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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

MARIA SALDANA, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

CRYOPORT SYSTEMS LLC; and DOES 1
through 20, inclusive,

Defendants.

Case No. 30-2023-01312802-CU-OE-CXC

Assigned for all purposes to:

Hon. William D. Claster

Dept.: CX101

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

Date: August 30, 2024

Time: 9:00 a.m.

Dept: CX101

Reservation: **74351505**

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1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court 3.769 (d) and (e), Plaintiff Maria Saldana (“Plaintiff”)
3 requests that the Court grant preliminary approval of a class action settlement of wage and hour claims,
4 including a claim under the California Private Attorneys General Act of 2004, codified at Lab. Code §
5 2698, *et seq.* (“PAGA”), against Defendant CRYOPORT SYSTEMS LLC (“Defendant”) (collectively,
6 Plaintiff and Defendant referred to as the “Parties”). The putative class consists of approximately 62
7 employees, and is defined as all non-exempt employees employed by Defendant in California
8 (individually, “Class Member”; collectively, “Class Members”) between September 17, 2018 through
9 October 15, 2023 (the “Class Period”). The basic terms of the Class Action and PAGA Settlement
10 Agreement and Class Notice (“Settlement Agreement” or “Settlement”)¹ provide for the following:

- 11 (1) A non-reversionary Gross Settlement Amount of \$200,000.00 allocated to
12 approximately 62 Class Members on a pro rata basis according to the number of
13 weeks each Class Member worked during the Class Period;
14 (2) An award of up to one-third of the Gross Settlement Amount (currently
15 \$66,666.67) in reimbursement of costs up to \$16,000.00 to Plaintiff’s Counsel for
16 services rendered as counsel on this matter;
17 (4) Settlement Administration fees and costs of up to \$5,250.00;
18 (5) A Class Representative Enhancement Award for Plaintiff up to \$5,000.00; and
19 (6) Allocations of \$20,000 for resolution of civil penalties under PAGA. Seventy-five
20 percent (75%) of this payment will be paid to the California Labor and Workforce
21 Development Agency (“LWDA Payment”), and twenty-five percent (25%) will be
22 paid to Class Members who worked for Defendant during the PAGA Period of
23 March 16, 2022 to October 15, 2023.

24 With each Class Member allocated an average recovery of nearly \$1,500 from the Net Settlement

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

Amount. (Valle Decl., ¶ 28.) 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, arm's-length bargaining at and after a 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 March 16, 2023, Plaintiff's counsel provided written notice to the LWDA and Defendant regarding Defendant's alleged Labor Code violations, as required by Lab. Code § 2699.3(a). (Valle Decl., ¶ 3, Ex. 2.) Also on March 16, 2023, Plaintiff filed a putative class action on behalf of Defendant's non-exempt employees alleging the following causes of action: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to permit rest breaks; (5) failure to 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. (*Id.*) The LWDA did not respond to the written notice, indicating it did not intend to investigate, thus allowing Plaintiff to add a ninth cause of action for enforcement of Labor Code § 2698 *et seq.* ("PAGA") in a First Amended Complaint filed on June 7, 2023. (*Id.* at ¶ 4.)

The Parties proceeded with informal discovery. Defendant produced its employee handbooks, policies, and Class Members' timekeeping and pay records. (Valle Decl., ¶ 5.) On August 30, 2023, the Parties attended a mediation session with Steven Pearl, a respected mediator. (*Id.* at ¶ 6.) After a full day of negotiating, the Parties agreed to a settlement amount and executed a Memorandum of Understanding, with the material terms the Parties had agreed to, on October 24, 2023. (*Id.*) The Parties spent the next several months negotiating the full terms of the Settlement, which was finalized in July 2024 (*Id.*)

On July 31, 2024, Plaintiff submitted the Settlement and this Motion to the LWDA pursuant to Lab. Code § 2699(1)(2). (*Id.* at ¶ 7; Ex. 3.) Plaintiff's counsel is unaware of any other pending litigation against Defendant. (*Id.*) As of July 26, 2024, the LWDA's website reflects no other PAGA filings

1 against Defendant. (*Id.*)

2 **III. SUMMARY OF THE SETTLEMENT**

3 **A. Terms of Settlement**

4 Plaintiff and Defendant agreed to settle the class claims in exchange for a Gross Settlement
5 Amount of \$200,000. (Settlement Agreement, § 3.1.) The Gross Settlement Amount will be used to
6 make payments for the following: (1) Individual Settlement Payments to Participating Class Members;
7 (2) attorneys’ fees to Class Counsel of up to one-third of the Gross Settlement Amount; (3)
8 reimbursement of Class Counsel’s litigation costs of up to \$16,000; (4) a Service Payment to Plaintiff
9 of up to \$5,000; (5) Settlement Administration fees and costs not to exceed \$5,250.00 ; and (6) a
10 payment to the LWDA of \$15,000 pursuant to PAGA. (*Id.* at §§ 3.2.1–3.2.5.) Class Members’ Individual
11 Settlement Payments will be distributed after final approval of the Settlement and Defendant fully funds
12 the Gross Settlement Amount. (*Id.* at §§ 4.3–4.4.) Individual Settlement Payments will be calculated by
13 comparing the total Qualifying Workweeks for the Class to each individual Class Member’s Qualifying
14 Workweeks. (*Id.* at § 3.2.4.) The Settlement Administrator will calculate the actual estimated recovery
15 to include in the Notice of Class Action Settlement (“Class Notice”) and provide the estimated low and
16 high range of possible recovery at final approval. (*Id.* at § 8.4.2 & Ex. A (Class Notice).) The Class
17 Notice will be provided in English since the Class Members speak and understand English. (*See*
18 Settlement Agreement, § 1.11)

19 The Individual Settlement Payments will be allocated 20% to wages; 80% to interest and penalties
20 for tax purposes. (*Id.* at § 3.2.4.1.) Defendant will pay the employer-side payroll taxes on the portion
21 allocated to wages separately from, and in addition to, the Gross Settlement Amount. (*Id.* at § 3.1.)
22 Funds from uncashed or undeliverable checks will be tendered by the Settlement Administrator to the
23 State Controller Unclaimed Property Fund in the Class Member’s name for whom the funds are
24 designated. (*Id.* at § 4.4.3.) None of the Gross Settlement Amount will revert to Defendant. (*Id.* at § 3.1.)

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

26 Once the Court grants preliminary approval, Defendant will have twenty-one days to deliver the
27 Class Data to the Settlement Administrator. (Settlement Agreement, § 4.2.) The Settlement Administrator
28 will then have fourteen days to send Class Notice by first-class mail after checking for updated addresses

1 through the National Change of Address database. (*Id.* at § 8.4.2.) The Class Notice provides information
2 regarding the nature of the lawsuit, a summary of the substance of the settlement terms, the formula for
3 calculating Individual Settlement Payments, the individual's estimated payout, a statement that Class
4 Members who take no action will release their claims and receive settlement checks, instructions
5 regarding how to dispute the calculations, instructions regarding how to request exclusion or object to
6 the Settlement, the date for the final approval hearing, the amounts sought for attorneys' fees and costs,
7 the Settlement Administration Costs, the Class Representative's Service Payment, and the PAGA
8 allocation. (*See* Settlement Agreement, Ex. A.)

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

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

26 **C. Proposed Release**

27 The release to be given by Class Members is limited to Defendant and its parent companies;
28 subsidiaries; respective attorneys; past, present, and future divisions; affiliates; predecessors;

1 successors; shareholders; officers; directors; employees; agents; trustees; representatives;
2 administrators; fiduciaries; assigns; subrogees; executors; partners; related corporations; and privies,
3 both individually and collectively; their respective past or present officers; directors; shareholders;
4 successors and predecessors in interest; and any individual or entity which could be jointly or severally
5 liable with Defendant (the “Released Parties”). (Settlement Agreement, § 1.41.) Under the proposed
6 release, Class Members who do not exclude themselves from the Settlement will be deemed to have
7 released the following:

8 all claims that were alleged or could have been alleged, based on the facts alleged in the
9 Operative Complaint, which arose during the Class Period, including any claims of: (1)
10 Failure to Pay Minimum Wages; (2) Failure to Pay Overtime Wages; (3) Failure to Provide
11 Meal Periods; (4) Failure to Permit Rest Breaks; (5) Failure to Reimburse Business
12 Expenses; (6) Failure to Provide Accurate Itemized Wage Statements; (7) Failure to Pay All
13 Wages Due Upon Separation of Employment; (8) Violation of Business and Professions
14 Code §§ 17200 et seq.; and (9) Enforcement of Labor Code §§ 2698 *et seq.*

15 (*Id.* at § 6.2.)

16 Aggrieved Employees (regardless of whether they exclude themselves from the Settlement) will
17 be deemed to have released: “all claims for civil penalties under PAGA arising during the PAGA Period
18 that were alleged, or could have been alleged, based on the facts alleged in the Operative Complaint,
19 and the PAGA Notice and ascertained in the course of the Action.” (*Id.* at § 6.3.)

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

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

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

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

28 **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* (1987) 196 Cal. App. 3d 1263, 1271.) Here, the Class consists of all non-exempt employees employed by Defendant in California at any time between September 17, 2018 to October 15, 2023. (Settlement Agreement, §§ 1.5 & 1.12.) Defendant’s records show the Class consists of approximately 62 individuals, making joinder of all Class Members impracticable. (Valle Decl., ¶ 8.) 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. Super. Ct.* (2007) 40 Cal. 4th 1069, 1089 (quoting *Richmond v. Dart Industries, Inc.* (1981) 29 Cal. 3d 462, 470.)

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. Super. Ct.* (2004) 34 Cal. 4th 319, 327 (*Sav-On Drug Stores, Inc.*)). 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 employment policies and/or practices that illegally deprived Class Members of lawful wages, meal periods, rest breaks, accurate wage statements, payment of all wages upon separation from employment, and waiting time pay. (Valle Decl., ¶ 9.) 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 testimony, written communications between Defendant 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* (1983) 145 Cal. App. 3d 27, 46.) Here, Plaintiff alleges that she and other Class Members were employed by Defendant and injured by Defendant's common wage and hour policies and practices, including Defendant's scheduling, timekeeping, minimum wage pay, overtime pay, meal period, and rest break practices and policies. (Valle Decl., ¶ 10.) Through documents and information exchanged in informal discovery, including production of policy documents by Defendant, 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 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 Dept. of Developmental Servs.* (2007) 155 Cal. App. 4th 676, 696-697.) 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 their attorneys on several occasions to understand the claims and theories of liability at issue, 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. (Declaration of Maria Saldana ("Saldana Decl.") ¶¶ 4-8; Valle Decl., ¶ 29.)

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*, Valle Decl.) Accordingly, Plaintiff should be appointed Class Representatives, 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.* (2000) 23 Cal. 4th 429, 435, 446; *Ghazaryan v. Diva Limousine, Ltd.*, (2008) 169 Cal. App. 4th 1524, 1537-1538.) Here, none of the other 62 Class Members had shown any interest in bearing the expense and burden of litigating their own claims. (Valle Decl., ¶ 29.) 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.*, (1994) 27 Cal. App. 4th 1085, 1089-90; 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* (2010) 186 Cal. App. 4th 1380, 1389.) 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 “arm’s-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.* (1996) 48 Cal. App. 4th 1794, 1802.) 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 extensively reviewing discovery. (Valle Decl., ¶¶ 5–6.) The negotiations were adversarial, conducted at arm’s-length, and tempered by the efforts of both

1 sides to serve the interests of their clients. (*Id.* at ¶ 6.) The amount of Plaintiff’s requested Service Award
2 was not negotiated until after the Parties agreed to the Gross Settlement Amount and many other terms.
3 (*Id.* at ¶ 30.)

4 *b. Plaintiff’s Counsel Conducted Sufficient Investigation and Discovery*

5 Plaintiff’s Counsel thoroughly investigated the class claims, applicable law, and potential
6 defenses. (*See generally*, Valle Decl.) In particular, Plaintiff’s Counsel assessed the value of the class
7 claims using Defendant’s data and documents produced through informal discovery. (Valle Decl., ¶¶
8 10, 12–13.) Plaintiff’s counsel extensively reviewed policy documents and Class Members’ time and
9 pay records to perform a thorough analysis. (*Id.* at ¶ 10.) Further, Plaintiff’s Counsel engaged an expert
10 to quantify the potential exposure using the time and payroll records, and then assessed the risks
11 associated with each of the claims meriting reductions in the likely recovery at trial. (*Id.*) Accordingly,
12 Plaintiff’s Counsel fully understood the strengths and weaknesses of the claims before the Parties
13 reached a settlement. (*Id.*)

14 *c. Plaintiff’s Counsel is Experienced in Similar Litigation*

15 Plaintiff is represented by Aegis Law Firm, PC (“Class Counsel”). Class Counsel prosecute wage
16 and hour class actions on behalf of employees and others who have had their rights violated. (Valle
17 Decl., ¶¶ 32-45.) The attorneys working on this case have been appointed class counsel in many cases,
18 through both contested motions and settlement approval motions. (*Id.*) Thus, Plaintiff’s Counsel has
19 extensive experience in similar litigation and should be appointed as Class Counsel.

20 **2. The Settlement is Reasonable Given the Strengths of Plaintiff’s Claims and**
21 **the Risks and Expense of Further 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.* (2010) 186
25 Cal. App. 4th 399, 407; *see also Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, 129.)

26 While Plaintiff and her 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. (Valle Decl., ¶ 12.) To determine if the amount negotiated was

1 reasonable, Plaintiff's Counsel weighed that figure against many risk factors. (*Id.* at ¶ 13). If Plaintiff
2 continued to prosecute the claims rather than accept a settlement, Plaintiff would have faced deadlines
3 to file a motion for class certification, had to have engaged in formal written discovery and taken
4 depositions, expended time and resources to resolve disputes, prepared and filed potential dispositive
5 motions and/or discovery motions, and engaged in extensive trial preparation. (*Id.* at ¶ 14.) An adverse
6 ruling at any one of these stages could have prevented the Class from obtaining any recovery. (*Id.*)

7 a. Plaintiff's Sample Size Was Statistically Reliable

8 The Parties agreed that in lieu of providing the data of all Class Members in discovery, Defendant
9 would provide Plaintiff's data and a sampling of the Class Members' data, using methods that ensured
10 the sampling would adequately represent the claims and damages of the class. (Valle Decl., ¶ 22.)
11 Through this sampling of data, Plaintiff received a statistically reliable portrait of the Class Members'
12 hours worked and potential damages. (*Id.* at 23.) In total, Defendant produced an approximate 53% data
13 sampling of the Class Members within the Class Period. (*Id.*)

14 Plaintiff and Defendant agreed to use a randomized sampling method to analyze the Class
15 Members' employment data. (*Id.* at ¶ 24.) No Class Members were excluded from the list generated to
16 create the sample, and selection was determined by a repeatable pattern ensuring that each class member
17 had an equal probability of being selected for inclusion. (*Id.*) Furthermore, Plaintiff's employment data
18 was requested separately from the rest of the Class Members, so as not to create a biased sample. (*Id.*)

19 Using Defendant's 53% sampling size resulted in a confidence level of over 95% in the accuracy
20 of the sample's data, and contained an approximate margin of error of 12%. (*Id.* at ¶ 25.) The 95%
21 confidence level and 12% margin of error are based on a sample size calculator by Survey Monkey
22 (<http://surveymonkey.com/mp/sample-size-calculator/>). The sample size calculator uses a formula that
23 advises the survey conductor of how large a sample size is needed to achieve a specified confidence
24 level in their sample size (between 80 – 99%) and a margin of error of 12%. (*Id.*) Survey Monkey is a
25 feedback platform that was owned and operated by Momentive Global Inc., who had a Better Business
26 Bureau rating of A+, posted revenue of \$118.8 million in the first quarter of 2023, and was on the
27 NASDAQ securities market, according to their 2023 First Quarter Financial Results Press Release. (*Id.*
28 at ¶ 26.) Survey Monkey and Momentive Global Inc. are now owned by Symphony Technology Group,

1 a privately held technology conglomerate. (*Id.*)

2 Prior to mediation, Plaintiff retained an expert to analyze Defendant’s sample data, and calculate
3 damages that were relied upon for mediation and included in Plaintiff’s Motion for Preliminary
4 Approval of Class and Representative Action Settlement. (*Id.* at ¶ 27.) For example, the expert analyzed
5 33,234 of the Class Members’ shifts, finding that of the shifts analyzed, approximately 84.9% were at
6 least six hours in length. (*Id.*) The lack of variation in shift length between the sampling of Class
7 Members reinforces Survey Monkey’s analysis that the sample had a low variability and margin of error,
8 which is statistically reliable and significant. (*See Duran v. U.S. Bank National Assn.* (2014) 59 Cal.4th
9 1, 42–44 (finding an analysis to determine if a sample size is statistically appropriate may include
10 ensuring that the data sample is randomly selected, evaluating the extent of variability within the sample,
11 removing any selection bias, and analyzing the margin of error).) Requiring Defendant to produce all
12 of the Class Members’ time and pay records would not provide a substantially more reliable data set
13 than the sample analyzed by Plaintiff. (Valle Decl. at ¶ 27.)

14 *b. Exposure Analysis*

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

18 Compromise is inherent and necessary in the settlement process . . . even if “the relief afforded
19 by the proposed settlement is substantially narrower than it would be if the suits were to be
20 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.”

21 (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 250 (citation omitted).) Here, Plaintiff
22 contend that their claims are based on Defendant’s common, class-wide policies and procedures, and
23 that liability could be determined on a class-wide basis without dependence on individual assessments
24 of liability. (Valle Decl., ¶ 11.) Although the amount of Defendant’s potential exposure—if proven—is
25 substantial, the legitimate and serious risks of succeeding at class certification and trial compelled
26 consideration of the benefit of a settlement. (*Id.* at ¶ 13.)

27 Overtime Claim: Plaintiff’s overtime claim is mainly premised on the theory that although
28 Defendant paid Class Members for overtime, it failed to adjust overtime rates to include Class Members’

1 stock plan incentives, sales incentives, and bonuses. (Valle Decl., ¶ 15.) An expert retained by Plaintiff's
2 Counsel calculated a potential exposure of approximately \$9,500 by calculating the underpayment of
3 overtime for each incentive or bonus shown in the pay records. (*Id.*) However, Defendant argued that
4 the bonuses were discretionary, and the stock plans were exempt from inclusion in the regular rate of
5 pay. (*Id.*) Accordingly, Plaintiff's counsel believed there was an 75% chance of success at class
6 certification and 50% chance of success on the merits at trial, rendering the claim worth approximately
7 \$3,563. (*Id.*)

8 Meal Period Claim: Plaintiff's meal period claim is premised on the theory that Defendant failed
9 to provide timely meal periods and failed to provide second meal periods to Class Members. (Valle
10 Decl., ¶ 16.) Plaintiff's expert estimated that this claim was worth approximately \$83,000. (*Id.*)
11 However, Defendant argued that Class Members signed meal period waivers that would cover any
12 missing second meal periods and Defendant had paid some meal period premiums. (*Id.*) As a result,
13 Plaintiff's counsel estimated that this claim had a 50% chance at certification and a 40% chance at trial,
14 resulting in a realistic evaluation of \$16,600. (*Id.*)

15 Rest Period Claim: Plaintiff's rest period claim is premised on the theory that Class Members
16 were frequently required to work through their breaks, and Defendant had no policy to pay rest break
17 premiums (Valle Decl., ¶ 17.) Plaintiff's expert estimated that this claim was worth approximately
18 \$693,000, based on Plaintiff's counsel's liberal calculation of the violation rate. (*Id.*) However, whether
19 Class Members were able to take rest breaks would have required depositions of Class Members, and
20 Defendant likely would have obtained opposing declarations stating rest breaks were adequately taken
21 or voluntarily waived, significantly decreasing the likelihood of class certification. (*Id.*) As such,
22 Plaintiff's counsel estimated that the rest break claim had 25% chance at certification and a 15% chance
23 at trial, resulting in a realistic evaluation of \$25,987. (*Id.*)

24 Expense Reimbursement Claim: Plaintiff's claim for failure to reimburse business expenses was
25 premised on the theory that Class Members used their personal cell phones to carry out their work duties,
26 such as clocking in and out on a phone application, but were not reimbursed for the expenses. (Valle
27 Decl., ¶ 18.) Assuming that each Class Member would be entitled to a reimbursement amount of at least
28 \$30 per month, the expert retained by Plaintiff's counsel estimated that the claim was worth

1 approximately \$46,000. (*Id.*) However, Defendant could defeat these claims by showing that it did not
2 require Class Members to use their phones for timekeeping. (*Id.*) Accordingly, Plaintiff's counsel
3 estimated that there would be a 50% chance of class certification and a 40% chance of success on the
4 merits at trial, rendering the claim worth approximately \$9,200. (*Id.*)

5 Unpaid Wages Claim: This claim was premised on the theory that Defendant required Class
6 Members to use their phones for business purposes while not clocked in for at least 5 minutes per week.
7 (Valle Decl., ¶ 19.) Using that amount, this claim could be worth as much as \$11,325. (*Id.*) The claim
8 was supported by Defendant's policies which stated that it required some employees to use their phones
9 for business purposes, which could foreseeably lead to performing job duties while not clocked in. (*Id.*)
10 However, Plaintiff's Counsel believed this claim would be extremely difficult to prove on a class-wide
11 basis and would require numerous declarations to establish that all Class Members were using their
12 phones for business purposes and were using the phones while not clocked-in. (*Id.*) Considering that
13 timekeeping could be done through an online website (and thus comprised Plaintiff's reimbursement
14 claim), Plaintiff believed the odds of proving or certifying this claim were low, and thus estimated a
15 25% chance of certification and a 15% chance of recovery on the merits. (*Id.*) As such, Plaintiff's
16 counsel believed this claim only had a realistic value of \$425. (*Id.*)

17 Waiting Time and Wage Statement Penalties: Plaintiff's Counsel considered the arguable presence
18 of various derivative penalties, and weighed the potential recoveries against probable defenses. (Valle
19 Decl., ¶ 20.) Specifically, Defendant could argue that Plaintiff could not prove the "willful" prong needed
20 to obtain waiting time penalties under Labor Code § 203; Plaintiff could not show that Class Members
21 suffered an "injury" as a result of wage statement violations, as required by Labor Code § 226; or that the
22 wage statements correctly reflected the wages paid and owed. (*Id.*) Although the Class could have seen a
23 potential payout of approximately \$119,000 for waiting time penalties and approximately \$240,000 for
24 wage statement penalties, Plaintiff would not recover any of these derivative penalties if she failed to
25 prove the underlying claims. (*Id.*) Thus, Plaintiff discounted these claims assuming a 75% chance of class
26 certification and 50% chance at the merits for both claims, resulting in a realistic value of approximately
27 \$44,625 for the waiting time claim and around \$90,000 for the wage statement claim. (*Id.*)
28

1 PAGA Claim: The PAGA claim presented even higher hurdles. (Valle Decl., ¶ 21.) Plaintiff's
2 expert analyzed the employment data provided by Defendant and found that Defendant's exposure could
3 potentially reach approximately \$184,200 under Lab. Code § 2699(f), assuming the initial penalty rate
4 of \$100 for each pay period for Aggrieved Employees. (*Id.*) However, to recover that amount, Plaintiff
5 would have to prove a violation in every pay period. (*Id.*) Furthermore, the Court would have discretion
6 to reduce the PAGA award based on whether the amount of the award would be "unjust, arbitrary and
7 oppressive, or confiscatory." Lab. Code § 2699(e)(2). In theory, the Court could reduce the award by
8 99% if it so wished. Plaintiff was doubtful she could recover a large sum PAGA penalties, especially if
9 the court considered Defendant's lack of prior wage and hour litigation, some facially compliant
10 policies, and payment of some meal period premiums, and if a large class judgment was entered for the
11 same violations, as explained below. Accordingly, Plaintiff could not place a high value on the PAGA
12 penalties, and therefore allocated \$20,000 of the Gross Settlement Amount to settle these claims. (*See*
13 *Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) 2009 U.S. Dist. LEXIS 33900 at *24 (finding
14 amount of PAGA penalties reasonable where the amounts are negotiated in good faith and "there is no
15 indication that [the] amount was the result of self-interest at the expense of other Class Members");
16 *Nordstrom Comm'n Cases* (2010) 186 Cal.App.4th 576, 579 ("trial court did not abuse its discretion in
17 approving a settlement which does not allocate any damages to the PAGA claims").²

18 Thus, given the realistic exposure to Defendant and the likelihood of recovery, the settlement
19 amount of \$200,000 is reasonable, fair, and proper.

20 **C. The Requested Service Award for Plaintiff**

21 Plaintiff seeks a Service Award of up to \$5,000 for accepting the responsibilities of representing
22 the interests of the Class and assuming risks and potential costs that were not borne by any other Class
23 Members. (Settlement Agreement, § 3.2.1.) A named plaintiff is eligible for payment that reasonably
24 compensates him or her for undertaking and fulfilling a fiduciary duty to represent absent class
25 members. (*See Cellphone Termination Fee Cases, supra*, 186 Cal. App. 4th at 1393-94 ("The rationale
26

27 ² Plaintiff did not attribute any independent value to her Business and Professions §§ 17200 *et seq.*
28 claim. (Valle Decl., ¶ 20.) Instead, she used it to extend the statute of limitations to obtain recovery for a
longer period of time for other violations. (*Id.*)

1 for making enhancement or incentive awards to named plaintiffs is that they should be compensated for
2 the expense or risk they have incurred in conferring a benefit to other members of the class”); *Bell v.*
3 *Farmers Ins. Exch.* (2004) 115 Cal. App. 4th 715, 726.) In evaluating the propriety of enhancement
4 awards, courts consider the following relevant factors, including: (1) the time and effort put into the
5 litigation and the degree to which the class has benefitted from those actions, (2) the duration of the
6 litigation, (3) a comparison between the service awards range of monetary recovery available to the
7 class, (4) whether the litigation will further the public policy underling the statutory scheme, and (5)
8 risks to the class representatives in participating in the lawsuit, including financial exposure, retaliation,
9 and negative notoriety related to the lawsuit. (*See, e.g., Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d
10 938, 977; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 301 F.Supp. 294, 299.)

11 Plaintiff had the option to pursue her claims individually, but instead chose to pursue this class
12 action, delaying individual recovery until approval of a class action settlement. (Valle Decl., ¶ 29.)
13 Throughout the case, Plaintiff assisted counsel in gathering the evidence necessary to prosecute the class
14 claims, maintained regular contact with counsel, was available on the day of mediation and
15 communicated with her attorneys during the day of mediation to answer critical questions, reviewed the
16 Settlement to make sure it was fair to the Class, and otherwise assisted the action as needed since this
17 action was filed in March 2023. (*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 the Class’s behalf. (*Id.*)

20 By actively pursuing this action, Plaintiff also furthered the California public policy goal of
21 enforcing the State’s wage and hour laws. (*See Sav-On Drug Stores, Inc., supra*, 34 Cal. 4th at 340.)
22 The requested Service Awards for Plaintiff’s service as the class representative and for a general release
23 of all employment claims is reasonable and should be preliminarily approved. At the final approval
24 stage, Plaintiff will further support the request for the Service by declarations addressing the factors for
25 the award. (Valle Decl., ¶ 29.)

26 **D. The Requested Attorneys’ Fees and Costs**

27 The purpose of an attorneys’ fee award in class action litigation is to reward counsel who invested
28 in a case despite the risk of non-payment and achieved a substantial positive result for the class.

1 Attorneys' fees are awarded as a matter of equity. California courts routinely award attorneys' fees
2 equaling one-third or more of the potential value of the common fund. (*See Chavez v. Netflix, Inc.* (2008)
3 162 Cal. App. 4th 43, 66, n.11 ("Empirical studies show that, regardless of whether the percentage
4 method or the lodestar method is used, fee awards in class actions average around one-third of the
5 recovery").)

6 Plaintiff seeks appointment of Aegis Law Firm, PC as Class Counsel. The attorneys performed
7 significant work and expended litigation costs in prosecuting the matter with no guarantee of any
8 payment. (Valle Decl., ¶ 46.) Plaintiff's Counsel seeks preliminary approval for \$66,666.67 in attorneys'
9 fees, which is up to one-third of the Gross Settlement Amount, and up to \$16,000.00 in reimbursement
10 of litigation costs. (Settlement Agreement § 3.2.2.) Given the work performed in this matter, the
11 extensive information exchange, and substantial recovery obtained on behalf of Plaintiff and the Class,
12 Plaintiff's Counsel achieved a settlement through efficient and diligent work. (*See generally*, Valle
13 Decl.) At final approval, Plaintiff's Counsel will fully brief the merits of its request for the award of
14 attorneys' fees and litigation costs. (*Id.* at ¶ 47.)

15 **V. CONCLUSION**

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

20 Dated: July 31, 2024

AEGIS LAW FIRM, PC

21 By: /s/ Alex J. Valle
22 Alex J. Valle
23 Attorneys for Plaintiff
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