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

14 **FOR THE COUNTY OF SAN DIEGO**

15 RAYNA MENENDEZ, individually and on
16 behalf of all others similarly situated,

17 Plaintiffs,

18 vs.

19 PETUNIA HOLDINGS, LLC; HUDSON
20 RIVER OPCO, LLC; and DOES 1 through
21 20, inclusive,

22 Defendants.

Case No. 37-2022-00052139-CU-OE-CTL

Assigned for All Purposes to:
Judge Katherine Bacal
Dept. C-69

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

Date: August 16, 2024

Time: 1:30 p.m.

Dept: C-69

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1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court 3.769 (d) and (e), Plaintiffs Rayna Menendez and Jose
3 Duran (“Plaintiffs”) request that the Court grant preliminary approval of a class action settlement of
4 wage and hour claims, including a claim under the California Private Attorneys General Act of 2004,
5 codified at Lab. Code § 2698, *et seq.* (“PAGA”), against Defendant Petunia Holdings, LLC
6 (“Defendant”) (collectively, Plaintiffs and Defendant referred to as the “Parties”). The putative class
7 consists of approximately 155 non-exempt employees who worked for Defendant in California and did
8 not sign an arbitration agreement (individually, “Class Member”; collectively, the “Class”) from
9 December 30, 2018 to February 21, 2024 (the “Class Period”). The basic terms of the Class Action and
10 PAGA Settlement Agreement and Class Notice (“Settlement Agreement” or “Settlement”)¹ provide for
11 the following:

- 12 (1) A non-reversionary Gross Settlement Amount of \$250,000.00 allocated to
13 approximately 155 Class Members on a pro rata basis according to the number of
14 weeks each Class Member worked during the Class Period;
- 15 (2) An award of up to one-third of the Gross Settlement Amount (currently
16 \$83,333.33) and up to \$25,000.00 in reimbursement of costs to Plaintiffs’
17 Counsel for services rendered as counsel on this matter;
- 18 (3) Service Payment of up to \$10,000.00 to the Named Plaintiff Rayna Menendez
19 and \$2,500 to the Named Plaintiff Jose Duran;
- 20 (4) Settlement Administration fees and costs of up to \$6,990.00; and
- 21 (5) Allocations of \$12,000 for resolution of civil penalties under PAGA. Seventy-
22 five percent (75%) of this payment will be paid to the California Labor and
23 Workforce Development Agency (“LWDA Payment”), and twenty-five percent
24

25 _____
26 ¹ A true and correct copy of the fully-executed “Class Action and PAGA Settlement Agreement and
27 Class Notice” is attached as **Exhibit 1** to the Declaration of Kristy R. Connolly in Support of Plaintiff’s
28 Motion for Preliminary Approval of Class Action Settlement (“Connolly Decl.”), filed concurrently
herewith. Unless otherwise defined herein, all capitalized terms in this Motion will be used as such
terms are defined and used in the Settlement.

(25%) will be paid to the non-exempt employees who worked for Defendant during the PAGA Period (the “Aggrieved Employees”).

With each Class Member allocated an average recovery of approximately \$710 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, Plaintiffs request that the Court grant preliminary approval of the Settlement, conditionally certify the Class for settlement purposes only, appoint Plaintiffs as the Class Representatives, appoint Plaintiffs’ Counsel as Class Counsel, appoint Apex Class Action Administration 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 December 30, 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). Connolly Decl., ¶ 3, 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 December 30, 2022, Plaintiff Williams filed a putative class action on behalf of Defendant’s non-exempt employees alleging the following causes of action: (1) failure to provide meal periods; (2) failure to permit rest breaks; (3) failure to provide accurate itemized wage statements; (4) failure to pay all wages due upon separation of employment; (5) violation of Business and Professions Code § 17200, *et seq.*; for the preceding claims. *Id.* On May 2, 2023, Plaintiff filed a First Amended Complaint to add a cause of action under PAGA and to add Plaintiff Duran as a second named plaintiff. *Id.*

The Parties agreed to attend early private mediation. Connolly Decl., ¶ 4. Through informal discovery, Defendant produced significant amount of documents and information, including relevant policy documents and a 20% sample of class members’ timekeeping and pay records. *Id.*

On February 21, 2024, the Parties attended a mediation session with Jill Sperber, a respected mediator, and reached a settlement. Connolly Decl., ¶ 5. After a full day of negotiating, the Parties agreed to a settlement amount and executed a Memorandum of Understanding with the material terms

1 the parties had agreed to. *Id.* The Parties spent the next few months negotiating the terms of the
2 Settlement, which was finalized in July of 2024. *Id.*

3 On July 24, 2024, Plaintiffs submitted the Settlement and this Motion to the LWDA pursuant to
4 Lab. Code § 2699(1)(2). Connolly Decl., ¶ 6, Ex. 3.

5 **III. SUMMARY OF THE SETTLEMENT**

6 **A. Terms of Settlement**

7 Plaintiffs and Defendant agreed to settle the class claims in exchange for a Gross Settlement
8 Amount of \$250,000. Settlement Agreement, § 3.1. The Gross Settlement Amount will be used to
9 make payments for the following: (1) Individual Settlement Payments to Participating Class Members;
10 (2) attorneys' fees to Class Counsel of up to one-third of the Gross Settlement Amount; (3)
11 reimbursement of Class Counsel's litigation costs of up to \$25,000; (4) a Service Payment to Plaintiff
12 Menendez of up to \$10,000 and to Plaintiff Duran of up to \$2,500; (5) Settlement Administration fees
13 and costs of \$6,990; and (6) a payment to the LWDA of \$9,000 pursuant to PAGA. *Id.* at § 3.2.1 –
14 3.2.5. Defendant shall fund the Gross Settlement Amount no later than August 31, 2025, and Class
15 Members' Individual Settlement Payments will be distributed within 14 days thereof. *Id.* at §§ 4.3-4.4.
16 Individual Settlement Payments will be calculated by comparing the total Qualifying Workweeks for
17 the Class to each individual Class Member's Qualifying Workweeks. *Id.* at § 3.2.4. The Settlement
18 Administrator will calculate the actual estimated recovery to include in the Class Notice and provide
19 the estimated low and high range of possible recovery at final approval. *Id.* at § 7.4.2; Settlement
20 Agreement, Ex. A (Notice of Class Action Settlement).

21 The Individual Settlement Payments to Class Members will be allocated for tax purposes as
22 follows: 10% to wages; 90% to penalties and interest. Settlement Agreement, § 3.2.4.1. The employer-
23 side payroll taxes on the portion allocated to wages will be paid by Defendant separately from, and in
24 addition to the Gross Settlement Amount. *Id.* at § 4.2. No portion of the Gross Settlement Amount will
25 revert to Defendant. *Id.* at § 3.1. Funds from uncashed or undeliverable checks will be tendered by the
26 Settlement Administrator to the State Controller Unclaimed Property Fund in the name of the Class
27 Member for whom the funds are designated. *Id.* at § 4.3.3.

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

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

13 The Class Notice provides instructions for Class Members who choose to exclude themselves
14 from the Settlement. *See* Settlement Agreement § 7.5.1. To opt out, Class Members are instructed to
15 submit a Request for Exclusion to the Settlement Administrator by a specified date (60 days after the
16 date of mailing of the Class Notice). *See* Settlement Agreement, Ex. A (Class Notice), pp. 1, 6. Class
17 Members do not need to submit a claim form to participate in the Settlement. *Id.* at p. 2. Class Members
18 are informed of how they can object to the Settlement, and the Class Notice informs Class Members of
19 the date, time, and location of the final fairness and approval hearing so that they can appear in person.
20 *Id.* at pp. 2, 8. The Class Notice also informs Class Members to check the Administrator’s website or
21 contact Class Counsel to verify the date and time of the Final Approval Hearing. *Id.* at p. 8.
22 Accordingly, the content of the Class Notice complies with the requirements of Cal. R. Ct. 3.766(d).

23 If Class Notice packets are returned as undeliverable, the Settlement Administrator will perform a
24 skip-trace or other search, and re-mail the Class Notice with an extended deadline, to opt out or object,
25 of 14 days from the date of mailing or the original deadline, whichever is later. Settlement Agreement,
26 §§ 7.5.1, 7.7.2. The initial 60-day notice period and extension process ensures the notice program
27 provides due process by giving Class Members enough time to determine whether they want to
28

1 participate in the Settlement. This means of notice is reasonably calculated to apprise Class Members of
2 the pendency of the action. *See* Cal. R. Ct. 3.766 (d)-(f).

3 **C. Proposed Release**

4 The release to be given by Class Members is limited to Defendant and Hudson River OPCO,
5 LLC and each of their former and present directors, officers, shareholders, owners, members, attorneys,
6 insurers, predecessors, successors, assigns subsidiaries and affiliates (the “Released Parties”).
7 Settlement Agreement, § 1.41. Under the proposed release, Class Members who do not exclude
8 themselves from the Settlement will be deemed to have released the following:

9 all claims arising during the Class Period that were alleged, or reasonably could have
10 been alleged, based on the facts stated in the Operative Complaint. Except as set forth in
11 Section 5.3 of this Agreement, Participating Class Members do not release any other
12 claims, including claims for vested benefits, wrongful termination, violation of the Fair
13 Employment and Housing Act, unemployment insurance, disability, social security,
14 workers’ compensation, or claims based on facts occurring outside the Class Period.

15 *Id* at § 5.2.

16 Aggrieved Employees will release the Released Parties from all claims that were alleged, or
17 reasonably could have been alleged, based on the facts stated in the Operative Complaint, and the
18 PAGA Notice, which arose during the PAGA Period, regardless of whether they opt out of the Class
19 Settlement, § 5.3.

20 Only Plaintiffs will agree to a general release of any and all claims, whether known or unknown,
21 which exist or may exist on Plaintiffs’ behalf as of the date of the Settlement, and a waiver of Civ. Code
22 § 1542. Settlement Agreement, § 5.1.1.

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

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

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

1 **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 persons currently or formerly employed by Defendant as a non-exempt employee in the State of California at any time during the Class Period and who did not sign arbitration agreements. Settlement Agreement, § 1.5. Defendant’s records show the Class consists of approximately 150 individuals, making joinder of all Class Members impracticable. Connolly Decl., ¶ 7. 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)).

a. Common Questions Predominate

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 Defendant 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. Connolly Decl., ¶ 8. Plaintiff’s allegations present common legal and factual questions of, *inter alia*, whether Defendant applied the same scheduling, timekeeping, minimum and overtime pay, meal period, and rest break policies to all Class Members; whether these policies and practices resulted in Labor Code violations; whether Defendant’s conduct was intentional; and whether Class Members are entitled to penalties. *Id.* These common questions could be resolved using Class Members’ schedules, time punches, and payroll records, Defendant’s corporate representative’s

1 testimony, written communications between Defendant and Class Members, and Class Member
2 declarations. *Id.* Thus, the Court can and should exercise its discretion to grant conditional class
3 certification for settlement purposes.

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

5 The typicality requirement is satisfied when the legal theories and facts supporting Plaintiff's
6 claims are substantially similar to other class members. *See Classen v. Weller*, 145 Cal. App. 3d 27,
7 46 (1983). Here, Plaintiffs allege that they and other Class Members were employed by Defendant and
8 injured by Defendant's common wage and hour policies and practices, including Defendant's
9 scheduling, timekeeping, minimum wage pay, overtime pay, meal period, and rest break practices and
10 policies. Connolly Decl., ¶ 9. Through documents and information exchanged in informal discovery,
11 Plaintiffs' Counsel confirmed that these common policies and practices similarly affected Plaintiffs
12 and the Class. *Id.* Thus, Plaintiffs' claims arise from the same employment practices and are based on
13 the same legal theories as those applicable to other Class Members, as further explained in Plaintiffs'
14 exposure analysis below.

15 *c. Plaintiffs and Plaintiffs' Counsel Will Adequately Represent the Interests*
16 *of the Proposed Class*

17 Certification requires adequacy of both the proposed class representative(s) and proposed class
18 counsel. With respect to the class representative, a plaintiff must adequately represent and protect the
19 interests of other members of the class and demonstrate that his or her claim is not inconsistent with
20 the claims of other members of the class. *See Capitol People First v. State Dept of Developmental*
21 *Servs.*, 155 Cal. App. 4th 676, 696-697 (2007). Here, Plaintiffs' interests are coextensive with the
22 interests of the Class. Plaintiffs demonstrated an ability to advocate for the interests of the Class by
23 litigating this action, gathering documents and information, being available on the day of mediation to
24 answer questions, meeting with their attorneys on several occasions to understand the claims and
25 theories of liability at issue, assisting attorneys in preparing for mediation, reviewing the proposed
26 settlement agreement to understand its legal effect, and obtaining a fair settlement on behalf of Class
27 Members who stand to recover a substantial amount under the Settlement.

1 Likewise, Aegis Law Firm, PC has expended considerable time and effort on this case and will
2 continue to do so through final approval. *See generally*, Connolly Decl. Accordingly, Plaintiffs should
3 be appointed Class Representatives, and Plaintiffs' Counsel should be appointed Class Counsel

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

5 Class treatment is superior to other methods of adjudication when the probability is small that
6 each class member will come forward to prove his or her claim and when the class approach would
7 deter and redress the alleged wrongdoing. *See Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 435, 446
8 (2000); *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524, 1537-1538 (2008). Here, none of
9 the other 150 Class Members had shown any interest in bearing the expense and burden of litigating
10 their own claims. Connolly Decl. ¶ 19. Thus, a class action is the superior method for seeking relief.

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

12 Preliminary approval is warranted if the settlement falls within a "reasonable range." *See North*
13 *County Contractor's Ass'n., Inc. v. Touchstone Ins. Servs.*, 27 Cal. App. 4th 1085, 1089-90 (1994);
14 Conte & Newberg, *Newberg on Class Actions*, § 11.26 (4th ed. 2002). In reviewing the fairness of a
15 class action settlement, due regard should be given to what is "otherwise a private consensual
16 agreement between the parties." *Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380, 1389
17 (2010). The inquiry "must be limited to the extent necessary to reach a reasoned judgment that the
18 agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties,
19 and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Id.*

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

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

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

27 Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless
28 evidence to the contrary is offered. Thus, there is a presumption that settlement negotiations are

1 conducted in good faith. Here, the Settlement was the product of extensive investigation and a full day
2 mediation session with a respected mediator. Connolly Decl. ¶¶ 4-5. The negotiations were
3 adversarial, conducted at arm's length and tempered by the efforts of both sides to serve the interests
4 of their clients. *Id.* at ¶ 5. The amount of Plaintiffs' requested Service Awards was not negotiated until
5 after the Parties agreed to the Gross Settlement Amount and many other terms. *Id.* at ¶ 19.

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

7 Plaintiffs' Counsel thoroughly investigated the class claims, applicable law, and potential
8 defenses. *See generally*, Connolly Decl. In particular, Plaintiffs' Counsel assessed the value of the
9 class claims using Defendant's data and documents produced through informal discovery. Connolly
10 Decl., ¶ 9. Further, Plaintiffs' Counsel engaged an expert to quantify the potential exposure using the
11 time and payroll records, and then assessed the risks associated with each of the claims meriting
12 reductions in the likely recovery at trial. *Id.* Accordingly, Plaintiffs' Counsel fully understood the
13 strengths and weaknesses of the claims before the Parties reached a settlement. *Id.*

14 *c. Plaintiffs' Counsel is Experienced in Similar Litigation*

15 Plaintiffs are represented by Aegis Law Firm, PC ("Class Counsel"). Class Counsel prosecute
16 wage and hour class actions on behalf of employees and others who have had their rights violated.
17 Connolly Decl. ¶¶ 21-33. The attorneys working on this case have been appointed class counsel in
18 many cases, through both contested motions and settlement approval motions. *Id.* Thus, Plaintiffs'
19 Counsel has extensive experience in similar litigation and should be appointed as Class Counsel.

20 **2. The Settlement is Reasonable Given the Strengths of Plaintiffs' Claims and**
21 **the Risks and Expense of Litigation**

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

26 While Plaintiffs and their counsel believed and continue to believe this is a strong case for
27 certification, the significant risks and expenses associated with class certification and liability
28 proceedings were taken into account. Connolly Decl., ¶ 11. To determine if the amount offered at

1 mediation was reasonable, Plaintiffs' Counsel weighed that figure against many risk factors. If Plaintiffs
2 continued to prosecute the claims rather than accept a settlement, Plaintiffs would have faced
3 deadlines to file a motion for class certification, had to have engaged in formal written discovery and
4 taken depositions, expended time and resources to resolve disputes, prepared and filed potential
5 dispositive motions and/or discovery motions, and engaged in extensive trial preparation. *Id.* An
6 adverse ruling at any one of these stages could have prevented the Class from obtaining any recovery.
7 *Id.*

8 a. Exposure Analysis

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

12 Compromise is inherent and necessary in the settlement process . . . even if “the relief afforded
13 by the proposed settlement is substantially narrower than it would be if the suits were to be
14 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.”

15 *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 250 (2001) (citation omitted). Here, Plaintiffs
16 contends that their claims are based on Defendant's common, class-wide policies and procedures, and
17 that liability could be determined on a class-wide basis without dependence on individual assessments
18 of liability. Connolly Decl., ¶ 10. Although the amount of Defendant's potential exposure – if proven
19 – is substantial, the legitimate and serious risks of succeeding at class certification and trial compelled
20 a serious consideration of the benefit of a settlement. *Id.* at ¶ 12.

21 Plaintiffs' minimum wage and overtime claims were premised on the theory that Defendants
22 failed to compensate class members for all time worked, including by requiring them to conduct
23 Covid-19 health screenings prior to clocking in for work. Assuming unpaid wages of two minutes per
24 shift, Plaintiffs' expert calculated a maximum exposure of \$44,833. However, because any time spent
25 completing the Covid-19 screenings was not recorded, this theory would be dependent on competing
26 testimonial evidence about Defendant's practices. Plaintiffs would need supportive testimony through
27 depositions and declarations (which will likely be countered with Defendants' own testimony received
28 by Class Members) to support that wages were unpaid under these theories in every pay period. The

1 reliance on supportive testimony through depositions and declarations renders the value of this claim
2 uncertain. As such, Plaintiffs assumed there was a 50% chance of success at class certification and
3 30% chance of success on the merits at trial, rendering the claim worth approximately \$6,725.
4 Connolly Decl., ¶ 13.

5 Plaintiff's meal period claim was potentially worth about \$75,379 in light of the violations
6 shown in the records. However, Defendant argued that it maintained compliant written policies and
7 that employees could waive their meal periods, as evidenced by the written meal period waivers
8 produced for mediation. Further, Defendant provided evidence of several instances in which it paid
9 meal period premiums. Thus, Plaintiffs discounted this claim for the risk that the damages could at
10 least be reduced, and that the claim would be hard to certify with a compliant policy. As such,
11 Plaintiff's counsel believed there was a 40% chance succeeding at class certification and a 430%
12 chance at trial, resulting in a value of \$9,045. Connolly Decl., ¶ 14.

13 Plaintiff alleged that Defendant failed to authorize timely rest breaks due to the requirement that
14 Class Members must remain on-premises during rest breaks. If Plaintiff could prove a 100% violation
15 rate for each shift over 3.5 hours, then damages could reach up to \$1,116,284. However, Defendant
16 argued that it maintained compliant written rest break policies, that it never penalized an employee for
17 leaving during a rest break, and that class members could again choose to waive their rest breaks. As
18 such, this claim would have relied on Class Member testimony, making it a riskier claim at class
19 certification and liability stages. Plaintiff's counsel believed there was a 30% chance succeeding at
20 class certification and a 20% chance at trial, resulting in a value of \$66,977. Connolly Decl., ¶ 15.

21 Plaintiffs' Counsel also considered the arguable presence of various derivative penalties, and
22 weighed the potential recoveries against probable defenses. Specifically, Defendant could argue that
23 Plaintiff could not prove the "willful" prong needed to obtain waiting time penalties under Labor Code
24 § 203. Additionally, Defendant could argue that Plaintiff could not show that Class Members suffered
25 an "injury" as a result of derivative wage statement violations, as required by Labor Code § 226.
26 Moreover, Plaintiffs would not recover any of these derivative penalties if they failed to prove the
27 underlying claims. Although the Class arguably could have seen a payout of approximately \$893,685
28 for waiting time penalties and \$40,000 for wage statement penalties, Plaintiffs would not recover any

1 of these derivative penalties if they failed to prove the underlying claims. Thus, Plaintiffs discounted
2 these claims assuming a 40% chance of class certification and 20% chance at the merits for both
3 claims, resulting in a realistic value of \$71,495 for the waiting time claim and \$3,200 for the wage
4 statement claim. Connolly Decl., ¶ 16.

5 The PAGA claim presented even higher hurdles. Although Plaintiffs' Counsel found
6 Defendant's exposure could potentially reach approximately \$1,294,900 under Lab. Code § 2699(f),
7 assuming the initial penalty rate of \$100 for each pay period, Plaintiffs would have to prove a
8 violation in every pay period. Most importantly, the Court would have discretion to reduce the PAGA
9 award based on whether the amount of the award would be "unjust, arbitrary and oppressive, or
10 confiscatory." Lab. Code § 2699(e)(2). In theory, the Court could reduce the award by 99% if it so
11 wished. Plaintiffs were doubtful they could recover any PAGA penalties, especially if a large class
12 judgment was entered for the same violations. Accordingly, Plaintiffs could not place a high value on
13 the PAGA penalties, and therefore allocated \$12,000 of the Gross Settlement Amount to settle these
14 claims. Connolly Decl., ¶ 17.

15 C. The Requested Service Award for Plaintiffs

16 Plaintiffs seek a Service Award of up to \$10,000 for Plaintiff Menendez and \$2,500 for Plaintiff
17 Duran for accepting the responsibilities of representing the interests of the Class and assuming risks
18 and potential costs that were not borne by any other Class Members. Settlement Agreement, § 3.2.1. A
19 named plaintiff is eligible for payment that reasonably compensates him or her for undertaking and
20 fulfilling a fiduciary duty to represent absent class members. *See Cellphone Termination Fee Cases*,
21 *supra*, 186 Cal. App. 4th at 1393; *Bell v. Farmers Ins. Exch.*, 115 Cal. App. 4th 715, 726 (2004).

22 Here, Plaintiffs had the option to pursue their claims individually, but instead chose to pursue
23 this class action, delaying individual recovery until approval of a class action settlement. Connolly
24 Decl., ¶ 18. Throughout the case, Plaintiffs assisted counsel in gathering the evidence necessary to
25 prosecute the class claims, maintained regular contact with counsel, were available on the day of
26 mediation and communicated with their attorneys during the day of mediation to answer critical
27 questions, and reviewed the Settlement to make sure it was fair to the Class. *Id.* No action would
28

likely have been taken by Class Members individually, and no compensation would have been recovered for them, but for Plaintiffs' services on behalf of the Class. *Id.*

By actively pursuing this action, Plaintiffs 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 Plaintiffs' services as the class representatives and for a general release of all employment claims is reasonable and should be preliminarily approved. At the final approval stage, Plaintiffs will further support the request for the Service Awards by declarations addressing the factors for the award. Connolly Decl., ¶ 20.

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").

Plaintiffs seek 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. Connolly Decl., ¶ 34. Plaintiff's Counsel seeks preliminary approval for \$83,333.33 in attorneys' fees, which is up to one-third of the Gross Settlement Amount, and up to \$25,000.00 in reimbursement of litigation costs. Given the work performed in this matter, the extensive information exchange, and substantial recovery obtained on behalf of Plaintiffs and the Class, Plaintiffs' Counsel achieved a settlement through efficient and diligent work. *See generally*, Connolly Decl. At final approval, Plaintiffs' Counsel will fully brief the merits of its request for the award of attorneys' fees and litigation costs. *Id.* at ¶ 35.

V. CONCLUSION

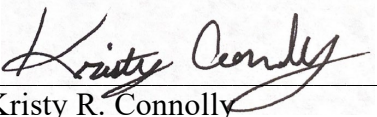
The Parties have negotiated a fair and reasonable Settlement of the class claims in light of the risks present in this case. Plaintiffs have appropriately presented the materials and information

1 necessary for preliminary approval, and therefore, respectfully requests that the Court preliminarily
2 approve the Settlement and schedule a date to conduct the final approval hearing.

3
4 Dated: July 24, 2024

AEGIS LAW FIRM, PC

5
6 By:



Kristy R. Connolly
Attorneys for Plaintiffs