meet federal motor carrier exemptions for overtime, and the anniversary bonuses were discretionary and did not need to be included in the regular rate of pay. (*Id.*) Accordingly, Plaintiff's counsel believed there was an 50% chance of success at class certification and 40% chance of success on the merits at trial, rendering the claim worth approximately \$58,000. (*Id.*)

Rest Period Claim: Plaintiff's rest break claim was premised on the theories that Defendant failed to provide two rest breaks to employees during each shift; failed to provide third rest breaks to employees whose shift exceed 10 hours in length; and failed to pay rest break premiums for the aforementioned violations. (Valle Decl., ¶ 18.) Liberally assuming a 100% violation rate for all shifts

1 exceeding 3.5 hours in length, Plaintiff's expert calculated that this claim could potentially be worth
2 about \$3,900,000. (*Id.*) However, Defendant argued that its written rest break policy complied with the
3 law. (*Id.*) Furthermore, whether Class Members were able to take rest breaks would have required
4 depositions of Class Members, and Defendant likely would have obtained opposing declarations stating
5 rest breaks were adequately taken or voluntarily waived, significantly decreasing the likelihood of class
6 certification. (*Id.*; see also, e.g., *Rai v. CVS Caremark Corp.* (C.D. Cal. Oct. 11, 2013) 2013 U.S. Dist.
7 LEXIS 177730 (denying certification of rest break claims where competing testimony regarding actual
8 practice meant adjudication would involve predominantly individual issues); *Gonzalez v. OfficeMax North*
9 *Am.* (C.D. Cal. Nov. 5, 2012) 2012 U.S. Dist. LEXIS 163853, at *9–12 (denying certification on
10 predominance grounds where plaintiff offered no evidence that a uniform rest break policy was
11 implemented uniformly).)) Accordingly, Plaintiff's counsel estimated that there would be a 25% chance
12 of success class certification and a 15% chance of success on the merits at trial, rendering the claim
13 worth approximately \$146,250. (*Id.*)

14 Waiting Time and Wage Statement Penalties: Plaintiff's Counsel considered the arguable presence
15 of various derivative penalties, and weighed the potential recoveries against probable defenses. (Valle
16 Decl., ¶ 19.) Specifically, Defendant could argue that Plaintiff could not prove the "willful" prong needed
17 to obtain waiting time penalties under Labor Code § 203; Plaintiff could not show that Class Members
18 suffered an "injury" as a result of wage statement violations, as required by Labor Code § 226; or that the
19 wage statements correctly reflected the wages paid and owed. (*Id.*) Although the Class could have seen a
20 potential payout of approximately \$1,100,000 for waiting time penalties and approximately \$800,000 for
21 wage statement penalties, Plaintiff would not recover any of these derivative penalties if he failed to prove
22 the underlying claims. (*Id.*) Thus, Plaintiff discounted these claims assuming a 50% chance of success at
23 class certification and 40% chance of success on the merits for both claims, resulting in a realistic value
24 of approximately \$220,000 for the waiting time claim and around \$160,000 for the wage statement claim.
25 (*Id.*)

26 PAGA Claim: The PAGA claim presented even higher hurdles. (Valle Decl., ¶ 20.) Plaintiff's
27 expert analyzed the employment data provided by Defendant and found that Defendant's exposure could
28 potentially reach approximately \$1,640,000 under Lab. Code § 2699(f), assuming the initial penalty rate

1 of \$100 for each pay period. (*Id.*) However, to recover that amount, Plaintiff would have to prove a
2 violation in every pay period. (*Id.*) Most importantly, the Court would have discretion to reduce the
3 PAGA award based on whether the amount of the award would be “unjust, arbitrary and oppressive, or
4 confiscatory.” Lab. Code § 2699(e)(2). In theory, the Court could reduce the award by 99% if it so
5 wished. Plaintiff was doubtful he could recover any PAGA penalties, especially if a large class judgment
6 was entered for the same violations. (Valle Decl., ¶ 20.) Accordingly, Plaintiff could not place a high
7 value on the PAGA penalties, and therefore allocated \$50,000 of the Gross Settlement Amount to settle
8 these claims. (Valle Decl., ¶ 20; *see also Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) 2009
9 U.S. Dist. LEXIS 33900 at *24 (finding amount of PAGA penalties reasonable where the amounts are
10 negotiated in good faith and “there is no indication that [the] amount was the result of self-interest at
11 the expense of other Class Members”); *Nordstrom Comm’n Cases* (2010) 186 Cal.App.4th 576, 579
12 (“trial court did not abuse its discretion in approving a settlement which does not allocate any damages
13 to the PAGA claims”).)

14 Thus, given the realistic exposure to Defendant, the settlement amount of \$1,250,000 is
15 reasonable, fair, and proper.

16 **C. The Requested Service Awards for Plaintiff**

17 Plaintiff seeks Service Award of up to \$10,000 for accepting the responsibilities of representing
18 the interests of the Class and assuming risks and potential costs that were not borne by any other Class
19 Members. (Settlement Agreement, § 3.2.1.) A named plaintiff is eligible for payment that reasonably
20 compensates him or her for undertaking and fulfilling a fiduciary duty to represent absent class
21 members. (*See Cellphone Termination Fee Cases, supra*, 186 Cal. App. 4th at 1393-94 (“The rationale
22 for making enhancement or incentive awards to named plaintiffs is that they should be compensated for
23 the expense or risk they have incurred in conferring a benefit to other members of the class”); *Bell v.*
24 *Farmers Ins. Exch.* (2004) 115 Cal. App. 4th 715, 726.) In evaluating the propriety of enhancement
25 awards, courts consider the following relevant factors, including: (1) the time and effort put into the
26 litigation and the degree to which the class has benefitted from those actions, (2) the duration of the
27 litigation, (3) a comparison between the service awards range of monetary recovery available to the
28 class, (4) whether the litigation will further the public policy underling the statutory scheme, and (5)

1 risks to the class representatives in participating in the lawsuit, including financial exposure, retaliation,
2 and negative notoriety related to the lawsuit. (*See, e.g., Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d
3 938, 977; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 301 F.Supp. 294, 299.)

4 Plaintiff had the option to pursue his claims individually, but instead chose to pursue this class
5 action, delaying individual recovery until approval of a class action settlement. (Valle Decl., ¶ 21.)
6 Throughout the case, Plaintiff assisted counsel in gathering the evidence necessary to prosecute the class
7 claims, maintained contact with counsel, was available on the day of mediation, communicated with his
8 attorneys during the day of mediation to answer critical questions, reviewed the Settlement to make sure
9 it was fair to the Class, and otherwise assisted the action as needed since this action was filed over two
10 years ago. (*Id.*; Navarro Decl., ¶¶ 7-9, 14) No action would likely have been taken by Class Members
11 individually, and no compensation would have been recovered for them, but for Plaintiff's services on
12 the Class's behalf. (Valle Decl., ¶ 21.)

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

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

20 The purpose of an attorneys' fee award in class action litigation is to reward counsel who invested
21 in a case despite the risk of non-payment and achieved a substantial positive result for the class.
22 Attorneys' fees are awarded as a matter of equity. California courts routinely award attorneys' fees
23 equaling one-third or more of the potential value of the common fund. (*See Chavez v. Netflix, Inc.* (2008)
24 162 Cal. App. 4th 43, 66, n.11 ("Empirical studies show that, regardless of whether the percentage
25 method or the lodestar method is used, fee awards in class actions average around one-third of the
26 recovery").)

27 Plaintiff seek appointment of Aegis Law Firm, PC as Class Counsel. The attorneys performed
28 significant work and expended litigation costs in prosecuting the matter with no guarantee of any

1 payment. (Valle Decl., ¶ 37.) Plaintiff's Counsel seeks preliminary approval for \$416,666.67 in
2 attorneys' fees, which is up to one-third of the Gross Settlement Amount, and up to \$20,000.00 in
3 reimbursement of litigation costs. (Settlement Agreement § 3.2.2.) Given the work performed in this
4 matter, the extensive information exchange, and substantial recovery obtained on behalf of Plaintiff and
5 the Class, Plaintiff's Counsel achieved a settlement through efficient and diligent work. (*See generally*,
6 Valle Decl.) At final approval, Plaintiff's Counsel will fully brief the merits of its request for the award
7 of attorneys' fees and litigation costs. (*Id.* at ¶ 38.)

8 **V. CONCLUSION**

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

13
14 Dated: September 18, 2024

AEGIS LAW FIRM, PC

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16 By: /s/ Alex J. Valle
17 Alex J. Valle
18 Attorneys for Plaintiff Luis Navarro
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