

1 **AEGIS LAW FIRM, PC**

2 SAMUEL A. WONG, State Bar No. 217104

3 KASHIF HAQUE, State Bar No. 218672

4 JESSICA L. CAMPBELL, State Bar No. 280626

5 ALEX J. VALLE, State Bar No. 334263

6 9811 Irvine Center Drive, Suite 100

7 Irvine, California 92618

8 Telephone: (949) 379-6250

9 Facsimile: (949) 379-6251

10 Email: jcampbell@aegislawfirm.com

11 avalle@aegislawfirm.com

12 Attorneys for Plaintiff Muhsin Haniff, individually,
13 and on behalf of all others similarly situated.

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **FOR THE COUNTY OF ALAMEDA**

16 MUHSIN HANIFF, individually and on
17 behalf of all others similarly situated,

18 Plaintiffs,

19 v.

20 MYCOWORKS, INC.; and DOES 1 through
21 20, inclusive,

22 Defendants.

Case No. 23CV028711

Assigned for all purposes to:

Hon. Peter Borkon

Dept. 15

23 **MEMORANDUM OF POINTS AND**
24 **AUTHORITIES IN SUPPORT OF**
25 **PLAINTIFF'S MOTION FOR**
26 **PRELIMINARY APPROVAL OF**
27 **CLASS ACTION SETTLEMENT**

28 Date: August 8, 2024

Time: 2:30 p.m.

Dept: 15

Res. No. 476608840621

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1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court 3.769 (d) and (e), Plaintiff Muhsin Haniff (“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 MycoWorks, Inc. (“Defendant”) (collectively, Plaintiff and
6 Defendant referred to as the “Parties”). The putative class consists of approximately 114 current and
7 former non-exempt employees employed by Defendant in California (individually, “Class Member”;
8 collectively, “Class Members”) at any time from March 2, 2019 through February 6, 2024 (the “Class
9 Period”).¹ The basic terms of the Class Action and PAGA Settlement Agreement and Class Notice
10 (“Settlement Agreement” or “Settlement”)² provide for the following:

- 11 (1) A non-reversionary Gross Settlement Amount of \$352,000.00 allocated to
12 approximately 114 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 \$117,333.33) and up to \$25,000.00 in reimbursement of litigation costs to
16 Plaintiff’s Counsel for services rendered as counsel on this matter;
- 17 (3) Service Payment of up to \$10,000.00 to the Named Plaintiff;
- 18 (4) Settlement Administration fees and costs of up to \$5,500.00; and
- 19 (5) 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.

23 With each Class Member allocated an average recovery of around \$1,550 from the Net Settlement

24 _____
25 ¹ The Parties selected September 5, 2018 as the beginning of the Class Period instead of March 2,
26 2019, as alleged in the FAC, based on Defendant’s representations that no non-exempt employees
27 worked for Defendant between September 5, 2018 to March 1, 2019. (Declaration of Alex J. Valle in
28 Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement (“Valle Decl.”). ¶ 6.)

² A true and correct copy of the fully-executed “Class Action and PAGA Settlement Agreement and
Class Notice” is attached as **Exhibit 1** to the Valle Decl. Unless otherwise defined herein, all capitalized
terms in this Motion will be used as such terms are defined and used in the 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, 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, appoint Plaintiff as the Class Representative, appoint Plaintiff's 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 March 2, 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.) 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 March 2, 2023, Plaintiff also 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 provide accurate itemized wage statements; (6) failure to pay wages timely during employment; (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.*) On June 27, 2023, Plaintiff filed a First Amended Complaint adding a cause of action for enforcement of Labor Code § 2698 *et seq* ("PAGA"). (*Id.*, at ¶ 4.)

The Parties proceeded with informal discovery. (Valle Decl., ¶ 5.) Defendant informally produced its employment policies, relevant employee and management trainings on those policies, timekeeping procedures, the total number of Class Members, and Class Members' timekeeping and pay records for the Class Period. (*Id.*)

On February 1, 2024, the Parties attended a mediation session with Gig Kyriacou, Esq., a respected mediator. (Valle Decl., ¶ 6.) After a full day of negotiating and subsequent negotiations in the days that followed the mediation, the Parties agreed to a settlement amount and executed a Memorandum of Understanding, with the material terms the Parties had agreed to, on February 6, 2024. (*Id.*) The Parties spent the next few months negotiating the full terms of the Settlement, which was finalized in May of

2024. (*Id.*) On May 30, 2024, Plaintiff submitted the Settlement to the LWDA pursuant to Lab. Code § 2699(1)(2). (Valle Decl., ¶ 7. Ex. 3.)

III. SUMMARY OF THE SETTLEMENT

A. Terms of Settlement

Plaintiff and Defendant agreed to settle the class claims in exchange for a Gross Settlement Amount of \$352,000. (Settlement Agreement, § 3.1.) The Gross Settlement Amount will be used to make payments for the following: (1) Individual Settlement Payments to Participating Class Members; (2) attorneys’ fees to Class Counsel of up to one-third of the Gross Settlement Amount; (3) reimbursement of Class Counsel’s litigation costs of up to \$25,000; (4) a Service Payment to Plaintiff of up to \$10,000; (5) Settlement Administration fees and costs of \$5,500; and (6) a payment to the LWDA of \$15,000 pursuant to PAGA. (*Id.* at §§ 3.2.1–3.2.5.) Class Members’ Individual Settlement Payments will be distributed after final approval of the Settlement and Defendant fully funds the Gross Settlement Amount. (*Id.* at §§ 4.3–4.4.) Individual Settlement Payments will be calculated by comparing the total qualifying Workweeks for the Class to each individual Class Member’s qualifying Workweeks. (*Id.* at § 3.2.4.) The Settlement Administrator will calculate the actual estimated recovery to include in the Notice of Class Action Settlement (“Class Notice”) and provide the estimated low and high range of possible recovery at final approval. (*Id.* at § 7.4.2 & Ex. A (Class Notice).) The Class Notice will be provided in English and Spanish. (*See* Settlement Agreement, § 1.11.) Once the Court grants final approval and enters judgment, the Settlement Administrator will post the Class Notice on its website. (Settlement Agreement, § 7.8.1.)

The Individual Settlement Payments will be allocated 20% to wages; 80% to interest and penalties for tax purposes. (*Id.* at § 3.2.4.1.) Defendant will pay the employer-side payroll taxes on the portion allocated to wages separately from, and in addition to, the Gross Settlement Amount. (*Id.* at § 3.1.) Funds from uncashed or undeliverable checks will be tendered by the Settlement Administrator to Legal Aid at Work as a Cy Pres. (*Id.* at § 4.4.3.) No funds will revert to Defendant. (*Id.* at § 3.1.)

B. Proposed Opt-Out and Objection Process

Once the Court grants preliminary approval, Defendant will have thirty days to deliver the Class Data to the Settlement Administrator. (Settlement Agreement, § 4.2.) The Settlement Administrator will

1 then have fourteen days to send Class Notice by first-class mail after checking for updated addresses
2 through the National Change of Address database. (*Id.* at § 7.4.2.) The Class Notice provides information
3 regarding the nature of the lawsuit, a summary of the substance of the settlement terms, the formula for
4 calculating Individual Settlement Payments, the individual's estimated payout, a statement that Class
5 Members who take no action will release their claims and receive settlement checks, instructions
6 regarding how to dispute the calculations, the amounts sought for attorneys' fees and costs, the
7 Settlement Administration Costs, the Class Representative's Service Payment, and the PAGA
8 allocation. (*See* Settlement Agreement, Ex. A.)

9 Class Members do not need to submit a claim form to participate in the Settlement. (*See* Settlement
10 Agreement, Ex. A.) The Class Notice provides instructions for Class Members who choose to exclude
11 themselves from the Settlement. (*Id.*) To opt out, Class Members are instructed to submit a Request for
12 Exclusion to the Settlement Administrator by a specified date (60 days after the date of mailing of the
13 Class Notice). (*Id.*, at § 7.5.1 & Ex. A.) The Class Notice also informs Class Members of how they can
14 object to the Settlement, and of the date, time, and location of the final fairness and approval hearing so
15 that they can appear at the hearing in person. (*Id.*) The Class Notice further informs Class Members to
16 check the Administrator's website or contact Class Counsel to verify the date and time of the Final
17 Approval Hearing. (*Id.*) Accordingly, the content of the Class Notice complies with the requirements of
18 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 7.4.3–7.4.4.) 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 each of its past and present
28 officers, directors, shareholders, employees, managers, human resources representatives, agents,

1 contractors, attorneys, principals, heirs, representatives, accountants, auditors, consultants, insurers and
2 reinsurers, and their respective parent corporations, subsidiaries, or related entities, divisions, affiliates,
3 attorneys, successors, and assigns (the “Released Parties”). (Settlement Agreement, § 1.39.) Under the
4 proposed release, Class Members who do not exclude themselves from the Settlement will be deemed
5 to have released the following:

6 “any and all claims, rights, demands, liabilities and causes of action that were or could have been
7 pled under local, state, or federal law arising out of or based on the facts alleged in the Operative
8 Complaint against Released Parties for the duration of the Class Period, including, but not limited
9 to, all claims under California Labor Code §§ 201-204, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1,
10 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, any appli[c]able California Industrial
11 Welfare Commission Wage Order, California Code of Regulations, tit. 8, § 11070, the California
12 Unfair Competition Law, California Business & Professions Code §§ 17200, *et seq.*, and any
13 remedies for any of the claims described herein, including, damages, statutory penalties, restitution,
14 declaratory relief, equitable or injunctive relief, interest, attorneys’ fees and costs.”

15 (*Id.* at § 5.2.)

16 Plaintiff, the State of California and the LWDA, and Aggrieved employees will be deemed to have
17 released the following:

18 “all PAGA claims that Plaintiff alleged or could have alleged against the Released Parties, on
19 behalf of the Aggrieved Employees and the State of California, based on the facts and/or theories
20 stated in the Operative Complaint and/or in the relevant LWDA notice letter, including but not
21 limited to, all PAGA claims premised upon California Labor Code §§ 201-204, 210, 226, 226.3,
22 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, any
23 appli[c]able California Industrial Welfare Commission Wage Order, PAGA, California Labor Code
24 §§ 2698 *et seq.*, and any remedies for any of the PAGA claims described herein, including, civil
25 penalties, declaratory relief, equitable relief, interest, and attorneys’ fees and costs.”

26 (*Id.* at §§ 5.3-5.4.)

27 Additionally, Plaintiff will be deemed to have released all potential claims. (*Id.* at § 5.1.) Plaintiff
28 also releases all known or unknown claims under Civil Code § 1542. (*Id.* at § 5.1.1.)

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

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

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

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

8 Whether a class is “ascertainable” is “determined by examining (1) the class definition, (2) the
9 size of the class, and (3) the means available for identifying class members.” (*Reyes v. Bd. of Supervisors*
10 (1987) 196 Cal. App. 3d 1263, 1271.) Here, the Class consists of all current and former nonexempt
11 employees employed by Defendant in California at any time from March 2, 2019 through February 6,
12 2024. (Settlement Agreement, §§ 1.5 & 1.12.) Defendant’s records show the Class consists of
13 approximately 114 individuals, making joinder of all Class Members impracticable. (Valle Decl., ¶ 8.)
14 Further, the Class is readily ascertainable from Defendant’s business records because all Class Members
15 are current or former employees of Defendant. (*Id.*)

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

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

21 **a. Common Questions Predominate**

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

27 Plaintiff alleged that Defendant maintained employment policies and/or practices that illegally
28 deprived Class Members of lawful wages, meal periods, rest breaks, business expense reimbursement,

1 accurate wage statements, payment of all wages upon separation from employment, and waiting time pay.
2 (Valle Decl., ¶ 9.) Plaintiff's allegations present common legal and factual questions of, *inter alia*, whether
3 Defendant applied the same scheduling, timekeeping, minimum and overtime pay, meal period, and rest
4 break policies to all Class Members; whether these policies and practices resulted in Labor Code
5 violations; whether Defendant's conduct was intentional; and whether Class Members are entitled to
6 penalties. (*Id.*) These common questions could be resolved using Class Members' schedules, time
7 punches, and payroll records, Defendant's corporate representative's testimony, written communications
8 between Defendant and Class Members, and Class Member declarations. (*Id.*) Thus, the Court can and
9 should exercise its discretion to grant conditional class certification for settlement purposes.

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

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

21 *c. Plaintiff and Plaintiff's Counsel Will Adequately Represent the Class*

22 Certification requires adequacy of both the proposed class representative(s) and proposed class
23 counsel. With respect to the class representative, a plaintiff must adequately represent and protect the
24 interests of other members of the class and demonstrate that his or her claim is not inconsistent with the
25 claims of other members of the class. (*See Capitol People First v. State Dept. of Developmental Servs.*
26 (2007) 155 Cal. App. 4th 676, 696-697.) Here, Plaintiff's interests are coextensive with the interests of
27 the Class. Plaintiff demonstrated an ability to advocate for the interests of the Class by litigating this
28 action, gathering documents and information, being available on the day of mediation to answer

1 questions, meeting with his attorneys on several occasions to understand the claims and theories of
2 liability at issue, reviewing the proposed settlement agreement to understand its legal effect, and
3 obtaining a fair settlement on behalf of Class Members who stand to recover a substantial amount under
4 the Settlement. (Declaration of Muhsin Haniff (“Haniff Decl.”) ¶¶ 4–8; Valle Decl., ¶ 19.)

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

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

9 Class treatment is superior to other methods of adjudication when the probability is small that
10 each class member will come forward to prove his or her claim and when the class approach would deter
11 and redress the alleged wrongdoing. (*See Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 435, 446;
12 *Ghazaryan v. Diva Limousine, Ltd.*, (2008) 169 Cal. App. 4th 1524, 1537-1538.) Here, none of the other
13 114 Class Members had shown any interest in bearing the expense and burden of litigating their own
14 claims. (Valle Decl., ¶ 19.) Thus, a class action is the superior method for seeking relief.

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

16 Preliminary approval is warranted if the settlement falls within a “reasonable range.” (*See North*
17 *County Contractor’s Ass’n., Inc. v. Touchstone Ins. Servs.*, (1994) 27 Cal. App. 4th 1085, 1089-90;
18 *Conte & Newberg, Newberg on Class Actions*, § 11.26 (4th ed. 2002).) In reviewing the fairness of a
19 class action settlement, due regard should be given to what is “‘otherwise a private consensual
20 agreement between the parties.’” (*Cellphone Termination Fee Cases*, (2010) 186 Cal. App. 4th 1380,
21 1389.) The inquiry “must be limited to the extent necessary to reach a reasoned judgment that the
22 agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties,
23 and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” (*Id.*)

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

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

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

3 Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless
4 evidence to the contrary is offered. Thus, there is a presumption that settlement negotiations are
5 conducted in good faith. Here, the Settlement was the product of extensive investigation and a full day
6 mediation session with a respected mediator after extensively reviewing informal discovery, as well as
7 several negotiations in the days the followed the mediation. (Valle Decl., ¶¶ 5–6.) The negotiations were
8 adversarial, conducted at arm’s-length, and tempered by the efforts of both sides to serve the interests
9 of their clients. (*Id.* at ¶ 6.) The amount of Plaintiff’s requested Service Award was not negotiated until
10 after the Parties agreed to the Gross Settlement Amount and many other terms. (*Id.* at ¶ 20.)

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

12 Plaintiff’s Counsel thoroughly investigated the class claims, applicable law, and potential
13 defenses. (*See generally*, Valle Decl.) In particular, Plaintiff’s Counsel assessed the value of the class
14 claims using Defendant’s data and documents produced through informal discovery. (Valle Decl., ¶¶
15 10, 12–13.) Plaintiff’s Counsel extensively reviewed policy documents and Class Members’ records to
16 perform a thorough analysis. (*Id.* at ¶ 10.) Further, Plaintiff’s Counsel engaged an expert to quantify the
17 potential exposure using the time and payroll records, and then assessed the risks associated with each
18 of the claims meriting reductions in the likely recovery at trial. (*Id.*) Accordingly, Plaintiff’s Counsel
19 fully understood the strengths and weaknesses of the claims before the Parties reached a settlement.
20 (*Id.*)

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

22 Plaintiff is represented by Aegis Law Firm, PC (“Class Counsel”). Class Counsel prosecute wage
23 and hour class actions on behalf of employees and others who have had their rights violated. (Valle
24 Decl., ¶¶ 22–34.) The attorneys working on this case have been appointed class counsel in many cases,
25 through both contested motions and settlement approval motions. (*Id.*) Thus, Plaintiff’s Counsel has
26 extensive experience in similar litigation and should be appointed as Class Counsel.

27 //

28 //

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

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

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

16 a. Exposure Analysis

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

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

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

1 Minimum Wage and Overtime Claims: Plaintiff's minimum wage and overtime claims are
2 premised on the following theories: (1) Defendant paid non-discretionary bonuses, but failed to include
3 the bonuses in Class Members' regular rates of pay; (2) Defendant issued stock plan payments to Class
4 Members, but failed to factor these payments into their regular rates of pay; (3) Defendant improperly
5 rounded Class Members' time punches; and (4) Defendant failed to compensate Class Members
6 engaging in pre-shift and post-shift work. (Valle Decl., ¶ 15.) An expert retained by Plaintiff's Counsel
7 calculated a potential exposure of approximately \$940,000. (*Id.*) However, Defendant argued that any
8 additional compensation paid was discretionary; Defendant's timekeeping procedures changed during
9 the Class Period and the prior timeclock affected few Class Members; and any time rounding practice
10 was neutral. (*Id.*) Accordingly, Plaintiff's counsel believed there was a 50% chance of success at class
11 certification and 30% chance of success on the merits at trial, rendering the claim worth approximately
12 \$141,000. (*Id.*)

13 Meal and Rest Period Claims: Plaintiff's meal period and rest break claims were premised on the
14 theories that Defendant: (1) regularly failed to provide meal periods for shifts exceeding 10 hours in
15 length; (2) regularly provided meal periods after the fifth hour of work; (3) interrupted Class Members'
16 meal and rest breaks by forcing them to work through their meal and/or rest period to complete their
17 work; (4) failed to relinquish control over employees during their rest breaks by discouraging them from
18 leaving Defendant's premises; (5) dissuaded Class Members from taking rest breaks; (6) automatically
19 deducted one 30-minute meal break from Class Members' timekeeping; and (7) failed to provide for
20 meal period and/or rest break premiums. (Valle Decl., ¶ 16.) Plaintiff's expert analyzed the employment
21 data received from Defendant, and calculated that the meal period claim was potentially worth
22 approximately \$335,000, and the rest break claim was potentially worth approximately \$870,000
23 assuming at least one violation per shift. (*Id.*)

24 However, Defendant argued that Class Members signed written meal period waivers; Defendant
25 paid meal premiums for meal breaks under 30 minutes in duration; Class Members' missed rest breaks
26 were infrequent and required individualized inquiries; and Defendant trained Class Members and
27 informed them that they did not have to remain on premises during rest breaks. (*Id.*) Defendant also
28 likely would have obtained opposing declarations stating rest breaks were adequately taken or

1 voluntarily waived, significantly decreasing the likelihood of class certification. (*Id.*; see also, e.g., *Rai*
2 *v. CVS Caremark Corp.* (C.D. Cal. Oct. 11, 2013) 2013 U.S. Dist. LEXIS 177730 (denying certification
3 of rest break claims where competing testimony regarding actual practice meant adjudication would
4 involve predominantly individual issues); *Gonzalez v. OfficeMax North Am.* (C.D. Cal. Nov. 5, 2012)
5 2012 U.S. Dist. LEXIS 163853, at *9–12 (denying certification on predominance grounds where
6 plaintiff offered no evidence that a uniform rest break policy was implemented uniformly)). As such,
7 Plaintiff’s Counsel believed there was a 50% chance at class certification and a 30% chance at trial on
8 Plaintiff’s meal period claim, resulting in a value of approximately \$50,250 for Plaintiff’s meal period
9 claim. (Valle Decl., ¶ 16.) Plaintiff’s counsel also estimated that there would be a 30% chance of
10 succeeding at class certification and a 20% chance at trial on Plaintiff’s rest break claim, resulting in a
11 value of around \$52,200. (*Id.*)

12 Waiting Time and Wage Statement Penalties: Plaintiff’s Counsel considered the arguable presence
13 of various derivative penalties, and weighed the potential recoveries against probable defenses. (Valle
14 Decl., ¶ 17.) Specifically, Defendant could argue that Plaintiff could not prove the “willful” prong needed
15 to obtain waiting time penalties under Labor Code § 203; Plaintiff could not show that Class Members
16 suffered an “injury” as a result of wage statement violations, as required by Labor Code § 226; or that the
17 wage statements correctly reflected the wages paid and owed. (*Id.*) Although the Class could have seen a
18 potential payout of approximately \$488,000 for wage statement penalties and approximately \$175,000 for
19 waiting time penalties, Plaintiff would not recover any of these derivative penalties if he failed to prove
20 the underlying claims. (*Id.*) Thus, Plaintiff discounted these claims assuming a 50% chance of class
21 certification and 30% chance at the merits for both claims, resulting in a realistic value of approximately
22 \$26,250 for the waiting time claim and around \$73,200 for the wage statement claim. (*Id.*)

23 PAGA Claim: The PAGA claim presented even higher hurdles. (Valle Decl., ¶ 18.) Plaintiff’s
24 expert analyzed the employment data provided by Defendant and found that Defendant’s exposure could
25 potentially reach approximately \$145,100 under Lab. Code § 2699(f), assuming the initial penalty rate
26 of \$100 for each pay period. (*Id.*) However, to recover that amount, Plaintiff would have to prove a
27 violation in every pay period. (*Id.*) Most importantly, the Court would have discretion to reduce the
28 PAGA award based on whether the amount of the award would be “unjust, arbitrary and oppressive, or

confiscatory.” Lab. Code § 2699(e)(2). In theory, the Court could reduce the award by 99% if it so wished. Plaintiff was doubtful he could recover any PAGA penalties, especially if a large class judgment was entered for the same violations. Accordingly, Plaintiff could not place a high value on the PAGA penalties, and therefore allocated \$20,000 of the Gross Settlement Amount to settle these claims. (*See Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) 2009 U.S. Dist. LEXIS 33900 at *24 (finding amount of PAGA penalties reasonable where the amounts are negotiated in good faith and “there is no indication that [the] amount was the result of self-interest at the expense of other Class Members”); *Nordstrom Comm’n Cases* (2010) 186 Cal.App.4th 576, 579 (“trial court did not abuse its discretion in approving a settlement which does not allocate any damages to the PAGA claims”).)

Thus, given the realistic exposure to Defendant, the settlement amount of \$352,000 is reasonable, fair, and proper.

C. The Requested Service Award for Plaintiff

Plaintiff seeks a Service Award of up to \$10,000 for accepting the responsibilities of representing the interests of the Class and assuming risks and potential costs that were not borne by any other Class Members. (Settlement Agreement, § 3.2.1.) A named plaintiff is eligible for payment that reasonably compensates him or her for undertaking and fulfilling a fiduciary duty to represent absent class members. (*See Cellphone Termination Fee Cases, supra*, 186 Cal. App. 4th at 1393-94 (“The rationale for making enhancement or incentive awards to named plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a benefit to other members of the class”); *Bell v. Farmers Ins. Exch.* (2004) 115 Cal. App. 4th 715, 726.) In evaluating the propriety of enhancement awards, courts consider the following relevant factors, including: (1) the time and effort put into the litigation and the degree to which the class has benefitted from those actions, (2) the duration of the litigation, (3) a comparison between the service awards range of monetary recovery available to the class, (4) whether the litigation will further the public policy underling the statutory scheme, and (5) risks to the class representatives in participating in the lawsuit, including financial exposure, retaliation, and negative notoriety related to the lawsuit. (*See, e.g., Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 977; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 301 F.Supp. 294, 299.)

1 Plaintiff had the option to pursue his claims individually, but instead chose to pursue this class
2 action, delaying individual recovery until approval of a class action settlement. (Valle Decl., ¶ 19.)
3 Throughout the case, Plaintiff assisted counsel in gathering the evidence necessary to prosecute the class
4 claims, maintained regular contact with counsel, was available on the day of mediation and
5 communicated with his attorneys during the day of mediation to answer critical questions, reviewed the
6 Settlement to make sure it was fair to the Class, and otherwise assisted the action as needed since this
7 action was filed approximately fifteen months ago (March 2023). (*Id.*; Haniff Decl., ¶¶ 4–8.) No action
8 would likely have been taken by Class Members individually, and no compensation would have been
9 recovered for them, but for Plaintiff’s services on the Class’s behalf. (Valle Decl., ¶ 19.)

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

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

17 The purpose of an attorneys’ fee award in class action litigation is to reward counsel who invested
18 in a case despite the risk of non-payment and achieved a substantial positive result for the class.
19 Attorneys’ fees are awarded as a matter of equity. California courts routinely award attorneys’ fees
20 equaling one-third or more of the potential value of the common fund. (*See Chavez v. Netflix, Inc.* (2008)
21 162 Cal. App. 4th 43, 66, n.11 (“Empirical studies show that, regardless of whether the percentage
22 method or the lodestar method is used, fee awards in class actions average around one-third of the
23 recovery”).)

24 Plaintiff seeks appointment of Aegis Law Firm, PC as Class Counsel. The attorneys performed
25 significant work and expended litigation costs in prosecuting the matter with no guarantee of any
26 payment. (Valle Decl., ¶ 35.) Plaintiff’s Counsel seeks preliminary approval for \$117,333.33 in
27 attorneys’ fees, which is up to one-third of the Gross Settlement Amount, and up to \$25,000.00 in
28 reimbursement of litigation costs. (Settlement Agreement § 3.2.2.) Given the work performed in this

1 matter, the extensive information exchange, and substantial recovery obtained on behalf of Plaintiff and
2 the Class, Plaintiff's Counsel achieved a settlement through efficient and diligent work. (*See generally*,
3 Valle Decl.) At final approval, Plaintiff's Counsel will fully brief the merits of its request for the award
4 of attorneys' fees and litigation costs. (*Id.* at ¶ 36.)

5 **V. CONCLUSION**

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

10
11 Dated: May 30, 2024

AEGIS LAW FIRM, PC

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13 By: /s/ Alex J. Valle
14 Alex J. Valle
15 Attorneys for Plaintiff Muhsin Haniff
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