AEGIS LAW FIRM, PC
SAMUEL A. WONG, State Bar No. 217104
KASHIF HAQUE, State Bar No. 218672
JESSICA L. CAMPBELL, State Bar No. 280626
JULIA M. TOSCANO State Bar No. 326272
9811 Irvine Center Drive, Suite 100
Irvine, California 92618
Telephone: (949) 379-6250
Facsimile: (949) 379-6251
jtoscano@aegislawfirm.com

Attorneys for Plaintiff Javier Hernandez, individually, and on behalf of all others similarly situated.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JAVIER HERNANDEZ, individually and on behalf of all others similarly situated, Plaintiff, vs. NOVA TRANSPORTATION SERVICES, INC.; H. RAUVEL, INC.; PRIORITYWORKFORCE, INC.; and DOES 1 through 20, inclusive, Defendants.	Case No. 25STCV18910 *Assigned for all purposes to:* *Hon. Elaine Lu* *Dept. 9* **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** Date: October 28, 2026 Time: 10:00 a.m. Dept: 9

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I. INTRODUCTION

Pursuant to California Rules of Court 3.769 (d) and (e), Plaintiff Javier Hernandez ("Plaintiff") requests that the Court grant preliminary approval of a class action settlement of wage and hour claims, including a claim under the California Private Attorneys General Act of 2004, codified at Labor Code §§ 2698, *et seq.* ("PAGA"), against Defendants Nova Transportation Services, Inc., H. Rauvel, Inc. (Nova Transportation Services, Inc. and H. Rauvel, Inc., collectively, "Nova" or "Defendant Nova") and PriorityWorkforce, Inc. ("Defendants") (collectively, Plaintiff and Defendants referred to as the "Parties"). The settlement releases claims on behalf of all of Nova's current and former non-exempt employees who worked at Nova Transportation Services, Inc. and/or H. Rauvel, Inc. in the State of California, at any time during the period beginning on June 29, 2022, to and including May 31, 2026 (referred to collectively as "Nova Sub-Class Members" or "Nova Sub-Class"); all of Priority's current and former hourly non-exempt workers who were assigned to work at Nova Transportation Services, Inc. and/or H. Rauvel, Inc. in the State of California at any time during the period beginning on December 18, 2023 to and including May 31, 2026 ("Priority Sub-Class Members" or "Priority Sub-Class") ((the Nova Sub-Class Members or Nova Sub-Class and Priority Sub-Class Members or Priority Sub-Class are referred to collectively as the "Class" or "Class Members") (the "Nova Class Period" is the period beginning on June 29, 2022 and to and including May 31, 2026; and "Priority Class Period" is the period beginning on December 18, 2023 to and including May 31, 2026 (the Nova Class Period and the Priority Class Period are referred to collectively as the "Class Period")). The basic terms of the Class Action and PAGA Settlement Agreement ("Settlement Agreement" or "Settlement")[1] provide for the following:

(1) A non-reversionary Gross Settlement Amount of $185,000.00 allocated to approximately 1,105 Class Members on a pro rata basis according to the number of weeks each Class Member worked during the Class Period;

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[1] A true and correct copy of the fully-executed "Class Action and PAGA Settlement Agreement and Class Notice" is attached as **Exhibit 1** to the Declaration of Julia M. Toscano in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Toscano 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.

(2) An award of up to one-third of the Gross Settlement Amount (currently $61,666.67) and up to $20,000.00 in reimbursement of costs to Plaintiff's Counsel for services rendered as counsel on this matter;

(3) Service Payment of up to $7,500.00 to the Named Plaintiff;

(4) Settlement Administration fees and costs of up to $10,950.00; and

(5) Allocation of $10,000.00 for resolution of civil penalties under PAGA. Sixty-five percent (65%) of this payment will be paid to the California Labor and Workforce Development Agency ("LWDA Payment"), and thirty-five percent (35%) will be paid to Class Members who worked for Defendants during the PAGA Period (the "Aggrieved Employees").

With each Class Member allocated an average recovery of approximately $69.98 from the Net Settlement Amount, the Settlement satisfies the criteria for preliminary approval and falls well within the range of reasonableness given the risks and costs of continued litigation. The Settlement was reached through informed, arms-length bargaining at and after mediation between experienced attorneys. As such, Plaintiff requests that the Court grant preliminary approval of the Settlement, conditionally certify the Class for settlement purposes only, appoint Plaintiff as the Class Representative, appoint Plaintiff's Counsel as Class Counsel, appoint ILYM Group, Inc. as the Settlement Administrator, authorize the Settlement Administrator to send notice of the Settlement, and set a final approval hearing date.

II. SUMMARY OF THE LITIGATION

On June 27, 2025, Plaintiff filed a putative class action on behalf of Defendants' 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 reimburse business expenses; (6) failure to provide accurate itemized wage statements; (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. Toscano Decl., ¶ 3. On June 27, 2025, Plaintiff's counsel provided written notice to the LWDA and Defendants regarding Defendants' alleged Labor Code violations, as required by Labor Code section 2699.3(a). *Id.* at Ex. 2. The LWDA did not respond to this notice, indicating it did not intend to investigate, thus allowing Plaintiff to bring a PAGA claim against Defendants. *Id*. On October 9, 2025, Plaintiff filed a First Amended the Complaint adding a PAGA claim. *Id*.

The Parties proceeded with informal discovery. *Id*. at ¶ 4. Plaintiff sought his personnel file, Defendants' policy documents, and class members' timekeeping and pay records. *Id*. After numerous discussions between the Parties' attorneys, the Parties agreed to attend a private mediation session. *Id*. Through informal discovery, Defendants produced a significant number of documents and information: the Defendants produced their respective policy documents, Defendant Nova produced all timekeeping and payroll records for the Nova Class Period, and Defendant Priority produced a 20% sample of timekeeping and payroll records for the Priority Class Period. *Id*.

On March 26, 2026, the Parties attended a mediation session with Lonnie Giamela, a respected mediator. *Id*. at ¶ 5. The Parties reached a settlement at the end of the mediation. *Id.* The Parties spent the next several months negotiating the terms of the Settlement, which was finalized in July of 2026. *Id.* The negotiations were adversarial, conducted at arm's length and tempered by the efforts of both sides to serve the interests of their clients. *Id.*

On August 20, 2026, Plaintiff submitted the Settlement to the LWDA pursuant to Labor Code section 2699(l)(2). *Id.* at ¶ 7, Ex. 3.

III. <u>SUMMARY OF THE SETTLEMENT</u>

A. Terms of Settlement

Plaintiff and Defendants agreed to settle the class claims in exchange for a Gross Settlement Amount of $185,000.00. Settlement Agreement, § 3.1. Nova shall be responsible for $40,000.00 of the Gross Settlement Amount, plus any employer-side payroll taxes applicable to this $40,000.00; and Priority shall be responsible for $145,000.00 of the Gross Settlement Amount, plus any employer-side payroll taxes applicable to this $145,000.00. Settlement Agreement, § 3.1.1 -3.1.2. The Gross Settlement Amount will be used to make payments for the following: (1) Individual Settlement Payments to Participating Class Members; (2) attorneys' fees to Class Counsel of up to one-third of the Gross Settlement Amount; (3) reimbursement of Class Counsel's litigation costs of up to $20,000.00; (4) a Service Payment to Plaintiff of up to $7,500.00; (5) Settlement Administration fees and costs of $10,950.00; and (6) a payment to the LWDA of $10,000.00 pursuant to PAGA. *Id.* at § 3.2.1- 3.2.2- 3.2.3- 3.2.5.

Class Members do not need to submit a claim form to participate in the Settlement. Settlement Agreement, § 3.1. Pursuant to the Settlement Agreement, Defendants will fully fund the Gross Settlement Amount and also fund the amounts necessary to fully pay Defendants' share of payroll taxes by transmitting the funds to the Administrator no later than thirty (30) days after the Effective Date.[2] *Id.* at § 4.3. Class Members' Individual Settlement Payments will be distributed within 14 days after Defendants fully fund the Gross Settlement Amount. *Id.* at § 4.4. Individual Settlement Payments will be calculated by comparing the total number of Workweeks for the Class to each individual Class Member's number of Workweeks. *Id.* at § 3.2.4. The Settlement Administrator will calculate the actual estimated recovery to include in the Class Notice and provide the estimated low and high range of possible recovery at final approval. *Id.* at § 7.4.2; Settlement Agreement, Ex. A (Notice of Class Action Settlement). The class notice will be provided in English, with a Spanish translation, in the form of Exhibit A to the Settlement Agreement, without material variation. *See* Settlement Agreement, § 1.17.

The Individual Settlement Payments to Class Members will be allocated for tax purposes as follows: twenty percent (20%) of each Participating Nova Sub-Class Member or Participating Priority Sub-Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The eighty percent (80%) of each Participating Nova Sub-Class Member or Participating Priority Sub-Class Member's Individual Class Payment will be allocated to settlement of claims for interest (forty percent [40%]) and penalties (forty percent [40%]) (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms.

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[2] The "Effective Date" is defined as the date on which the Judgment becomes final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or (c) if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur. (Settlement Agreement, § 1.25.)

Settlement Agreement, § 3.2.4.1. The employer-side payroll taxes on the portion allocated to wages will be paid by Defendants separately from, and in addition to the Gross Settlement Amount. *Id.* at § 3.1. No portion of the Gross Settlement Amount will revert to Defendants. *Id* at § 3.1. Funds from uncashed or undeliverable checks will be tendered by the Settlement Administrator to the State Controller Unclaimed Property Fund in the name of the Class Member for whom the funds are designated. *Id*. at § 4.4.3.

B. Proposed Opt-Out and Objection Process

Once the Court grants preliminary approval, Defendants will have fourteen (14) days to deliver the Class Data to the Settlement Administrator. Settlement Agreement, § 4.2. The Settlement Administrator will then have fourteen (14) days to send Class Members the Notice of Class Action Settlement ("Class Notice") by first-class mail after checking for updated addresses through the National Change of Address database. *Id.* at §§ 4.4 -7.4.2. The Class Notice provides information regarding the nature of the lawsuit, a summary of the substance of the settlement terms, the formula for calculating Individual Settlement Payments, the individual's estimated payout, a statement that Class Members who take no action will release their claims and receive settlement checks, instructions regarding how to dispute the calculations, instructions regarding how to request exclusion or object to the Settlement, the date for the final approval hearing, the amounts sought for attorneys' fees and costs, the Settlement Administration Costs, the Class Representative's Service Payment, and the PAGA allocation. *See* Settlement Agreement, Ex. A (Class Notice).

The Class Notice provides instructions for Class Members who choose to exclude themselves from the Settlement. *See* Settlement Agreement § 7.5.1. To opt out, Class Members are instructed to submit a Request for Exclusion to the Settlement Administrator by a specified date (45 days after the date of mailing of the Class Notice). *See* Settlement Agreement, Ex. A (Class Notice), pp. 2, 11. Class Members do not need to submit a claim form to participate in the Settlement. *Id.* at p. 2. Class Members are informed of how they can object to the Settlement, and the Class Notice informs Class Members of the date, time, and location of the final fairness and approval hearing so that they can appear in person. *Id.* at pp. 2, 11. The Class Notice also informs Class Members to check the Administrator's website or contact Class Counsel to verify the date and time of the Final Approval Hearing. *Id.* at p. 11. Accordingly, the content of the Class Notice complies with the requirements of California Rules of Court Rule 3.766(d).

If Class Notice packets are returned as undeliverable, the Settlement Administrator will perform a skip-trace or other search, and re-mail the Class Notice with an extended deadline, to opt out or object, of 14 days from the date of the original deadline. Settlement Agreement, § 7.6. The initial 45-day notice period and extension process ensures the notice program provides due process by giving Class Members enough time to determine whether they want to participate in the Settlement. This means of notice is reasonably calculated to apprise Class Members of the pendency of the action. *See* California Rules of Court Rule 3.766 (d)-(f).

C. Proposed Release

The release to be given by Class Members is limited to Defendants and any and all of their respective parents, predecessors, subsidiaries, affiliates, successors, related entities, assigns, and agents, and each of their former and present directors, officers, shareholders, owners, members, employees, attorneys, and insurers (the "Released Parties"). Settlement Agreement, § 1.51. Under the proposed release, Class Members who do not exclude themselves from the Settlement will be deemed to have released the following:

> all claims that were alleged, or reasonably could have been alleged, arising out of the same operative facts in the Operative Complaint and PAGA Notices and arising at any point during the Nova Class Period and the Priority Class Period, and arising at any point during the Nova PAGA Period and Priority PAGA Period, including claims for alleged unpaid wages (including minimum wages, straight time wages, overtime wages, sick pay, meal break premium wages, and rest break premium wages), claims related to timely payment of wages, alleged unpaid meal and rest break premiums, alleged unpaid holiday premiums or incentives, alleged failure to provide and permit meal and rest breaks, alleged itemized wage statement penalties, alleged failure to reimburse for business-related expenditures, alleged failure to maintain accurate and complete records, alleged waiting time penalties under the California Labor Code, relief under Business & Professions Code (including Section 17200, et seq.) and/or all claims under the California Labor Code Private Attorneys General Act of 2004 or for civil penalties that could have been premised on the claims,

causes of action or legal theories described above or any of the claims, causes of action or legal theories of relief pleaded in the Operative Complaint, claims for restitution and other equitable relief, liquidated damages, or penalties; and any other benefit claimed on account of the allegations asserted in operative First Amended Complaint and in Plaintiff's submission letter to the LWDA (Operative Complaint and PAGA Notices), including but not limited to Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 233, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2698, 2699, 2699.5, 2800, and 2802; Business & Professions Code section 17200 et seq.; IWC Wage Order sections 3, 4, 11, and 12; and California Code of Civil Procedure section 1021.5 (collectively, the "Released Class Claims"). This release shall further apply to the corresponding PAGA claims arising at any point during the Nova PAGA Period and Priority PAGA Period.

Id at § 5.2.

Release by Priority PAGA Group[3] and Nova PAGA Group[4]:

All Priority PAGA Group Members and Nova PAGA Group Members are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, arising out of the same operative facts in the Operative Complaint and the PAGA Notices. This includes claims for alleged unpaid wages (including minimum wages, straight time wages, overtime wages, sick pay, meal break premium wages, and rest break premium wages), claims related to timely payment of wages, alleged unpaid meal and rest break premiums, alleged unpaid holiday premiums or incentives, alleged failure to provide and permit meal and rest breaks, alleged

[3] "Priority PAGA Group" refers collectively to all "Priority PAGA Group Members", which is defined as "[a] ll of Priority's current and former hourly non-exempt workers who were assigned to work at Nova Transportation Services, Inc. and/or H. Rauvel, Inc. in the State of California at any time during the period beginning on June 27, 2024 to and including May 31, 2026." Settlement Agreement, § 1.7.

[4] "Nova PAGA Group" refers collectively to all "Nova PAGA Group Members", which is defined as "[a]ll of Nova's current and former non-exempt employees who worked at Nova Transportation Services, Inc. and/or H. Rauvel, Inc. in the State of California at any time during the period beginning on June 27, 2024 to and including May 31, 2026." *Id.*

> itemized wage statement penalties, alleged failure to reimburse for business-related expenditures, alleged failure to maintain accurate and complete records, and alleged waiting time penalties under the California Labor Code. For avoidance of doubt, this PAGA release includes any alleged violations of Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 233, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802; and Business & Professions Code section 17200 et seq.; IWC Wage Order sections 3, 4, 11, and 12; and California Code of Civil Procedure section 1021.5 (collectively, the "Released PAGA Claims"); and unfair business practices that could have been premised on the claims. The PAGA release period encompasses both the Nova PAGA Period and the Priority PAGA Period. The Priority PAGA Group and the Nova PAGA Group do not release claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and PAGA claims outside the PAGA Period.

Settlement Agreement, § 5.3.

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

IV. <u>LEGAL ARGUMENTS SUPPORTING PRELIMINARY APPROVAL</u>

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 of Nova's current and former non-exempt employees who worked at Nova Transportation Services, Inc. and/or H. Rauvel, Inc. in the State of California, at any time during the period beginning on June 29, 2022, to and including

May 31, 2026 and all of Priority's current and former hourly non-exempt workers who were assigned to work at Nova Transportation Services, Inc. and/or H. Rauvel, Inc. in the State of California at any time during the period beginning on December 18, 2023 to and including May 31, 2026. Settlement Agreement, §§ 1.18, 1.19. Defendants' records show the Class consists of approximately 1,105Class Members, making joinder of all Class Members impracticable. Toscano Decl., ¶ 7. Further, the Class is readily ascertainable from Defendants' business records because all Class Members are current or former employees of Defendants. *Id.*

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

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

a. <u>*Common Questions Predominate*</u>

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

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

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

The typicality requirement is satisfied when the legal theories and facts supporting Plaintiff's claims are substantially similar to other class members. *See Classen v. Weller*, 145 Cal. App. 3d 27, 46 (1983). Here, Plaintiff alleges that he and other Class Members were employed by Defendants and injured by Defendants' common wage and hour policies and practices, including Defendants' scheduling, timekeeping, minimum wage pay, overtime pay, meal period, and rest break practices and policies. Toscano Decl., ¶ 9. Through documents and information exchanged in discovery, including production of thousands of pages of documents by Defendants, Plaintiff confirmed that these common policies and practices similarly affected Plaintiff and the Class. *Id.* Thus, Plaintiff's claims arise from the same employment practices and are based on the same legal theories as those applicable to other Class Members, as further explained in Plaintiff's exposure analysis below.

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

Certification requires adequacy of both the proposed class representative(s) and proposed class counsel. With respect to the class representative, a plaintiff must adequately represent and protect the interests of other members of the class and demonstrate that his or her claim is not inconsistent with the claims of other members of the class. *See Capitol People First v. State 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 litigating this action, gathering documents and information, being available on the day of mediation to answer questions, meeting with his attorneys on several occasions to understand the claims and theories of liability at issue, assisting attorneys in preparing for mediation, reviewing the proposed settlement agreement to understand its legal effect, and obtaining a fair settlement on behalf of Class Members who stand to recover a substantial amount under the Settlement. Toscano Decl., ¶ 20.

Likewise, Aegis Law Firm, PC has expended considerable time and effort on this case and will continue to do so through final approval. *See generally,* Toscano 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 approximately 1,105 other Class Members had shown any interest in bearing the expense and burden of litigating their own claims. Toscano Decl. ¶ 21. Thus, a class action is the superior method for seeking relief.

B. The Settlement Meets the Standards for Preliminary Approval

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

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

1. The Settlement is Entitled to a Presumption of Fairness

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

Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered. Thus, there is a presumption that settlement negotiations are conducted in good faith. Here, the Settlement was the product of extensive investigation and a full day mediation session with a respected mediator after extensive discovery. Toscano Decl. ¶¶ 4-5. The negotiations were adversarial, conducted at arm's length and tempered by the efforts of both sides to serve the interests of their clients. *Id.* at ¶ 5. The amount of Plaintiff's requested Service Award was not negotiated until after the Parties agreed to the Gross Settlement Amount and many other terms. *Id.* at ¶ 21.

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

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

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

Plaintiff is represented by Aegis Law Firm, PC ("Class Counsel"). Class Counsel prosecute wage and hour class actions on behalf of employees and others who have had their rights violated. Toscano Decl. ¶¶ 23-36. The attorneys working on this case have been appointed class counsel in many cases, through both contested motions and settlement approval motions. *Id.* Thus, Plaintiff's Counsel has extensive experience in similar litigation and should be appointed as Class Counsel.

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

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

While Plaintiff and his counsel believed and continue to believe this is a strong case for certification, they accounted for the significant risks and expenses associated with class certification and liability proceedings. Toscano Decl., ¶ 12. To determine if the amount offered at mediation was reasonable, Plaintiff's Counsel weighed the figure offered against numerous risk factors. *Id.* at ¶ 13. For example, Plaintiff's counsel considered that if they were to continue to prosecute the claims rather than accept the settlement offered at mediation, they would expend significant time and resources engaging in extensive formal written discovery, conducting depositions, resolving disputes, preparing and filing discovery motions and/or dispositive motions, preparing and filing a motion for class certification, and engaging in extensive trial preparation. Moreover, they understood that an adverse ruling at any one of the foregoing stages could prevent Plaintiff and the Class from obtaining any recovery.

a. *<u>Exposure Analysis</u>*

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

> Compromise is inherent and necessary in the settlement process . . . even if "the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated," this is no bar to a class settlement because "the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation."

Wershba v. Apple Computer, Inc., 91 Cal. App. 4th 224, 250 (2001) (citation omitted). Here, Plaintiff contends that his claims are based on Defendants' common, class-wide policies and procedures, and that liability could be determined on a class-wide basis without dependence on individual assessments of liability. Toscano Decl., ¶ 11. Although the amount of Defendants' total potential exposure—if proven—is substantial, the legitimate and serious risks of succeeding at class certification and trial compelled a serious consideration of the benefit of a settlement. *Id.* at ¶¶ 13-19.

<u>Unpaid Overtime Claims</u>: Plaintiff's overtime claim was potentially worth about $5,360.00 based on instances of unpaid overtime found in Defendants' timekeeping and payroll records. However, Defendants argued that the instances were so few that they did not and could not represent a class-wide issue, and therefore, the claim is not suitable for certification. Without a higher violation rate evidencing a class-wide issue, this claim could become difficult to certify. As such, Plaintiff assumed there was a 60% chance of success at class certification and 50% chance of success on the merits at trial, rendering the claim worth approximately $1,608.00. Toscano Decl., ¶ 14.

<u>Unpaid Overtime and Sick Wages:</u> Plaintiff's unpaid overtime wages claim and sick wages

claims was based on the theory that Defendants failed to incorporate non-discretionary bonuses into the regular rate for the purposes of calculating overtime and sick pay. Plaintiff's expert calculated that this claim could be worth approximately $32,882.00 based on an analysis of Defendants' timekeeping and payroll records. However, Defendants argued that one of the bonuses Plaintiff assumed was non-discretionary, was in fact discretionary. If true, Defendants' liability exposure would be significantly reduced, and certification of this issue could become more difficult. As such, Plaintiff assumed there was a 40% chance of success at class certification and 30% chance of success on the merits at trial, rendering the claim worth approximately $3,945.84.00. Toscano Decl., ¶ 15.

<u>Meal Period Claims</u>: Plaintiff's meal period claim was potentially worth about $ 254,237.00 in light of the violations shown in the records. However, Defendants argued that they maintained compliant written policies and that employees could waive their meal periods. Thus, Plaintiff discounted this claim for the risk that the damages could at least be reduced, and that the claim would be hard to certify with a compliant policy. As such, Plaintiff's counsel believed there was a 60% chance succeeding at class certification and a 50% chance at trial, resulting in a value of $76,271.10. Toscano Decl., ¶ 16.

<u>Rest Break Claim</u>: Plaintiff alleged that Defendants failed to authorize timely rest breaks due to the productivity requirements imposed on class members. If Plaintiff could prove a 100% violation rate for each shift over 3.5 hours, then damages could reach up to $2,227,355.00. However, Defendants argued that they maintained compliant written rest break policies and that class members could again choose to waive their rest breaks. As such, this claim would have relied on Class Member testimony, making it a riskier claim at class certification and liability stages. Plaintiff's counsel believed there was a 15% chance succeeding at class certification and a 10% chance at trial, resulting in a value of $33,410.33. Toscano Decl., ¶ 17.

<u>Waiting Time and Wage Statement Penalties</u>: Plaintiff's Counsel also considered the arguable presence of various derivative penalties, and weighed the potential recoveries against probable defenses. Specifically, Defendants could argue that Plaintiff could not prove the "willful" prong needed to obtain waiting time penalties under Labor Code § 203. Additionally, Defendants could argue that Plaintiff could not show that Class Members suffered an "injury" as a result of wage statement violations, as required

by Labor Code § 226, or that the wage statements correctly reflected the wages paid and owed. Moreover, Plaintiff would not recover any of these derivative penalties if he failed to prove the underlying claims. Although the Class arguably could have seen a payout of approximately $1,642,884.00 for waiting time penalties and $1,023,350.00 for wage statement penalties, Plaintiff would not recover any of these derivative penalties if he failed to prove the underlying claims. Thus, Plaintiff discounted these claims assuming a 20% chance of class certification and 10% chance at the merits for both claims, resulting in a realistic value of $32,857.68 for the waiting time claim and $20,467.00 for the wage statement claim. Toscano Decl. ¶ 18.

PAGA Claim: The PAGA claim presented even higher hurdles. Although Plaintiff's Counsel found Defendants' exposure could potentially reach approximately $1,557,500 under Lab. Code § 2699(f), assuming the initial penalty rate of $100 for each pay period, Plaintiff would have to prove a violation in every pay period. 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. Plaintiff was doubtful he could recover any PAGA penalties, especially if a large class judgment was entered for the same violations. Accordingly, Plaintiff could not place a high value on the PAGA penalties, and therefore allocated $10,000.00 of the Gross Settlement Amount to settle these claims. Toscano Decl., ¶ 19.

C. The Requested Service Award for Plaintiff

Plaintiff seeks a Service Award of up to $7,500.00 for accepting the responsibilities of representing the interests of the Class and assuming risks and potential costs that were not borne by any other Class Members. A named plaintiff is eligible for payment that reasonably compensates him or her for undertaking and fulfilling a fiduciary duty to represent absent class members. *See Cellphone Termination Fee Cases*, *supra,* 186 Cal. App. 4th at 1393; *Bell v. Farmers Ins. Exch.*, 115 Cal. App. 4th 715, 726 (2004).

Here, Plaintiff had the option to pursue his claims individually, but instead chose to pursue this class action, delaying individual recovery until approval of a class action settlement. Toscano Decl., ¶ 20. Throughout the case, Plaintiff assisted counsel in gathering the evidence necessary to prosecute the class claims, maintained regular contact with counsel, made himself available on the day of mediation to answer critical questions from his attorneys, and reviewed the Settlement to make sure it was fair to the Class. *Id.* None of the other approximately 1,105 Class Members had shown any interest in bearing the expense and burden of litigating their own claims. *Id.* No action would likely have been taken by Class Members individually, and no compensation would have been recovered for them, but for Plaintiff's services on behalf of the Class. *Id.*

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

D. The Requested Attorneys' Fees and Costs

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

Plaintiff seeks appointment of Aegis Law Firm, PC as Class Counsel. The attorneys performed significant work and expended litigation costs in prosecuting the matter with no guarantee of any payment. Toscano Decl., ¶ 36. Plaintiff's Counsel seeks preliminary approval for $61,666.67 in attorneys' fees, which is up to one-third of the Gross Settlement Amount, and up to $20,000.00 in reimbursement of litigation costs. Given the work performed in this matter, the extensive information exchange, and substantial recovery obtained on behalf of Plaintiff and the Class, Plaintiff's Counsel achieved a settlement through efficient and diligent work. *See generally,* Toscano Decl. At final approval, Plaintiff's Counsel will fully brief the merits of its request for the award of attorneys' fees and litigation costs. *Id.* at ¶ 37.

V. CONCLUSION

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

Dated: August 20, 2026

AEGIS LAW FIRM, PC

By: *__/s/ Julia M. Toscano__________________*
Julia M. Toscano
Attorneys for Plaintiff