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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF KERN

JUAN CARLOS CAUDILLO, individually
and on behalf of all others similarly situated,

Plaintiff,

v.

B & B SURPLUS, INC.; and DOES 1
through 20, inclusive,

Defendants.

Case No. *BCV-22-102876*

Assigned for All Purposes to:
Hon. Mark Smith
Dept. T-2

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

Date: May 23, 2024

Time: 8:30 a.m.

Dept.: T-2

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1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court 3.769 (d) and (e), Plaintiff Juan Carlos Caudillo (“Plaintiff”)
3 requests that the Court grant preliminary approval of a class action settlement of wage and hour claims,
4 including claims under the California Private Attorneys General Act of 2004, codified at Lab. Code §
5 2698, *et seq.* (“PAGA”), against Defendant B&B Surplus, Inc. (“Defendant”) (collectively, Plaintiff and
6 Defendant are hereafter referred to as, the “Parties”). The putative class consists of approximately 132
7 current or former non-exempt employees who are or were employed by Defendant in California
8 (individually, “Class Member”; collectively, the “Class”) during the Class Period of May 3, 2018
9 through August 31, 2023 (the “Class Period”). The basic terms of the Joint Stipulation of Class and
10 Representative PAGA Action Settlement (“Settlement Agreement” or “Settlement”)¹ provide for the
11 following:

- 12 (1) A non-reversionary Gross Settlement Amount of \$850,000.00 allocated to
13 approximately 132 Class Members on a pro rata basis according to the weeks
14 worked by each Class Member worked during the Class Period;
15 (2) An award of up to one-third of the Gross Settlement Amount (currently
16 \$288,333.33) and up to \$25,000.00 in reimbursement of costs to Plaintiff’s Counsel
17 for services rendered as counsel on this matter;
18 (3) Enhancement Award of up to \$10,000.00 to Plaintiff Juan Carlos Caudillo;
19 (4) Settlement Administration fees and costs of up to \$ \$6,750.00; and
20 (5) Allocation of \$20,000.00 for civil penalties pursuant to PAGA. Seventy-five
21 percent (75%) of this payment will be paid to the California Labor and Workforce
22 Development Agency (“LWDA Payment”), and twenty-five percent (25%) will be
23 distributed to Class Members who worked for Defendant during the PAGA Period.

24 The Settlement satisfies the criteria for preliminary approval and falls well within the range of
25 reasonableness given the risks and costs of continued litigation. The Settlement was reached through
26

27 ¹ A true and correct copy of the fully-executed “Joint Stipulation of Class and Representative PAGA
28 Action Settlement” is attached as Exhibit 1 to the Declaration of Jamie M. Loos in Support of Plaintiff’s
Motion for Preliminary Approval of Class Action Settlement (“Loos Decl.”), filed concurrently herewith.

1 informed, arms-length bargaining at and after mediation between experienced attorneys. As such,
2 Plaintiff requests that the Court grant preliminary approval of the Settlement, conditionally certify the
3 Class for settlement purposes only, appoint Plaintiff Juan Carlos Caudillo as the Class Representative,
4 appoint Plaintiff's Counsel as Class Counsel, appoint CPT Group Class Action Administrators as the
5 Settlement Administrator, authorize the Settlement Administrator to send notice of the Settlement, and
6 set a final approval hearing date.

7 **II. SUMMARY OF THE LITIGATION**

8 On October 27, 2022, Plaintiff filed this action on behalf of Defendant's non-exempt employees
9 who were employed in California. Loos Decl., ¶ 3. On October 27, 2022, before adding a PAGA claim,
10 Plaintiff provided written notice to the LWDA and Defendant as required by Lab. Code § 2699.3(a). *Id.*
11 On March 22, 2023, Plaintiff amended his complaint to add a cause of action for PAGA. *Id.* at ¶ 4. Plaintiff
12 alleges the following causes of action in the First Amended Complaint: (1) failure to pay minimum wages
13 (2) failure to pay overtime wages (3) failure to provide meal periods (4) failure to permit rest breaks (5)
14 failure to reimburse necessary business expenses (6) failure to provide accurate itemized wage statements
15 (7) failure to pay timely wages during employment (8) failure to pay all wages due upon separation of
16 employment (9) violation of California Business and Professions Code §§17200, *et seq.*, and (10)
17 enforcement of the Private Attorney General Act, § 2698 *et seq.* ("PAGA"). *Id.*

18 After some initial formal discovery and meet and confer efforts between counsel, the parties agreed
19 to private mediation. *Id.* at ¶ 5. In preparation for mediation, Plaintiff informally requested, *inter alia*, data
20 and information pertaining to the Class, all versions of employee handbooks in effect during the Class
21 Period, policy documents such as training materials and documents regarding timekeeping, meal periods
22 and rest breaks, as well as wage statements and pay records. *Id.* In response, Defendant provided a
23 breakdown of data for both the Class and PAGA Period, Class Members' time and pay records, and all
24 versions of employee handbooks and policy documents in effect during the Class Period. *Id.* at ¶ 6. The
25 documents, data and information provided sufficiently allowed Plaintiff to prepare for mediation. *Id.*

26 On August 31, 2023, the Parties attended a mediation session with Jill Sperber, a respected
27 mediator. Loos Decl., ¶ 7. The Parties reached a class-wide settlement at mediation and executed a
28 Memorandum of Understanding thereafter. *Id.* The Parties spent the next several months negotiating the

1 terms of the Settlement, which was finalized in February of 2024. Loos Decl., ¶ 8. On April 26, 2024,
2 Plaintiff submitted the Settlement and this Motion to the LWDA pursuant to Lab. Code § 2699(1)(2).
3 *Id.* at ¶¶ 8, 46, Exhibit 3 (Confirmation of Submission of Settlement and Motion to LWDA).

4 **III. SUMMARY OF THE SETTLEMENT**

5 **A. Terms of Settlement**

6 Plaintiff Defendant agreed to settle the class and representative PAGA claims in exchange for a
7 Gross Settlement Amount of \$850,000.00, subject to a potential pro rata increase. Settlement
8 Agreement, §§ O, 3.04(e), 3.06(a). The Gross Settlement Amount will be used to make payments for
9 the following: (1) Individual Settlement Payments to Participating Class Members; (2) attorneys' fees
10 to Class Counsel of up to one-third of the Gross Settlement Amount; (3) reimbursement of Class
11 Counsel's litigation costs of up to \$25,000.00; (4) an Enhancement Award to Plaintiff of up to
12 \$10,000.00; (5) Settlement Administration fees and costs of \$6,750.00; and (6) an allocation of
13 \$20,000.00 in PAGA penalties. *Id.* at § 3.06(b-f). Class Members' Individual Settlement Payments will
14 be distributed after final approval of the Settlement and after Defendant funds the Gross Settlement
15 Amount. *Id.* at § 3.06. Individual Settlement Payments will be calculated by comparing the total
16 Qualifying Class Workweeks to each individual Class Member's Workweeks. Settlement Agreement, §
17 3.06(f). The Settlement Administrator will calculate the actual estimated recovery to include in the Class
18 Notice. *See* Settlement Agreement, Exhibit A (Notice of Class Action Settlement).

19 The Individual Settlement Payments to Class Members will be allocated for tax purposes as
20 follows: 20% to wages; and 80% to interest, penalties, and reimbursements. Settlement Agreement, §
21 3.06(f). The employer-side payroll taxes on the portion allocated to wages will be paid by Defendant
22 separately from, and in addition to the Gross Settlement Amount. *Id.* No portion of the Gross Settlement
23 Amount will revert to Defendant. *Id.* Funds from uncashed or undeliverable checks will be tendered by
24 the Settlement Administrator to Court appointed Special Advocates of Kern County, thereby leaving no
25 unpaid residue consistent with California Code of Civil Procedure § 384, subd. (b). *Id.*

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

27 The Settlement Administrator will send Class Members the Notice of Class Action Settlement
28 ("Class Notice") by first-class mail after checking for updated addresses through the National Change of

1 Address database. Settlement Agreement, § 3.03. The Class Notice provides information regarding the
2 nature of the lawsuit, a summary of the substance of the settlement terms, the formula for calculating
3 Individual Settlement Payments, the individual's estimated payout, a statement that Class Members who
4 take no action will release their claims and receive settlement checks, instructions regarding how to
5 dispute the calculations, instructions regarding how to request exclusion or object to the Settlement, the
6 date for the final approval hearing, the amounts sought for attorneys' fees and costs, the Settlement
7 Administration Costs, an Enhancement Award for Plaintiff, the PAGA allocation, and information on
8 how to access the court's website to view the case records. *See* Settlement Agreement, Exhibit A (Class
9 Notice).

10 The Class Notice provides instructions for Class Members who choose to exclude themselves
11 from the Settlement. *See* Settlement Agreement, Exhibit A (Class Notice). To opt out, Class Members are
12 instructed to submit a Request for Exclusion to the Settlement Administrator by a specified date (60 days
13 after the date of mailing of the Class Notice). *Id.* Class Members do not need to submit a claim form to
14 participate in the Settlement. *Id.* Class Members are informed of how they can object to the Settlement,
15 and the Class Notice informs Class Members of the date, time, and location of the final fairness and
16 approval hearing so that they can appear in person. *Id.* Accordingly, the content of the Class Notice
17 complies with the requirements of Cal. R. Ct. 3.766(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 15 days from the date of mailing or the original deadline, whichever is later. Settlement Agreement, §
21 3.03. The initial 60-day notice period ensures the notice program provides due process by giving Class
22 Members enough time to determine whether they want to participate in the Settlement. This means of
23 notice is reasonably calculated to apprise Class Members of the pendency of the action. *See* Cal. R. Ct.
24 3.766 (d)-(f).

25 C. Proposed Release

26 The release to be given by Class Members is limited to the Defendant ("Released Parties").
27 Settlement Agreement, § ee. Under the proposed release, Class Members who do not exclude
28 themselves from the Settlement will be deemed to have released or waived all claims alleged or that

could have been alleged based on the facts alleged in Plaintiff's Operative Complaint, which arose during the Class Period ("Released Claims") against the Released Parties. *Id.* at § 5.01.

As for the PAGA Release, all Class Members who are Aggrieved Employees, regardless of whether they opt out of the Settlement, are deemed to release the Released Parties from, "...all claims exhausted in Plaintiff's notice sent to the LWDA and alleged in Plaintiff's Operative Complaint, which arose during the PAGA Period..." *Id.* at § 5.02. Only Plaintiff will agree to a general release of any and all claims, whether known or unknown, which exist or may exist on Plaintiff's behalf as of the date of the Settlement, and a waiver of Civ. Code § 1542. *Id.* at § 5.03.

IV. LEGAL ARGUMENTS SUPPORTING PRELIMINARY APPROVAL

A. Provisional Certification of the Class is Appropriate

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

1. The Proposed Class is Numerous and Ascertainable

Whether a class is "ascertainable" is "determined by examining (1) the class definition, (2) the size of the class, and (3) the means available for identifying class members." *Reyes v. Bd. of Supervisors*, 196 Cal. App. 3d 1263, 1271 (1987). Here, the Class consists of all non-exempt employees employed by Defendant in California at any time from May 3, 2018 through August 31, 2023. *See* Settlement Agreement §§ c, g. Defendant's records show the Class consists of approximately 132 individuals, making joinder of all Class Members impracticable. *See* Loos Decl. ¶ 9. Further, the Class is readily ascertainable from Defendant's business records because all Class Members are current or former employees of Defendant. *Id.*

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

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

1 a. Common Questions Predominate

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

7 Plaintiff alleged that Defendant maintained uniform employment policies and/or practices that
8 illegally deprived Class Members of lawful meal periods, rest breaks, accurate wage statements, waiting
9 time pay and reimbursement of necessary business expenses. Loos Decl. ¶ 10. Plaintiff's allegations
10 present common legal and factual questions of, *inter alia*, whether Defendant applied the same scheduling,
11 timekeeping, pay, meal period policies, rest break policies, and reimbursement practices to all Class
12 Members; whether these policies and practices resulted in Labor Code violations; whether Defendant's
13 conduct was intentional; and whether Class Members are entitled to penalties. *Id.*

14 These common questions could be resolved using Class Members' time punches and pay records,
15 Defendant's corporate representative's testimony, written communications between Defendant and Class
16 Members, and Class Member declarations. *Id.* Thus, the Court can and should exercise its discretion to
17 grant conditional class certification for settlement purposes.

18 b. Plaintiff's Claims are Typical of the Class Claims

19 The typicality requirement is satisfied when the legal theories and facts supporting Plaintiff's
20 claims are substantially similar to other class members. *See Classen v. Weller*, 145 Cal. App. 3d 27, 46
21 (1983). Here, Plaintiff alleged he and other Class Members were employed by Defendant and injured
22 by Defendant's common wage and hour policies and practices, including Defendant's scheduling,
23 timekeeping, compensation, meal period, rest break, and business reimbursement practices. Loos Decl.
24 ¶ 11. Through documents and information exchanged via formal and informal discovery, including
25 production of hundreds of pages of documents by Defendant, Plaintiff confirmed that these common
26 policies and practices similarly affected Plaintiff and the Class. *Id.* Thus, Plaintiff's claims arise from
27 the same employment practices and are based on the same legal theories as those applicable to other
28 Class Members, as further explained in Plaintiff's exposure analysis below.

c. Plaintiff and Plaintiff's Counsel Will Adequately Represent the Interests of the Proposed Class

Certification requires adequacy of both the proposed class representative and proposed class counsel. With respect to the class representative, a plaintiff must adequately represent and protect the interests of other members of the class and demonstrate that his or her claim is not inconsistent with the claims of other members of the class. *See Capitol People First v. State Dep't of Developmental Servs.*, 155 Cal. App. 4th 676, 696-697 (2007). Here, Plaintiff's interests are coextensive with the interests of the Class. Plaintiff demonstrated an ability to advocate for the interests of the Class by initiating this litigation, gathering documents and information, being available on the day of mediation to answer questions, assisting his attorneys in preparing for mediation, reviewing the proposed settlement agreement to understand its legal effect, and obtaining a fair settlement on behalf of Class Members. Loos Decl., ¶ 13.

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

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

Class treatment is superior to other methods of adjudication when the probability is small that each class member will come forward to prove his or her claim and when the class approach would deter and redress the alleged wrongdoing. *See Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 435, 446 (2000); *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524, 1537-1538 (2008). Here, none of the other 132 Class Members had shown any interest in bearing the expense and burden of litigating their own claims. Loos Decl. ¶ 14. Thus, a class action is the superior method for seeking relief.

B. The Settlement Meets the Standards for Preliminary Approval

Preliminary approval is warranted if the settlement falls within a "reasonable range." *See North County Contractor's Ass'n., Inc. v. Touchstone Ins. Servs.*, 27 Cal. App. 4th 1085, 1089-90 (1994); Conte & Newberg, *Newberg on Class Actions*, § 11.26 (4th ed. 2002). In reviewing the fairness of a class action settlement, due regard should be given to what is "otherwise a private consensual agreement between the parties." *Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380, 1389

(2010). The inquiry “must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Id.*

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

1. The Settlement is Entitled to a Presumption of Fairness

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

Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered. Thus, there is a presumption that settlement negotiations are conducted in good faith. Here, the Settlement was the product of a full day mediation session with a respected mediator after production of extensive documents and data. Loos Decl. ¶¶ 5-7. The negotiations were adversarial, conducted at arm’s length and tempered by the efforts of both sides to serve the interests of their clients. Loos Decl. ¶ 8.

b. Plaintiff’s Counsel Conducted Sufficient Investigation and Discovery

Plaintiff’s Counsel thoroughly investigated the claims, applicable law, and potential defenses. *See generally*, Loos Decl. In particular, Plaintiff’s Counsel assessed the value of the claims using Defendant’s data and documents produced prior to mediation. Plaintiff’s counsel also engaged an expert to quantify the potential exposure using the time and payroll records, and then assessed the risks associated with each claims meriting reductions in the likely recovery at trial. Loos Decl. ¶ 15-25. Accordingly, Plaintiff’s Counsel fully understood the strengths and weaknesses of the claims before the Parties reached a settlement.

c. Plaintiff’s Counsel is Experienced in Similar Litigation

Plaintiff is represented by Aegis Law Firm, PC (“Class Counsel”). Class Counsel prosecute wage and hour class actions on behalf of employees and others who have had their rights violated. Loos Decl. ¶ 28. The attorneys working on this case have been appointed class counsel in many cases, through both

1 contested motions and settlement approval motions. *Id.* at ¶ 29. Thus, Plaintiff’s Counsel has extensive
2 experience in similar litigation and should be appointed as Class Counsel.

3 **2. The Settlement is Reasonable Given the Strengths of Plaintiff’s Claims and**
4 **the Risks and Expense of Litigation**

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

9 While Plaintiff and his counsel believed and continue to believe this is a strong case for
10 certification, the significant risks and expenses associated with class certification and liability
11 proceedings were taken into account. Loos Decl. ¶ 15-24. To determine if the amount offered to settle
12 was reasonable, Plaintiff’s Counsel weighed that figure against many risk factors. *Id.* at ¶ 16. If Plaintiff
13 continued to prosecute the claims rather than accept a settlement, Plaintiff would have faced deadlines
14 to file a motion for class certification, had to engage in further formal written discovery and taken
15 depositions, expended time and resources to resolve disputes, prepared and filed potential dispositive
16 motions and/or discovery motions, and engaged in extensive trial preparation. *Id.* at ¶ 17. An adverse
17 ruling at any one of these stages could have prevented the Class from obtaining any recovery. *Id.*

18 **a. Exposure Analysis**

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

22 Compromise is inherent and necessary in the settlement process . . . even if “the relief afforded
23 by the proposed settlement is substantially narrower than it would be if the suits were to be
24 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.”

25 *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 250 (2001) (citation omitted). Here, Plaintiff
26 contends that his claims are based on Defendant’s common, class-wide policies and procedures, and
27 that liability could be determined on a class-wide basis without dependence on individual assessments
28 of liability. Loos Decl. ¶ 16. Although the amount of Defendant’s potential exposure – if proven – is

1 substantial, the legitimate and serious risks of succeeding at class certification and trial compelled a
2 serious consideration of the benefit of a settlement. *Id.*

3 Plaintiff's Meal Period Claim: Plaintiff's theory of liability for meal period violations was based
4 on Defendant's alleged failure to provide timely, uninterrupted meal periods or compensation in lieu
5 thereof, due to Defendant's alleged prioritization of having Class Members finish their tasks or help
6 with customers prior to taking a meal period, or requiring Class Members to discuss work related matters
7 during a meal period. *Id.* at ¶ 18. Plaintiff's expert estimated meal period violations to be worth as much
8 as \$909,239.00 based on a 54.3% violation rate. *Id.* However, Defendant argued that it had compliant
9 meal period waivers and it paid premiums for violations. *Id.* In light of Defendant's arguments and the
10 likelihood that proof of this claim may become reliant upon testimony, Plaintiff estimated a 60% chance
11 of prevailing at class certification and a 50% chance of prevailing at trial, thereby discounting the claim
12 to approximately \$272,772.00. *Id.*

13 Plaintiff's Rest Break Claim: Plaintiff's rest break claim was based on Defendant's alleged
14 requirement that Class Members remain on the premises and carry Walkie-Talkie's at all times,
15 requiring Class Members to delay or interrupt rest breaks to tend to work related matters. *Id.* at ¶ 19.
16 Based on a 100% violation rate, Plaintiff's expert calculated this claim to be worth as much as
17 \$1,649,400.00. *Id.* However, Defendant argued that a 100% violation rate was unlikely and that Class
18 Members were permitted to leave the premises. *Id.* As such, certification would likely have required
19 declarations or depositions of Class Members, and Defendant surely would have obtained opposing
20 declarations stating either rest breaks were taken or rest breaks were voluntarily waived. *See, e.g.,*
21 *Ordonez v. Radio Shack, Inc.*, 2013 WL 210223, at *11 (C.D. Cal. Jan. 17, 2013) ("Because of the
22 competing testimony before the Court, plaintiff's evidence that defendant may have an illegal, written
23 rest break policy is insufficient for this Court to find that common issues predominate."); *Villa v. United*
24 *Site Servs. of California, Inc.*, 2012 WL 5503550, at *8 (N.D. Cal. Nov. 13, 2012) ("Indeed, Plaintiff's
25 own evidence confirms that the written policy does not generate uniform practices."). Accordingly,
26 Plaintiff estimated a 50% chance of success at class certification and a 40% chance of success at trial,
27 thereby discounting the claim to approximately \$329,880. Loos Decl. ¶ 19.

1 Plaintiff's Reimbursement Claim: Plaintiff argued that Class Members were required to pay for
2 special cleaning and maintenance of their uniforms, without reimbursement. *Id.* at ¶ 20. Plaintiff's expert
3 calculated unreimbursed business expenses to be worth approximately \$198,393.00 assuming \$8.00 of
4 unreimbursed expenses per workweek. *Id.* However, Defendant argued that such cleaning was not a
5 necessary expenditure or loss, as required by Labor Code Section 2802. *Id.* Accordingly, Plaintiff
6 estimated a 50% chance of success at class certification and a 40% chance of prevailing at trial, thereby
7 reducing the value of the claim to approximately \$39,679. *Id.*

8 Plaintiff's Unpaid Wages Claim: Plaintiff argued that Defendant failed to pay Class Members for
9 all time worked due the fact Class Members allegedly were required to continue working after clocking
10 out for their shifts because supervisors requested that Class Members complete an additional task, fix
11 something, or otherwise help out as they were on their way out. *Id.* at ¶ 21. Plaintiff's expert found that
12 the average rate of pay was approximately \$17.54 and calculated the total value of this claim to be
13 approximately \$199,316.00 based on the assumption of 0.33 hours of off-the-clock work per workweek.
14 *Id.* However, Defendant argued that Class Members were paid for all time worked and that Defendant
15 was unaware if Class Members were completing these tasks after clocking out, as they were never
16 instructed to do so. *Id.* Similar to Plaintiff's rest break claim, Plaintiff would have needed to obtain
17 Class Member declarations and taken depositions to help prove this claim. *Id.* Surely, Defendant would
18 have also obtained competing declarations and taken Class Members' depositions. *Id.* As such, Plaintiff
19 estimated an approximate 45% chance of success at class certification and an approximate 35% chance
20 of prevailing at trial, thereby discounting this claim to approximately \$31,392.00. *Id.*

21 Plaintiff's Regular Rate Claim: Plaintiff's regular rate claim is based on Defendant's alleged
22 failure to incorporate non-discretionary bonuses into the regular rate of pay when calculating overtime
23 during the beginning of the Class Period. *Id.* at ¶ 22. Defendant allegedly announced and issued certain
24 bonuses and incentive pay in exchange for positive group and company performance, but did not
25 incorporate such payments in the regular rate of pay when calculating overtime. *Id.* Plaintiff's expert
26 estimated this claim to be worth approximately \$106,493.00. *Id.* Plaintiff estimated an 80% chance of
27 success at both class certification and trial, thereby valuing the claim at approximately \$68,156.00. *Id.*

1 Plaintiff's Derivative Wage Statement Claim: Plaintiff argued the presence of derivative wage
2 statement violations based on the claims described above. *Id.* at ¶ 23. Plaintiff's expert estimated
3 Plaintiff's wage statement claim to be worth as much as \$354,900.00. *Id.* However, Defendant could
4 argue that Plaintiff could not show that Class Members suffered an "injury" as a result of wage statement
5 violations, as required by Lab. Code § 226. *Id.* As a result, Plaintiff estimated an approximate 60% chance
6 of success at class certification and an approximate 50% chance of prevailing at trial, thereby discounting
7 this claim to approximately \$106,470.00. *Id.*

8 Derivative Waiting Time Penalties: Plaintiff's Counsel also considered the arguable presence of
9 waiting time penalties based on the above violations, and weighed the potential recoveries against
10 probable defenses. *Id.* at ¶ 24. Specifically, Defendant could argue that Plaintiff could not prove the
11 "willful" prong needed to obtain waiting time penalties under Lab. Code § 203. *Id.* Although the Class
12 arguably could have seen a payout of approximately \$317,940.00 for waiting time penalties, Plaintiff
13 would not recover any of this derivative penalty if he failed to prove the underlying claims. *Id.* Thus,
14 Plaintiff estimated a 40% chance of prevailing at class certification and a 30% chance of prevailing at
15 trial, thereby discounting these claims to approximately \$38,153.00. *Id.*

16 Plaintiff's PAGA Claim: The PAGA claim presented even higher hurdles. *Id.* at ¶ 25. Although
17 Plaintiff's expert found Defendant's exposure could potentially reach approximately \$815,200.00 under
18 Labor Code section 2699(f), assuming the initial penalty rate of \$100 for each pay period and based on
19 8,152 pay periods, Plaintiff would have to prove a violation in every pay period. *Id.* Most importantly, the
20 Court would have discretion to reduce the PAGA award based on whether the amount of the award would
21 be "unjust, arbitrary and oppressive, or confiscatory." Lab. Code § 2699(e)(2). In theory, the Court could
22 reduce the award by 99% if it so wished. Loos Decl. at ¶ 25. Plaintiff was doubtful he could recover any
23 PAGA penalties, especially if a large class judgment was entered for the same violations and given
24 Defendant's apparent attempts to curb any potential violations, such as starting to pay meal period
25 premiums during the liability period. *Id.* Accordingly, Plaintiff could not place a high value on the
26 PAGA penalties, and therefore allocated \$20,000.00 of the Gross Settlement Amount to settle these
27 claims. *Id.*

1 Ultimately, the damages estimates were extremely liberal and assumed the best-case scenario for
2 every Class Member. *Id.* at ¶ 26. However, given the serious risks of continued litigation, reaching a
3 compromise at this stage will allow Class Members to obtain compensation for their claims without having
4 to file and litigate their own cases. *Id.*

5 **C. The Requested Enhancement Award for Plaintiff Phipps**

6 Plaintiff seeks an Enhancement Award of up to \$10,000.00 for accepting the responsibilities of
7 representing the interests of the Class and assuming risks and potential costs that were not borne by any
8 other Class Members. Settlement Agreement, § 3.06(d). A named plaintiff is eligible for payment that
9 reasonably compensates him or her for undertaking and fulfilling a fiduciary duty to represent absent
10 class members. *See Cellphone Termination Fee Cases, supra*, 186 Cal. App. 4th at 1393; *Bell v. Farmers*
11 *Ins. Exch.*, 115 Cal. App. 4th 715, 726 (2004).

12 Here, Plaintiff had the option to pursue his claims individually, but instead chose to pursue this
13 wage and hour class action, delaying individual recovery until approval of a class action settlement.
14 Loos Decl. ¶ 27. Throughout the case, Plaintiff assisted counsel in gathering the evidence necessary to
15 prosecute the class claims, assisted counsel in preparing for mediation, maintained regular contact with
16 counsel, was available on the day of mediation to answer questions, and reviewed the Settlement to
17 make sure it was fair to the Class. *Id.* No action would likely have been taken by Class Members
18 individually, and no compensation would have been recovered for them, but for Plaintiff's services on
19 behalf of the Class. *Id.*

20 By actively pursuing this action, Plaintiff furthered the California public policy goal of enforcing
21 the State's wage and hour laws. *See Sav-On Drug Stores, Inc., supra*, 34 Cal. 4th at 340. The requested
22 Enhancement Award for Plaintiff's service as the Class Representative is reasonable and should be
23 preliminarily approved. At the final approval stage, Plaintiff will further support the request for an
24 Enhancement Award by a declaration that addresses the factors for the award. Loos Decl. ¶ 28.

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

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

1 equaling one-third or more of the potential value of the common fund. *See Chavez v. Netflix, Inc.*, 162
2 Cal. App. 4th 43, 66, n.11 (2008) (“Empirical studies show that, regardless of whether the percentage
3 method or the lodestar method is used, fee awards in class actions average around one-third of the
4 recovery”).

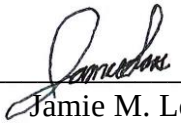
5 Plaintiff seeks appointment of Aegis Law Firm, PC as Class Counsel. The attorneys performed
6 significant work and expended litigation costs in prosecuting the matter with no guarantee of any
7 payment. Loos Decl. ¶ 42. Plaintiff’s Counsel seeks preliminary approval for attorneys’ fees of up to
8 one-third of the Gross Settlement Amount, currently estimated to be \$283,333.33, and up to \$25,000.00
9 in reimbursement of litigation costs. Settlement Agreement § 3.06(b). Given the work performed in this
10 matter, the extensive information exchanged, and the substantial recovery obtained on behalf of Plaintiff
11 and the Class, Plaintiff’s Counsel achieved a settlement through efficient and diligent work. *See*
12 *generally*, Loos Decl. At final approval, Plaintiff’s Counsel will fully brief the merits of its request for
13 the award of attorneys’ fees and litigation costs. Loos Decl. ¶ 43.

14 **V. CONCLUSION**

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

19 Dated: April 26, 2024

AEGIS LAW FIRM, PC

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21 By:  _____
22 Jamie M. Loos
23 Attorneys for Plaintiff
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