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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN JOAQUIN

GARRETT LEE SCHUCK, individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

TW SERVICES, INC.; and DOES 1 through 20, inclusive,

Defendants.

Case No. STK-CV-UOE-2023-0006580

Assigned for All Purposes to:
Judge Jayne Lee,
Dept. 10C

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

Date:
Time: 8:30 a.m.
Dept: 10C

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I. INTRODUCTION

Pursuant to California Rules of Court 3.769 (d) and (e), Plaintiffs Garrett Lee Schuck and Brittney Ewing ("Plaintiffs") request that this Court grant preliminary approval of a class action settlement of wage and hour claims, including a claim under the Private Attorneys General Act of 2004, codified at Lab. Code § 2698, *et seq.* ("PAGA"), entered into with Defendant TW Services, Inc. ("Defendant") (collectively, Plaintiffs and Defendant referred to as the "Parties"). The putative class consists of approximately 1,266 non-exempt employees who worked for Defendant in California (individually, "Class Member"; collectively, the "Class") from April 16, 2020 to October 7, 2024 (the "Class Period"). The basic terms of the Class Action and PAGA Settlement Agreement and Class Notice ("Settlement Agreement" or "Settlement")[1] provide for the following:

(1) A non-reversionary Gross Settlement Amount of $1,650,000.00 allocated to approximately 1,266 Class Members on a pro rata basis according to the number of weeks each Class Member worked during the Class Period;

(2) An award of up to one-third of the Gross Settlement Amount (currently $550,000.00) and up to $40,000.00 in reimbursement of costs to Plaintiffs' Counsel for services rendered as counsel on this matter;

(3) Service Payment of up to $10,000.00 to each of the Named Plaintiffs;

(4) Settlement Administration fees and costs of up to $ 18,950.00; and

(5) Allocations of $100,000 for resolution of civil penalties under PAGA. Seventy-five percent (75%) of this payment will be paid to the California Labor and Workforce Development Agency ("LWDA Payment"), and twenty-five percent (25%) will be paid to Class Members who worked for Defendant from June 26, 2022 to October 7, 2024 (the "PAGA Period").

With each Class Member allocated an average recovery of approximately $727 from the Net

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[1] A true and correct copy of the fully-executed "Class Action and PAGA Settlement Agreement and Class Notice" is attached as **Exhibit 1** to the Declaration of Kristy R. Connolly in Support of Plaintiff's 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.

Settlement Amount, this Settlement satisfies the criteria for preliminary approval and falls well within the range of reasonableness given the risks and costs of continued litigation. The Settlement was reached through informed, arms-length bargaining at and after mediation between experienced attorneys. As such, Plaintiffs request that the Court grant preliminary approval of the Settlement, conditionally certify the Class for settlement purposes only, appoint Plaintiffs as the Class Representatives, appoint Plaintiffs' Counsel as Class Counsel, appoint Phoenix Settlement Administrator as the Settlement Administrator, authorize the Settlement Administrator to send notice of the Settlement, and set a final approval hearing date.

II. SUMMARY OF THE LITIGATION

On June 26, 2023, Plaintiff Garrett Lee Schuck's ("Plaintiff Schuck") Counsel provided written notice to the LWDA and Defendant regarding Defendant's alleged Labor Code violations, as required by Lab. Code § 2699.3(a). Connolly Decl., ¶ 3, Ex. 3. The LWDA did not respond to this notice, indicating it did not intend to investigate, thus allowing Plaintiff to bring a PAGA claim against Defendant. *Id.* On June 27, 2023, Plaintiff Schuck commenced this Action by filing a Complaint alleging causes of action against Defendant for: (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. *Id.* at ¶ 4. On September 28, 2023, Plaintiff Schuck filed a First Amended Complaint alleging an additional cause of action against Defendant for Enforcement of Labor Code § 2698 et seq. (PAGA). *Id.*

On September 12, 2023, Plaintiff Brittney Ewing ("Plaintiff Ewing") filed a putative class action against Defendant in the Superior Court of California, County of Los Angeles (LASC Case No. 23STCV21896), alleging causes of action for: (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal periods; (4) failure to provide rest period; (5) failure to pay all wages due upon separation of employment; (6) failure to provide accurate itemized wage statements; (7) failure to reimburse business expenses; (8) failure to timely pay wages; and (9) violation of Business and Professions Code §§ 17200, et seq. Connolly Decl., ¶ 5. On September 13, 2023, Plaintiff Ewing's Counsel provided written notice to the LWDA and Defendant regarding Defendant's alleged Labor

Code violations. *Id.* The LWDA did not respond to this notice; therefore, on December 7, 2023, Plaintiff Ewing filed a separate representative action Complaint (LASC 23STCV21896) in the Superior Court of California, County of Los Angeles, alleging a cause of action against Defendant for civil penalties under PAGA. *Id.*

The Parties agreed to attend an early, global mediation. Connolly Decl., ¶ 6. To that end, Defendant informally produced relevant data and documents, including Plaintiffs' personnel files, a 25% sample of employees' time and pay records, signed meal break waivers, and policy documents. *Id.* Plaintiffs' Counsel engaged an expert to quantify the potential exposure using the time and payroll records, and then assessed the risks associated with each of the claims meriting reductions in the likely recovery at trial. *Id.*

On August 8, 2024, the Parties attended a mediation session with Steven J. Serratore, a respected mediator, and reached a settlement. Connolly Decl., ¶ 7. 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. *Id.* The Parties spent the next few months negotiating the terms of the Settlement, which was finalized in December of 2024. *Id.*

Pursuant to the terms of the Settlement, on December 30, 2024, Plaintiff Schuck filed a Second Amended Complaint to add Plaintiff Ewing as a second named plaintiff and class representative. Connolly Decl., ¶ 8.

On February 14, 2025, Plaintiffs submitted the Settlement and this Motion to the LWDA pursuant to Lab. Code § 2699(l)(2). Connolly Decl., ¶ 9.

III. SUMMARY OF THE SETTLEMENT

A. Terms of Settlement

Plaintiffs and Defendant agreed to settle this action for a Gross Settlement Amount of $1,650,000. 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 $40,000; (4) a Service Payment to each of the two named Plaintiffs of up to $10,000 each; (5) Settlement Administration fees and costs of $18,950; and (6) a payment to the LWDA of $75,000 pursuant to PAGA. *Id.* at § 3.2.1 – 3.2.5. Once the Court grants final approval, Defendant will pay the Gross Settlement Amount in three installments starting 60 days after Final Judgment, and every 60 days thereafter. *Id.* at § 4.3. Class Members' Individual Settlement Payments will be distributed within 14 days after Defendant fully funds the Gross Settlement Amount. *Id.* at § 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 Class Notice and provide the estimated low and high range of possible recovery at final approval. *Id.* at § 7.4.2; Settlement Agreement, Ex. A (Notice of Class Action Settlement). The class notice will be provided in English with a Spanish translation in the form. *See* Settlement Agreement, § 1.11. Once the Court grants final approval and enters judgment, Plaintiffs will provide Notice of Entry of Final Judgment and the Settlement Administrator will post the Final Judgment on its website. *Id.* at § 7.8.1.

The Individual Settlement Payments to Class Members will be allocated for tax purposes as follows: 10% to wages; 90% to penalties and interest. Settlement Agreement, § 3.2.4.1. The employer-side payroll taxes on the portion allocated to wages will be paid by Defendant separately from, and in addition to the Gross Settlement Amount. *Id.* at § 3.1. No portion of the Gross Settlement Amount will revert to Defendant. *Id*. Funds from uncashed or undeliverable checks will be tendered by the Settlement Administrator to the State Controller Unclaimed Property Fund in the name of the Class Member for whom the funds are designated. *Id*. at § 4.4.3.

B. Proposed Opt-Out and Objection Process

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

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

If Class Notice packets are returned as undeliverable, the Settlement Administrator will perform a skip-trace or other search, and re-mail the Class Notice with an extended deadline, to opt out or object, of 14 days from the original deadline. Settlement Agreement, § 7.4.4. The initial 60-day notice period and extension process ensures the notice program provides due process by giving Class Members enough time to determine whether they want to participate in the Settlement. This means of notice is reasonably calculated to apprise Class Members of the pendency of the action. *See* California Rules of Court Rule 3.766 (d)-(f).

C. Proposed Release

The release to be given by Class Members is limited to Defendant and each of its former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates (the "Released Parties"). Settlement Agreement, § 1.41. Under the proposed release, Class Members who do not exclude themselves from the Settlement will be deemed to have released all claims arising during the Class Period that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint. *Id.* at § 5.2. The LWDA and the State of California, by and through Plaintiffs as agents and proxies of the LWDA, will release the

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

Only Plaintiffs will agree to a general release of any and all claims, whether known or unknown, which exist or may exist on Plaintiff's behalf as of the date of the Settlement, and a waiver of Civil Code section 1542. Settlement Agreement, §§ 5.1 – 5.1.1.

IV. LEGAL ARGUMENTS SUPPORTING PRELIMINARY APPROVAL

A. Provisional Certification of the Class is Appropriate

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

1. The Proposed Class is Numerous and Ascertainable

Whether a class is "ascertainable" is "determined by examining (1) the class definition, (2) the size of the class, and (3) the means available for identifying class members." *Reyes v. Bd. of Supervisors*, 196 Cal. App. 3d 1263, 1271 (1987). Here, the Class consists of all current and former non-exempt employees who are or were employed by Defendant in California at any time from April 16, 2020 to October 7, 2024. Settlement Agreement, §§ 1.5, 1.12. Defendant's records show the Class consists of approximately 1,266 individuals, making joinder of all Class Members impracticable. Settlement Agreement, § 4.1; Connolly Decl., ¶ 10. Further, the Class is readily ascertainable from Defendant's business records because all Class Members are current or former employees of Defendant. Connolly Decl., ¶ 11.

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

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

a. *Common Questions Predominate*

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

Plaintiffs alleged that Defendant maintained uniform employment policies and/or practices that illegally deprived Class Members of lawful wages, meal periods, rest breaks, accurate wage statements, and waiting time pay. Connolly Decl., ¶ 12. Plaintiffs' 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. Plaintiffs' *Claims are Typical of the Class Claims*

The typicality requirement is satisfied when the legal theories and facts supporting Plaintiff's claims are substantially similar to other class members. *See Classen v. Weller*, 145 Cal. App. 3d 27, 46 (1983).Here, Plaintiffs alleged that they 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. Connolly Decl., ¶ 13. Through documents and information exchanged in informal discovery, including production of thousands of pages of documents by Defendant, Plaintiffs confirmed that these common policies and practices similarly affected Plaintiffs and the Class. *Id.* Thus, Plaintiffs' 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 Plaintiffs' exposure analysis below.

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

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

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,* Connolly Decl. Accordingly, Plaintiffs should be appointed Class Representatives, and Plaintiffs' Counsel should be appointed Class Counsel

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

Class treatment is superior to other methods of adjudication when the probability is small that each class member will come forward to prove his or her claim and when the class approach would deter and redress the alleged wrongdoing. *See Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 435, 446 (2000); *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524, 1537-1538 (2008). Here, none of the other 1,266 Class Members had shown any interest in bearing the expense and burden of litigating their own claims. Connolly Decl. ¶ 21. Thus, a class action is the superior method for seeking relief.

B. The Settlement Meets the Standards for Preliminary Approval

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

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

1. The Settlement is Entitled to a Presumption of Fairness

a. <u>The Settlement is the Result of Arm's-Length Negotiations</u>

Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered. Thus, there is a presumption that settlement negotiations are conducted in good faith. Here, the Settlement was the product of extensive investigation and a full day mediation session with a respected mediator after extensive informal discovery. Connolly Decl. ¶¶ 6-7 The negotiations were adversarial, conducted at arm's length and tempered by the efforts of both sides to serve the interests of their clients. *Id.* at ¶ 7. The amount of Plaintiffs' requested Service Awards was not negotiated until after the Parties agreed to the Gross Settlement Amount and many other terms. *Id.* at ¶ 19.

b. <u>Plaintiffs' Counsel Conducted Sufficient Investigation and Discovery</u>

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

c. Plaintiffs' Counsel is Experienced in Similar Litigation

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

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

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

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

a. Exposure Analysis

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

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

be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation."

Wershba v. Apple Computer, Inc., 91 Cal. App. 4th 224, 250 (2001) (citation omitted). Here, Plaintiffs contend that their claims are based on Defendant's common, class-wide policies and procedures, and that liability could be determined on a class-wide basis without dependence on individual assessments of liability. Connolly Decl., ¶ 13. Although the amount of Defendant's potential exposure – if proven – is substantial, the legitimate and serious risks of succeeding at class certification and trial compelled a serious consideration of the benefit of a settlement. *Id.* at ¶ 15.

Minimum Wage and Overtime Claims: Plaintiffs' minimum wage and overtime claims were premised on the theory that Defendant failed to compensate class members for all time worked by requiring them to finish pre- and post-shift duties without pay. Specifically, Plaintiffs alleged that Class Members were required to undergo pre-shift health screenings and post-shift security checks. Assuming unpaid wages of five minutes per shift, Plaintiffs' expert calculated a maximum exposure of $915,479. However, Defendant argued that it maintained policies of paying for all recorded work and that there was no evidence that it required Class Members to complete these duties off-the-clock or for how much time was allegedly spent undergoing these checks. As such, this claim could become highly individualized and difficult to certify. As such, Plaintiff assumed there was a 60% chance of success at class certification and 30% chance of success on the merits at trial, rendering the claim worth approximately $164,786. Connolly Decl., ¶ 16.

Rest Break Claim: Plaintiffs' rest break claim was based on the theory that Defendant implemented written policies that failed to authorize or permit rest breaks every four hours worked, or major fraction thereof. More specifically, Plaintiffs alleged that Defendant's policy only authorized a rest break for each four-hour segment. If Plaintiffs could prove that shifts between 3.5-4 hours, 6-8 hours, and 10-12 hours did not get a rest break, then damages could reach up to $619,357. However, Defendant argued that despite this written policy, employees could and did take a rest break as required under law and that employees could voluntarily waive their breaks if they chose to. Certification would likely have required depositions of Class Members who provided declarations, and Defendant surely would have obtained opposing declarations stating either rest breaks were taken or rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.*, 2013 WL 210223, at *11 (C.D. Cal. Jan.

17, 2013) ("Because of the competing testimony before the Court, plaintiff's evidence that defendant may have an illegal, written rest break policy is insufficient for this Court to find that common issues predominate."). As such, this claim would have ultimately relied on Class Member testimony, making it a riskier claim at class certification and liability stages. Plaintiffs' counsel believed there was a 70% chance succeeding at class certification and a 30% chance at trial, resulting in a value of $130,065. Connolly Decl., ¶ 17.

Meal Period Claims: Plaintiffs' meal period claim was potentially worth about $1,356,749 in light of the violations shown in the records and Defendant's failure to pay meal period premiums until 2024. However, Defendant provided evidence that it maintained compliant written policies and that employees could waive their meal periods citing to *Brinker Restaurant Corp. v. Superior Court* 53 Cal. 4th 1004, 1029 (2012), in which the Supreme Court explained that employers do not need to "police" breaks, i.e., ensure that a meal is being taken if it was provided. *See also Murphy v. Kenneth Cole Productions, Inc.*, 40 Cal. 4th 1094, 1104 (2007) (finding a violation occurs only if the employee is "forced to forgo his or her meal period"). Indeed, Defendant produced hundreds of signed meal period waivers. Thus, Plaintiffs discounted this claim for the risk that the damages could at least be reduced, and that the claim would be hard to certify with a compliant policy. As such, Plaintiffs' counsel believed there was a 50% chance succeeding at class certification and a 40% chance at trial, resulting in a value of $271,350. Connolly Decl., ¶ 18.

Waiting Time and Wage Statement Penalties: Plaintiffs' Counsel also considered the arguable presence of various derivative penalties, and weighed the potential recoveries against probable defenses. Specifically, Defendant could argue that Plaintiffs could not prove the "willful" prong needed to obtain waiting time penalties under Labor Code section 203. Additionally, Defendant could argue that Plaintiffs could not show that Class Members suffered an "injury" as a result of wage statement violations, as required by Labor Code section 226, and that the wage statements correctly reflected the wages paid and owed. Moreover, Plaintiffs would not recover any of these derivative penalties if they failed to prove the underlying claims. Although the Class arguably could have seen a payout of approximately $3.44 million for waiting time penalties and $2.52 million for wage statement penalties, Plaintiffs would not recover any of these derivative penalties if they failed to prove the underlying claims. Thus, Plaintiffs discounted these claims assuming a 50% chance of class certification and 30% chance at the merits for both claims, resulting in a realistic value of $516,150 for the waiting time claim and $379,200 for the wage statement claim. Connolly Decl. ¶ 19.

PAGA Claim: The PAGA claim presented even higher hurdles. Although Plaintiffs' Counsel found Defendant's exposure could potentially reach approximately $4,425,500 under Labor Code section 2699(f), assuming the initial penalty rate of $100 for all 44,255 pay periods, Plaintiffs would have to prove a violation in every pay period. Most importantly, the Court would have discretion to reduce the PAGA award based on whether the amount of the award would be "unjust, arbitrary and oppressive, or confiscatory." Lab. Code § 2699(e)(2). In theory, the Court could reduce the award by 99% if it so wished. Plaintiffs were doubtful they could recover any PAGA penalties, especially if a large class judgment was entered for the same violations. Accordingly, Plaintiffs could not place a high value on the PAGA penalties, and therefore allocated $100,000 of the Gross Settlement Amount to settle these claims. Connolly Decl. ¶ 20.

C. The Requested Service Award for Plaintiffs

Plaintiffs each seek a Service Award of $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; *Bell v. Farmers Ins. Exch.*, 115 Cal. App. 4th 715, 726 (2004).

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

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

D. The Requested Attorneys' Fees and Costs

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

Plaintiffs seek appointment of Aegis Law Firm, PC and Bibiyan Law Group, P.C. as Class Counsel. The attorneys performed significant work and expended litigation costs in prosecuting the matter with no guarantee of any payment. Connolly Decl., ¶ 37. Plaintiffs' Counsel seeks preliminary approval for $550,000.00 in attorneys' fees, which is up to one-third of the Gross Settlement Amount, and up to $40,000.00 in reimbursement of litigation costs. Given the work performed in this matter, the extensive information exchange, and substantial recovery obtained on behalf of Plaintiffs and the Class, Plaintiffs' Counsel achieved a settlement through efficient and diligent work. *See generally,* Connolly Decl. At final approval, Plaintiffs' Counsel will fully brief the merits of its request for the award of attorneys' fees and litigation costs. *Id.* at ¶ 38.

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V. CONCLUSION

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

Dated: February 14, 2025

AEGIS LAW FIRM, PC

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