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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

ERIC PENNINGTON, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

EXPRESS PIPE & SUPPLY CO., LLC;
MORSCO SUPPLY, LLC; and DOES 1
through 20, inclusive,

Defendants.

Case No. 23STCV05168

*Assigned for all purposes to:
Hon. David S. Cunningham
Dept. 11*

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

Date: November 4, 2024
Time: 9:00 a.m.
Dept: 11

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1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court 3.769 (d) and (e), Plaintiff Eric Pennington (“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 Defendants Express Pipe & Supply Co., LLC and Morsco Supply, LLC
6 (“Defendant”) (collectively, Plaintiff and Defendants referred to as the “Parties”). The putative class
7 consists of approximately 670 non-exempt employees who worked for Defendants in California
8 (individually, “Class Member”; collectively, the “Class”) from July 1, 2021 through June 30, 2024 (the
9 “Class Period”). The basic terms of the Class Action and PAGA Settlement Agreement and Class Notice
10 (“Settlement Agreement” or “Settlement”)¹ provide for the following:

- 11 (1) A non-reversionary Gross Settlement Amount of \$740,000.00 allocated to
12 approximately 666 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 \$246,666.67) and up to \$25,000.00 in reimbursement of costs to Plaintiff’s Counsel
16 for services rendered as counsel on this matter;
17 (3) Service Payment of up to \$5,000.00 to the Named Plaintiff;
18 (4) Settlement Administration fees and costs of up to \$12,000.00; and
19 (5) Allocations of \$40,000 for resolution of civil penalties under PAGA. Seventy-five
20 percent (75%) of this payment will be paid to the California Labor and Workforce
21 Development Agency (“LWDA Payment”), and twenty-five percent (25%) will be
22 paid to Class Members who worked for Defendant during the PAGA Period.

23 With each Class Member allocated an average recovery of approximately \$613 from the Net
24 Settlement Amount, the Settlement satisfies the criteria for preliminary approval and falls well within
25

26 ¹ A true and correct copy of the fully-executed “Class Action and PAGA Settlement Agreement and
27 Class Notice” is attached as **Exhibit 1** to the Declaration of 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.

1 the range of reasonableness given the risks and costs of continued litigation. The Settlement was reached
2 through informed, arms-length bargaining at and after mediation between experienced attorneys. As
3 such, Plaintiff requests that the Court grant preliminary approval of the Settlement, conditionally certify
4 the Class for settlement purposes only, appoint Plaintiff as the Class Representative, appoint Plaintiff's
5 Counsel as Class Counsel, appoint Phoenix Settlement Administrator as the Settlement Administrator,
6 authorize the Settlement Administrator to send notice of the Settlement, and set a final approval hearing
7 date.

8 **II. SUMMARY OF THE LITIGATION**

9 On March 9, 2023, Plaintiff's counsel provided written notice to the LWDA and Defendants
10 regarding Defendants' alleged Labor Code violations, as required by Lab. Code § 2699.3(a). Connolly
11 Decl., ¶ 3, Ex. 3. The LWDA did not respond to this notice, indicating it did not intend to investigate, thus
12 allowing Plaintiff to bring a PAGA claim against Defendants. *Id.* On March 9, 2023, Plaintiff a putative
13 class action on behalf of Defendant's non-exempt employees alleging the following causes of action: (1)
14 failure to provide meal periods; (2) failure to permit rest breaks; (3) failure to provide accurate itemized
15 wage statements; (4) failure to pay all wages due upon separation of employment; (5) violation of Business
16 and Professions Code § 17200, *et seq.*; for the preceding claims. *Id.* On July 5, 2023, Plaintiff filed a First
17 Amended Complaint to add a cause of action under the Private Attorneys General Act ("PAGA"). *Id.*

18 The Parties proceeded with formal discovery. Plaintiff served written discovery on Defendants,
19 seeking, *inter alia*, his personnel files, policy documents, the class members' contact information, and
20 class members' timekeeping and pay records. Connolly Decl., ¶ 4.

21 After formal discovery and engaging in numerous discussions between the Parties' attorneys, the
22 Parties agreed to attend a private mediation session. Connolly Decl., ¶ 5. To prepare for mediation,
23 Defendant informally produced a 20% sample of time-keeping and payroll data as well as various relevant
24 policy documents. *Id.* Plaintiff's counsel worked with experts to analyze the time and pay data related to
25 the claims in order to evaluate the potential damages and penalties. *Id.*

26 On April 29, 2024, the Parties attended a mediation session with Gig Kyriacou, a respected
27 mediator. Connolly Decl., ¶ 6. After a full day of negotiating, the mediator made a mediator's proposal,
28 which was eventually accepted by the Parties. *Id.* The Parties spent the next month negotiating the terms

1 of the Settlement, which was finalized in June of 2024. *Id.* The negotiations were adversarial, conducted
2 at arm's length and tempered by the efforts of both sides to serve the interests of their clients. *Id.*

3 Pursuant to the terms of the Settlement, Plaintiff filed a Second Amended Complaint to allege
4 additional causes of action for failure to pay accrued vacation time, failure to produce personnel records
5 upon request of employees, and additional bases for Plaintiff's claim for civil penalties under PAGA.
6 Connolly Decl., ¶ 7.

7 On August 8, 2024, Plaintiff submitted the Settlement and this Motion to the LWDA pursuant to
8 Lab. Code § 2699(1)(2). Connolly Decl., ¶ 8. Ex. 5 (Confirmation of Submission of Settlement and
9 Motion to LWDA).

10 **III. SUMMARY OF THE SETTLEMENT**

11 **A. Terms of Settlement**

12 Plaintiff and Defendants agreed to settle the class claims in exchange for a Gross Settlement
13 Amount of \$740,000. Settlement Agreement, § 3.1. The Gross Settlement Amount will be used to make
14 payments for the following: (1) Individual Settlement Payments to Participating Class Members; (2)
15 attorneys' fees to Class Counsel of up to one-third of the Gross Settlement Amount; (3) reimbursement
16 of Class Counsel's litigation costs of up to \$25,000; (4) a Service Payment to Plaintiff of up to \$5,000;
17 (5) Settlement Administration fees and costs of \$12,000; and (6) a payment to the LWDA of \$30,000
18 pursuant to PAGA. *Id.* at § 3.2.1 – 3.2.5. The Parties have agreed to appoint Phoenix Settlement
19 Administrators as the Settlement Administrator. *Id.* at § 1.2.

20 Defendants agreed to fund the Settlement no later than 65 days after the Court enters Judgment
21 and the Judgment becomes final. Settlement Agreement, §§ 4.3, 1.18. Class Members' Individual
22 Settlement Payments will be distributed 14 days after Defendant funds the Gross Settlement Amount.
23 *Id.* at § 4.4. Individual Settlement Payments will be calculated by comparing the total Qualifying
24 Workweeks for the Class to each individual Class Member's Qualifying Workweeks. *Id.* at § 3.2.4. The
25 Settlement Administrator will calculate the actual estimated recovery to include in the Class Notice and
26 provide the estimated low and high range of possible recovery at final approval. *Id.* at § 7.4.2; Settlement
27 Agreement, Ex. A (Notice of Class Action Settlement). The class notice will be provided in English
28 along with a Spanish translation. *See* Settlement Agreement, § 1.11. Once the Court grants final approval

1 and enters judgment, Plaintiff will provide Notice of Entry of Final Judgment and the Settlement
2 Administrator will post the Notice on its website. *Id.* at § 7.8.1.

3 The Individual Settlement Payments to Class Members will be allocated for tax purposes as
4 follows: 20% to wages; 80% to penalties and interest. Settlement Agreement, § 3.2.4.1. The employer-
5 side payroll taxes on the portion allocated to wages will be paid by Defendants separately from, and in
6 addition to the Gross Settlement Amount. *Id.* at § 4.3. No portion of the Gross Settlement Amount will
7 revert to Defendant. *Id.* at § 3.1. Funds from uncashed or undeliverable checks will be tendered by the
8 Settlement Administrator to the State Controller Unclaimed Property Fund in the name of the Class
9 Member for whom the funds are designated. *Id.* at § 4.4.3.

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

11 Once the Court grants preliminary approval, Defendants will have 15 days to deliver the Class Data
12 to the Settlement Administrator. Settlement Agreement, § 4.2. The Settlement Administrator will then
13 have 14 days to send Class Members the Notice of Class Action Settlement (“Class Notice”) by first-class
14 mail after checking for updated addresses through the National Change of Address database. *Id.* at §§ 4.2,
15 7.4.2. The Class Notice provides information regarding the nature of the lawsuit, a summary of the
16 substance of the settlement terms, the formula for calculating Individual Settlement Payments, the
17 individual’s estimated payout, a statement that Class Members who take no action will release their
18 claims and receive settlement checks, instructions regarding how to dispute the calculations, instructions
19 regarding how to request exclusion or object to the Settlement, the date for the final approval hearing,
20 the amounts sought for attorneys’ fees and costs, the Settlement Administration Costs, the Class
21 Representative’s Service Payment, and the PAGA allocation. *See* Settlement Agreement, Ex. A (Class
22 Notice).

23 The Class Notice provides instructions for Class Members who choose to exclude themselves
24 from the Settlement. *See* Settlement Agreement § 7.5.1. To opt out, Class Members are instructed to
25 submit a Request for Exclusion to the Settlement Administrator by a specified date (60 days after the date
26 of mailing of the Class Notice). *See* Settlement Agreement, Ex. A (Class Notice), pp. 1, 6. Class Members
27 do not need to submit a claim form to participate in the Settlement. *Id.* at p. 2. Class Members are informed
28 of how they can object to the Settlement, and the Class Notice informs Class Members of the date, time,

1 and location of the final fairness and approval hearing so that they can appear in person. *Id.* at pp. 2, 8.
2 The Class Notice also informs Class Members to check the Administrator's website or contact Class
3 Counsel to verify the date and time of the Final Approval Hearing. *Id.* at p. 8. Accordingly, the content of
4 the Class Notice complies with the requirements of Cal. R. Ct. 3.766(d).

5 If Class Notice packets are returned as undeliverable, the Settlement Administrator will perform a
6 skip-trace or other search, and re-mail the Class Notice with an extended deadline, to opt out or object, of
7 14 days from the date of mailing or the original deadline, whichever is later. Settlement Agreement, §
8 7.6. The initial 60-day notice period and extension process ensures the notice program provides due
9 process by giving Class Members enough time to determine whether they want to participate in the
10 Settlement. This means of notice is reasonably calculated to apprise Class Members of the pendency of
11 the action. *See* Cal. R. Ct. 3.766 (d)-(f).

12 **C. Proposed Release**

13 The release to be given by Class Members is limited to Defendants and each of their former and
14 present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors,
15 assigns subsidiaries and affiliates (the “Released Parties”). Settlement Agreement, § 1.41. Under the
16 proposed release, Class Members who do not exclude themselves from the Settlement will be deemed
17 to have released the following:

18 all claims, rights, demands, liabilities, and causes of action that were alleged, or reasonably
19 could have been alleged, based on the facts stated in the Operative Complaint, including (1)
20 Failure to Pay Minimum Wages; (2) Failure to Pay Overtime Wages; (3) Failure to Provide
21 Meal Breaks; (4) Failure to Permit Rest Breaks; (5) Failure to Reimburse Business
22 Expenses; (6) Failure to Provide Accurate Itemized Wage Statements; (7) Failure to Pay
23 Wages Timely During Employment; (8) Failure to Pay All Wages Due Upon Separation of
24 Employment; (9) Failure to Pay Accrued Vacation; (10) Failure to Produce Records; and
25 (11) Violation of Business and Professions Code §§ 17200, *et seq.*

26 *Id.* at § 5.3. Aggrieved Employees will release the Released Parties from all claims for PAGA penalties
27 arising during the PAGA Period that were alleged, or reasonably could have been alleged, based on the
28 facts stated in the Operative Complaint. *Id.* at § 5.4.

1 Only Plaintiff will agree to a general release of any and all claims, whether known or unknown,
2 which exist or may exist on Plaintiff's behalf as of the date of the Settlement, and a waiver of Civ. Code
3 § 1542. Settlement Agreement, §§ 5.1-5.2.

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

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

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

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

11 Whether a class is "ascertainable" is "determined by examining (1) the class definition, (2) the
12 size of the class, and (3) the means available for identifying class members." *Reyes v. Bd. of Supervisors*,
13 196 Cal. App. 3d 1263, 1271 (1987). Here, the Class consists of all current and former non-exempt
14 employees who are or were employed by Defendant in California at any time from July 1, 2021 through
15 June 30, 2024. Settlement Agreement, §§ 1.5, 1.12. Defendants' records show the Class consists of
16 approximately 670 individuals, making joinder of all Class Members impracticable. Connolly Decl., ¶
17 11. Further, the Class is readily ascertainable from Defendants' business records because all Class
18 Members are current or former employees of Defendants. *Id.*

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

20 "[T]he 'community of interest requirement embodies three factors: (1) predominant common
21 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3)
22 class representatives who can adequately represent the class.'" *Fireside Bank v. Superior Court*, 40 Cal.
23 4th 1069, 1089 (2007) (quoting *Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 470 (1981)).

24 **a. Common Questions Predominate**

25 To assess whether common questions predominate, courts focus on whether the theories of
26 recovery advanced are likely to prove amenable to class treatment. *See Sav-On Drug Stores, Inc. v.*
27 *Superior Court*, 34 Cal. 4th 319, 327 (2004). In other words, courts determine whether the elements
28

1 necessary to establish liability are susceptible of common proof, even if the class members must
2 individually prove their damages. *Brinker, supra*, 53 Cal. 4th at 1021-1022, 1024.

3 Plaintiff alleged that Defendants maintained uniform employment policies and/or practices that
4 illegally deprived Class Members of lawful wages, meal periods, rest breaks, accurate wage statements,
5 and waiting time pay. Connolly Decl., ¶ 10. Plaintiff's allegations present common legal and factual
6 questions of, *inter alia*, whether Defendants applied the same scheduling, timekeeping, minimum and
7 overtime pay, meal period, and rest break policies to all Class Members; whether these policies and
8 practices resulted in Labor Code violations; whether Defendants' conduct was intentional; and whether
9 Class Members are entitled to penalties. *Id.* These common questions could be resolved using Class
10 Members' schedules, time punches, and payroll records, Defendants' corporate representative's
11 testimony, written communications between Defendants and Class Members, and Class Member
12 declarations. *Id.* Thus, the Court can and should exercise its discretion to grant conditional class
13 certification for settlement purposes.

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

15 The typicality requirement is satisfied when the legal theories and facts supporting Plaintiff's
16 claims are substantially similar to other class members. *See Classen v. Weller*, 145 Cal. App. 3d 27, 46
17 (1983). Here, Plaintiff alleges that he and other Class Members were employed by Defendants and
18 injured by Defendants' common wage and hour policies and practices, including Defendant's
19 scheduling, timekeeping, minimum wage pay, overtime pay, meal period, and rest break practices and
20 policies. Connolly Decl., ¶ 11. Through documents and information exchanged in formal discovery,
21 including relevant policy documents and time and payroll data, Plaintiff confirmed that these common
22 policies and practices similarly affected Plaintiff and the Class. *Id.* Thus, Plaintiff's claims arise from
23 the same employment practices and are based on the same legal theories as those applicable to other
24 Class Members, as further explained in Plaintiff's exposure analysis below.

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

27 Certification requires adequacy of both the proposed class representative(s) and proposed class
28 counsel. With respect to the class representative, a plaintiff must adequately represent and protect the

1 interests of other members of the class and demonstrate that his or her claim is not inconsistent with the
2 claims of other members of the class. *See Capitol People First v. State Dept of Developmental Servs.*,
3 155 Cal. App. 4th 676, 696-697 (2007). Here, Plaintiff's interests are coextensive with the interests of
4 the Class. Plaintiff demonstrated an ability to advocate for the interests of the Class by litigating this
5 action, gathering documents and information, helping respond to written discovery, being available on
6 the day of mediation to answer questions, meeting with his attorneys on several occasions to understand
7 the claims and theories of liability at issue, assisting attorneys in preparing for mediation, reviewing the
8 proposed settlement agreement to understand its legal effect, and obtaining a fair settlement on behalf
9 of Class Members who stand to recover a substantial amount under the Settlement.

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

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

14 Class treatment is superior to other methods of adjudication when the probability is small that
15 each class member will come forward to prove his or her claim and when the class approach would deter
16 and redress the alleged wrongdoing. *See Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 435, 446 (2000);
17 *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524, 1537-1538 (2008). The 670 Class Members
18 who will receive a payment from this settlement will not have to bear the expense and burden of
19 litigating their own claims. Connolly Decl. ¶ 21. Thus, a class action is the superior method for seeking
20 relief.

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

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

1 and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Id.*

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

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

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

9 Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless
10 evidence to the contrary is offered. Thus, there is a presumption that settlement negotiations are
11 conducted in good faith. Here, the Settlement was the product of extensive investigation and a full day
12 mediation session with a respected mediator after extensive informal discovery. Connolly Decl. ¶¶ 4-6.
13 The negotiations were adversarial, conducted at arm’s length and tempered by the efforts of both sides
14 to serve the interests of their clients. *Id.* at ¶ 6. The amount of Plaintiff’s requested Service Award was
15 not negotiated until after the Parties agreed to the Gross Settlement Amount and many other terms. *Id.*
16 at ¶ 24.

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

18 Plaintiff’s Counsel thoroughly investigated the class claims, applicable law, and potential
19 defenses. *See generally*, Connolly Decl. In particular, Plaintiff’s Counsel assessed the value of the class
20 claims using Defendant’s data and documents produced through informal discovery. Connolly Decl., ¶
21 11. Further, Plaintiff’s Counsel engaged an expert to quantify the potential exposure using the time and
22 payroll records, and then assessed the risks associated with each of the claims meriting reductions in the
23 likely recovery at trial. *Id.* Accordingly, Plaintiff’s Counsel fully understood the strengths and
24 weaknesses of the claims before the Parties reached a settlement. *Id.*

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

26 Plaintiff is represented by Aegis Law Firm, PC (“Class Counsel”). Class Counsel prosecute wage
27 and hour class actions on behalf of employees and others who have had their rights violated. Connolly
28 Decl. ¶¶ 24-36. The attorneys working on this case have been appointed class counsel in many cases,

1 through both contested motions and settlement approval motions. *Id.* Thus, Plaintiff's Counsel has
2 extensive experience in similar litigation and should be appointed as Class Counsel.

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

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

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

18 *a. Exposure Analysis*

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

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

25 *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 250 (2001) (citation omitted). Here, Plaintiff
26 contends that his claims are based on Defendants' common, class-wide policies and procedures, and
27 that liability could be determined on a class-wide basis without dependence on individual assessments
28 of liability. Connolly Decl., ¶ 12. Although the amount of Defendant's potential exposure – if proven –

1 is substantial, the legitimate and serious risks of succeeding at class certification and trial compelled a
2 serious consideration of the benefit of a settlement. *Id.* at ¶ 14.

3 Minimum Wage Claim: Plaintiff's minimum wage claim was premised on the theory that
4 Defendants failed to pay all wages due for time worked off-the-clock, including post-shift duties and
5 time worked during interrupted meal periods. Assuming unpaid wages of five minutes per shift,
6 Plaintiff's expert calculated a maximum exposure of \$565,498. However, Defendant argued that it
7 maintained policies of paying for all recorded work and that there was no evidence that it required class
8 members to complete job tasks outside of their shifts. As such, this claim could become highly
9 individualized and difficult to certify. As such, Plaintiff assumed there was a 30% chance of success at
10 class certification and 20% chance of success on the merits at trial, rendering the claim worth
11 approximately \$33,930. Connolly Decl., ¶ 15.

12 Unpaid Overtime Wages: Plaintiff's claims for failure to pay overtime wages and failure to pay
13 all accrued vacation pay was based on the theory that Defendant failed to properly calculate the regular
14 rate of pay to include nondiscretionary bonuses for purposes of overtime and payment of accrued
15 vacation. Plaintiff calculated that these claims were worth approximately \$40,585. However,
16 Defendants argued that any additional compensation paid was discretionary. For example, Defendants
17 argued that the annual bonuses were a gift and thus considered discretionary. Additionally, Defendants
18 provided authority under the Federal Labor Standards Act that the referral bonuses are considered
19 discretionary. As such, Plaintiff assumed there was a 50% chance of success at class certification and
20 30% chance of success on the merits at trial, rendering the claim worth approximately \$6,088. Connolly
21 Decl., ¶ 16.

22 Meal Period Claims: Plaintiff's meal period claim was potentially worth about \$723,164 in light
23 of the violations shown in the records. However, Defendant argued that drivers constituted
24 approximately 70% of the meal violations and that these drivers are exempt from California's meal
25 period requirements under federal law. Furthermore, approximately 36% of the meal violations were
26 waivable (e.g., shifts less than 6 hours and shifts between 10-12 hours with one meal recorded) and
27 Defendants provided evidence of written meal waivers. Additionally, Defendants provided evidence
28 that they began automatically paying meal period premiums during the class period. As such, Plaintiff's

1 counsel believed there was a 40% chance succeeding at class certification and a 30% chance at trial,
2 resulting in a value of \$86,780. Connolly Decl., ¶ 17.

3 Rest Break Claim: Plaintiff alleged that Defendants failed to authorize duty-free rest breaks
4 because its break policies only permitted employees to leave the premises during meal periods, not rest
5 breaks. If Plaintiff could prove a 100% violation rate for each shift over 3.5 hours, then damages could
6 reach up to 4,727,510. However, Defendants argued that they updated their policies to delete this
7 language, required employees to sign attestations affirming they were provided rest breaks, and have
8 otherwise maintained compliant written rest break policies. Further, Defendants also argued that they
9 were not required to police breaks and that class members could again choose to waive their breaks. As
10 such, this claim would have relied on Class Member testimony, making it a riskier claim at class
11 certification and liability stages. Plaintiff's counsel believed there was a 30% chance succeeding at class
12 certification and a 20% chance at trial, resulting in a value of \$283,651. Connolly Decl., ¶ 18.

13 Waiting Time and Wage Statement Penalties: Plaintiff's Counsel also considered the arguable
14 presence of various derivative penalties, and weighed the potential recoveries against probable defenses.
15 Specifically, Defendants could argue that Plaintiff could not prove the "willful" prong needed to obtain
16 waiting time penalties under Labor Code § 203. Additionally, Defendants could argue that Plaintiff could
17 not show that Class Members suffered an "injury" as a result of wage statement violations, as required by
18 Labor Code § 226, and that the wage statements correctly reflected the wages paid and owed. Moreover,
19 Plaintiff would not recover any of these derivative penalties if he failed to prove the underlying claims.
20 Although the Class arguably could have seen a payout of approximately \$1.88 million for waiting time
21 penalties and \$1.85 million for wage statement penalties, Plaintiff would not recover any of these
22 derivative penalties if he failed to prove the underlying claims. Thus, Plaintiff discounted these claims
23 assuming a 30% chance of class certification and 20% chance at the merits for both claims, resulting in a
24 realistic value of \$112,690 for the waiting time claim and \$110,998 for the wage statement claim.
25 Connolly Decl., ¶ 19.

26 PAGA Claim: The PAGA claim presented even higher hurdles. Although Plaintiff's Counsel
27 found Defendants' exposure could potentially reach approximately \$1,879,300 under Lab. Code §
28 2699(f), assuming the initial penalty rate of \$100 for each pay period for the 18,793 pay periods, Plaintiff

1 would have to prove a violation in every pay period. Most importantly, the Court would have discretion
2 to reduce the PAGA award based on whether the amount of the award would be “unjust, arbitrary and
3 oppressive, or confiscatory.” Lab. Code § 2699(e)(2). In theory, the Court could reduce the award by
4 99% if it so wished. Plaintiff was doubtful he could recover any PAGA penalties, especially in light of
5 Defendants’ facially compliant policies. Accordingly, Plaintiff could not place a high value on the
6 PAGA penalties, and therefore allocated \$40,000 of the Gross Settlement Amount to settle these claims.
7 Connolly Decl. ¶ 20.

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

9 Plaintiff seeks a Service Award of up to \$7,500 each for accepting the responsibilities of
10 representing the interests of the Class and assuming risks and potential costs that were not borne by any
11 other Class Members. Settlement Agreement, § 3.2.1. A named plaintiff is eligible for payment that
12 reasonably compensates him or her for undertaking and fulfilling a fiduciary duty to represent absent
13 class members. *See Cellphone Termination Fee Cases, supra*, 186 Cal. App. 4th at 1393; *Bell v. Farmers*
14 *Ins. Exch.*, 115 Cal. App. 4th 715, 726 (2004).

15 Here, Plaintiff had the option to pursue his claims individually, but instead chose to pursue this
16 class action, delaying individual recovery until approval of a class action settlement. Connolly Decl., ¶
17 21. Throughout the case, Plaintiff assisted counsel in gathering the evidence necessary to prosecute the
18 class claims, helped respond to written discovery, maintained regular contact with counsel, was
19 available on the day of mediation and communicated with his attorneys during the day of mediation to
20 answer critical questions, and reviewed the Settlement to make sure it was fair to the Class. *Id.* No action
21 would likely have been taken by Class Members individually, and no compensation would have been
22 recovered for them, but for Plaintiff’s services on behalf of the Class. *Id.*

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

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

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

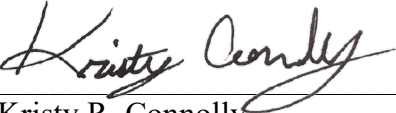
9 Plaintiff seeks appointment of Aegis Law Firm, PC as Class Counsel. The attorneys performed
10 significant work and expended litigation costs in prosecuting the matter with no guarantee of any
11 payment. Connolly Decl., ¶ 37. Plaintiff's Counsel seeks preliminary approval for \$416,666.67 in
12 attorneys' fees, which is up to one-third of the Gross Settlement Amount, and up to \$30,000.00 in
13 reimbursement of litigation costs. Given the work performed in this matter, the extensive information
14 exchange, and substantial recovery obtained on behalf of Plaintiff and the Class, Plaintiff's Counsel
15 achieved a settlement through efficient and diligent work. *See generally*, Connolly Decl. At final
16 approval, Plaintiff's Counsel will fully brief the merits of its request for the award of attorneys' fees
17 and litigation costs. *Id.* at ¶ 38.

18 **V. CONCLUSION**

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

23
24 Dated: August 8, 2024

AEGIS LAW FIRM, PC

25
26 By: 
27 Kristy R. Connolly
28 Attorneys for Plaintiff