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

14 **FOR THE COUNTY OF LOS ANGELES**

15 AARICA BRITTANY, individually and on
16 behalf of all others similarly situated,

17 Plaintiff,

18 vs.

19 FOLLETT HIGHER EDUCATION
20 GROUP, LLC; FOLLETT HIGHER ED
21 GROUP, LTD; and DOES 1 through 20,
22 inclusive,

23 Defendants.

Case No. 23STCV21385

Assigned for All Purposes to:
Judge Peter A. Hernandez
Dept. K

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

Date: July 18, 2024
Time: 9:00 a.m.
Dept: K

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1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court 3.769 (d) and (e), Plaintiff Aarica Brittany (“Plaintiff”)
3 requests that the Court grant preliminary approval of a class action settlement of wage and hour claims,
4 including claims under the California Private Attorneys General Act of 2004, codified at Lab. Code §
5 2698, *et seq.* (“PAGA”), against Defendant Follett Higher Education Group LLC (“Defendant”)
6 (collectively, Plaintiff and Defendant referred to as, the “Parties”). The putative class consists of
7 approximately 4,700 non-exempt employees who worked for Defendant in California (individually,
8 “Class Member”; collectively, the “Class”) from December 20, 2018 through July 24, 2024 (the “Class
9 Period”). The basic terms of the CLASS ACTION SETTLEMENT AGREEMENT (“Settlement
10 Agreement” or “Settlement”)¹ provide for the following:

- 11 (1) A non-reversionary Gross Settlement Amount of \$2,100,000.00 allocated to
12 approximately 4,700 Class Members on a pro rata basis according to the number
13 of 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 \$700,000.00) and up to \$25,000.00 in reimbursement of costs to Plaintiff’s
16 Counsel for services rendered as counsel on this matter;
- 17 (3) Service Payment of up to \$15,000.00 for Plaintiff Aarica Brittany;
- 18 (4) Settlement Administration fees and costs of up to \$28,500; and
- 19 (5) Allocations of \$50,000 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 (the
23 “Aggrieved Employees”).
- 24
- 25

26 ¹ A true and correct copy of the fully-executed “CLASS ACTION SETTLEMENT AGREEMENT” is
27 attached as **Exhibit 1** to the Declaration of Kristy R. Connolly in Support of Plaintiff’s Motion for
28 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 Settlement satisfies the criteria for preliminary approval and falls well within the range of
2 reasonableness given the risks and costs of continued litigation. The Settlement was reached through
3 informed, arms-length bargaining at and after mediation between experienced attorneys. As such,
4 Plaintiff requests that the Court grant preliminary approval of the Settlement, conditionally certify the
5 Class for settlement purposes only, appoint Plaintiff as the Class Representative, appoint Plaintiff's
6 Counsel as Class Counsel, appoint Phoenix Settlement Administrators, Inc, as the Settlement
7 Administrator, authorize the Settlement Administrator to send notice of the Settlement, and set a final
8 approval hearing date.

9 **II. SUMMARY OF THE LITIGATION**

10 On June 16, 2023, Plaintiff's counsel provided written notice to the LWDA and Defendant
11 regarding Defendant's alleged Labor Code violations, as required by Lab. Code § 2699.3(a). Connolly
12 Decl., ¶ 3. The LWDA did not respond to this notice, indicating it did not intend to investigate, thus
13 allowing Plaintiff to bring a PAGA claim against Defendants. *Id.* On June 16, 2023, Plaintiff filed a class
14 action on behalf of Defendant's non-exempt employees, which Defendant removed to the United States
15 District Court on August 11, 2023 (the "Federal Court Action"). *Id.* at ¶ 4. Plaintiff alleged the following
16 causes of action: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to
17 provide meal periods; (4) failure to permit rest breaks; (5) failure to reimburse business expenses; (6)
18 failure to provide accurate wage statements; (7) failure to timely pay wages during employment; (8) failure
19 to pay all wages due upon separation of employment; and (9) violation of Business and Professions Code
20 § 17200, *et seq.*, based on the preceding claims. *Id.*

21 While the class action was pending in federal court, Plaintiff filed this separate action as a PAGA-
22 only case before the above-entitled Court (the "State Court Action"). Connolly Decl., ¶ 5.

23 In the Federal Court Action, the Parties engaged in significant formal discovery. Connolly Decl., ¶
24 6. Both Parties served and responded to Interrogatories and Requests for Production of Documents. *Id.*
25 Through formal discovery, Defendant produced a significant amount of documents and information,
26 including Plaintiff's personnel file, relevant policy documents, and class members' timekeeping and pay
27 records. *Id.* Defendant also took Plaintiff's deposition on October 9 and 16, 2023. *Id.*

28 After formal discovery and engaging in numerous discussions between the Parties' attorneys, the

1 Parties agreed to attend a private mediation session. Connolly Decl., ¶ 7. To prepare for mediation,
2 Plaintiff's counsel worked with experts to analyze time-keeping and payroll data related to the claims in
3 order to evaluate the potential damages and penalties. *Id.*

4 On March 25, 2024, the Parties attended private mediation with Kristen Rizzo, a respected wage
5 and hour mediator. Connolly Decl., ¶ 8. The action did not settle at mediation. *Id.* However, the Parties
6 continued to work with the mediator and eventually attended a second mediation with Ms. Rizzo on April
7 24, 2024. *Id.* After a full day of negotiating, the mediator made a mediator's proposal, which was
8 eventually accepted by the Parties. *Id.* The Parties spent the next month negotiating the terms of the
9 Settlement, which was finalized in May of 2024. *Id.* The negotiations were adversarial, conducted at
10 arm's length and tempered by the efforts of both sides to serve the interests of their clients. *Id.*

11 Pursuant to the terms of the Settlement, the Parties stipulated to stay the Federal Court Action
12 pending approval of the Settlement in the State Court Action before this Court. Connolly Decl., ¶ 9. To
13 that end, the Parties agreed that Plaintiff would file a First Amended Complaint in the State Court Action
14 to allege the class claims asserted in the Federal Court Action. *Id.* Plaintiff's First Amended Complaint
15 was filed on May 23, 2024. *Id.*

16 On June 6, 2024, Plaintiff submitted the Settlement and this Motion to the LWDA pursuant to
17 Lab. Code § 2699(1)(2). Connolly Decl., ¶ 10, Ex. 2.

18 **III. SUMMARY OF THE SETTLEMENT**

19 **A. Terms of Settlement**

20 Plaintiff and Defendant agreed to settle the class claims in exchange for a Gross Settlement
21 Amount of \$2,100,000.00. Settlement Agreement, ¶ 37. The Gross Settlement Amount will be used to
22 make payments for the following: (1) Settlement Shares to Participating Class Members; (2) attorneys'
23 fees to Class Counsel of up to one-third of the Gross Settlement Amount; (3) reimbursement of Class
24 Counsel's litigation costs of up to \$25,000.00; (4) a Service Payment up to \$15,000.00 for Plaintiff; (5)
25 Settlement Administration fees and costs of \$28,500.00; and (6) a payment to the LWDA of \$37,500.00
26 pursuant to PAGA. *Id.* Defendant will fund the Gross Settlement Amount within 10 days of the Effective
27 Date (*i.e.*, 61 days after the Court grants final approval of the settlement). *Id.* at ¶ 44. Class Members'
28 Settlement Shares will be distributed 15 days after Defendants funds the Gross Settlement Amount. *Id.*

1 Settlement Shares will be calculated by comparing the total number of work weeks for the Class to each
2 individual Class Member's number of weeks worked. *Id.* at ¶ 39(b). With approximately 4,700 Class
3 Members, the Net Settlement Amount allocates an average of \$272 per Class Member. The Settlement
4 Administrator will calculate the actual estimated recovery to include in each Class Members' Class
5 Notice and provide the estimated low and high range of possible recovery at final approval. Settlement
6 Agreement, Ex. A (Notice of Class Action Settlement).

7 The Settlement Shares will be allocated for tax purposes as follows: 30% to wages; 70% to
8 penalties and interest. Settlement Agreement, ¶ 39(c). The employer-side payroll taxes on the portion
9 allocated to wages will be paid by Defendant separately from, and in addition to the Gross Settlement
10 Amount. *Id.* at ¶ 37. No portion of the Gross Settlement Amount will revert to Defendant. *Id.* Funds
11 from uncashed or undeliverable checks will be tendered by the Settlement Administrator to the State
12 Controller Unclaimed Property Fund in the name of the Class Member for whom the funds are designated.
13 *Id.* at ¶ 45.

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

15 The Settlement Administrator will send Class Members the Notice of Proposed Settlement of Class
16 Action and Hearing Date ("Class Notice") by first-class mail after checking for updated addresses through
17 the National Change of Address database. Settlement Agreement, ¶ 41(b)(ii). The Class Notice provides
18 information regarding the nature of the lawsuit, a summary of the substance of the settlement terms, the
19 Class Member's estimated individual Settlement Share, a statement that Class Members who take no
20 action will release their claims and receive settlement checks, instructions regarding how to dispute the
21 calculations, instructions regarding how to request exclusion or object to the Settlement, the date for the
22 final approval hearing, the amounts sought for attorneys' fees and costs, the Settlement Administration
23 Costs, the Class Representative's Service Payment, and the PAGA allocation.. *See* Settlement
24 Agreement, Ex. A (Class Notice).

25 The Class Notice provides instructions for Class Members who choose to exclude themselves
26 from the Settlement. To opt out, Class Members are instructed to submit a signed election not to
27 participate in the settlement to the Settlement Administrator by a specified date (45 days after the date of
28 mailing of the Class Notice). *See* Settlement Agreement, Ex. A (Class Notice), pp. 1, 6. Class Members

1 do not need to submit a claim form to participate in the Settlement. *Id.* at p. 1. Class Members are informed
2 of how they can object to the Settlement, and the Class Notice informs Class Members of the date, time,
3 and location of the final fairness and approval hearing so that they can appear. *Id.* at pp. 1, 7. Accordingly,
4 the content of 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 15 days from the date of mailing or the original deadline, whichever is later. Settlement Agreement, ¶
8 41(b)(iii). The initial 45-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 Defendant, Defendant's respective past,
14 present and future parents, subsidiaries, corporations, divisions, and successors and assigns, and the past,
15 present and future shareholders, managers, officers, partners, members, directors, agents, employees,
16 attorneys, insurers, predecessors, successors and assigns of Defendant. ("Released Parties"). Settlement
17 Agreement, ¶ 26. Under the proposed release, Class Members who do not exclude themselves from the
18 Settlement will be deemed to have released or waived the following "Released Class Claims" against
19 the Released Parties:

20 any and all causes of action, claims, rights, damages (including punitive, statutory or
21 liquidated damages), penalties, liabilities, restitution, attorneys' fees, costs, expenses,
22 interest and losses alleged in the Operative Complaint and the complaints in the Actions or
23 which could reasonably have been alleged in the complaints in the Actions and the
24 Operative Complaint under federal, state, local or common law or at equity, based on the
25 facts alleged in the operative Complaints during the Class Period, including: (i) all claims
26 for unpaid wages, including overtime and minimum wages; (ii) all claims for meal and rest
27 break violations; (iii) all claims for the failure to timely pay wages during employment or
28 upon termination; (iv) all claims for the failure to reimburse for necessary business

expenses; (v) all claims for wage statement violations; and (vi) all claims asserted through California Business & Professions Code §§ 17200, et seq.

Id at ¶ 47(a).

Aggrieved Employees will release the Released Parties from all claims pled or could have been pled based on the factual allegations contained in the operative complaint and PAGA letter sent by Plaintiff that occurred during the PAGA Period. Settlement Agreement, ¶ 47(b).

Only Plaintiff 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 Civ. Code § 1542. Settlement Agreement, ¶ 47(c).

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 individuals who were employed by Defendant in California who were classified as hourly, non-exempt employees at any time from December 20, 2018 through July 24, 2024. Settlement Agreement, ¶¶ 3, 10. Defendant's records show the Class consists of approximately 4,700 individuals, making joinder of all Class Members impracticable. Connolly Decl., ¶ 11. Further, the Class is readily ascertainable from Defendant's business records because all Class Members are current or former employees of Defendant. *Id*.

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

"[T]he 'community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.'" *Fireside Bank v. Superior Court*, 40 Cal.

1 4th 1069, 1089 (2007) (quoting *Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 470 (1981)).

2 a. Common Questions Predominate

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

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

19 b. Plaintiff's Claims are Typical of the Class Claims

20 The typicality requirement is satisfied when the legal theories and facts supporting Plaintiff's
21 claims are substantially similar to other class members. *See Classen v. Weller*, 145 Cal. App. 3d 27, 46
22 (1983). Here, Plaintiff alleges that she and other Class Members were employed by Defendant and
23 injured by Defendant's common wage and hour policies and practices, including Defendant's
24 scheduling, timekeeping, compensation, meal period, and rest break practices and policies. Connolly
25 Decl., ¶ 13. Through documents and information exchanged in formal discovery, including Plaintiff's
26 depositions, Plaintiff confirmed that these common policies and practices similarly affected Plaintiff
27 and the Class. *Id.* Thus, Plaintiff's claims arise from the same employment practices and are based on
28 the same legal theories as those applicable to other Class Members, as further explained in Plaintiff's

1 exposure analysis below.

2 c. Plaintiff and Plaintiff's Counsel Will Adequately Represent the Interests of
3 the Proposed Class

4 Certification requires adequacy of both the proposed class representative(s) and proposed class
5 counsel. With respect to the class representative, a plaintiff must adequately represent and protect the
6 interests of other members of the class and demonstrate that his or her claim is not inconsistent with the
7 claims of other members of the class. *See Capitol People First v. State Dep't of Developmental Servs.*,
8 155 Cal. App. 4th 676, 696-697 (2007). Here, Plaintiff's interests are coextensive with the interests of
9 the Class. Plaintiff demonstrated an ability to advocate for the interests of the Class by initiating this
10 litigation, gathering documents and information, responding to written discovery and sitting for two
11 depositions, being available on the two full days of mediation to answer questions, meeting with her
12 attorneys on several occasions to understand the claims and theories of liability at issue, assisting
13 attorneys in preparing for mediation, reviewing the proposed settlement agreement to understand its
14 legal effect, and obtaining a fair settlement on behalf of Class Members who stand to recover a
15 substantial amount under the Settlement. Connolly Decl., ¶ 24.

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

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

20 Class treatment is superior to other methods of adjudication when the probability is small that
21 each class member will come forward to prove his or her claim and when the class approach would deter
22 and redress the alleged wrongdoing. *See Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 435, 446 (2000);
23 *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524, 1537-1538 (2008). Here, none of the other
24 4,700 Class Members had shown any interest in bearing the expense and burden of litigating their own
25 claims. Connolly Decl. ¶ 24. Thus, a class action is the superior method for seeking relief.

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

27 Preliminary approval is warranted if the settlement falls within a "reasonable range." *See North*
28 *County Contractor's Ass'n., Inc. v. Touchstone Ins. Servs.*, 27 Cal. App. 4th 1085, 1089-90 (1994);

1 Conte & Newberg, *Newberg on Class Actions*, § 11.26 (4th ed. 2002). In reviewing the fairness of a
2 class action settlement, due regard should be given to what is “otherwise a private consensual
3 agreement between the parties.” *Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380, 1389
4 (2010). The inquiry “must be limited to the extent necessary to reach a reasoned judgment that the
5 agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties,
6 and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Id.*

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

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

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

14 Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless
15 evidence to the contrary is offered. Thus, there is a presumption that settlement negotiations are
16 conducted in good faith. Here, the Settlement was the product of extensive investigation and two full
17 days of mediation sessions with a respected mediator after formal discovery. Connolly Decl. ¶¶ 6-8.
18 The negotiations were adversarial, conducted at arm’s length and tempered by the efforts of both sides
19 to serve the interests of their clients. *Id.* at ¶ 8. The amount of Plaintiff’s requested Service Award was
20 not negotiated until after the Parties agreed to the Gross Settlement Amount and many other terms. *Id.*
21 at ¶ 25.

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

23 Plaintiff’s Counsel thoroughly investigated the class claims, applicable law, and potential
24 defenses. *See generally*, Connolly Decl. In particular, Plaintiff’s Counsel assessed the value of the class
25 claims using Defendant’s data and documents produced through formal discovery as well as Plaintiff’s
26 deposition testimony. Connolly Decl., ¶¶ 6-8, 13. Further, Plaintiff’s Counsel engaged an expert to
27 quantify the potential exposure using the time and payroll records, and then assessed the risks associated
28 with each of the claims meriting reductions in the likely recovery at trial. *Id.* at ¶ 13. Accordingly,

1 Plaintiff's Counsel fully understood the strengths and weaknesses of the claims before the Parties
2 reached a settlement.

3 c. Plaintiff's Counsel is Experienced in Similar Litigation

4 Plaintiff is represented by Aegis Law Firm, PC ("Class Counsel"). Class Counsel prosecute wage
5 and hour class actions on behalf of employees and others who have had their rights violated. Connolly
6 Decl. ¶¶ 27-39. The attorneys working on this case have been appointed class counsel in many cases,
7 through both contested motions and settlement approval motions. *Id.* Thus, Plaintiff's Counsel has
8 extensive experience in similar litigation and should be appointed as Class Counsel.

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

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

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

25 a. Exposure Analysis

26 A settlement does not have to provide 100% of the damages sought to be considered a fair and
27 reasonable settlement. *See Rebney v. Wells Fargo Bank*, 220 Cal. App. 3d 1117, 1139 (1991). Rather,
28 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, Plaintiff contends that her claims are based on Defendants’ 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., ¶ 14. 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 ¶ 16.

Minimum Wage and Overtime Claims: Plaintiff’s 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 conduct temperature checks and health screenings prior to clocking in for work and complete bag security checks after clocking out for work. Assuming unpaid wages of three minutes per shift, Plaintiff’s expert calculated a maximum exposure of \$429,862. However, because any time spent completing the Covid-19 screenings and bag checks was not recorded, this theory would be largely dependent on competing testimonial evidence about Defendants’ practices. Plaintiff would need supportive testimony through depositions and declarations (which will likely be countered with Defendants’ own testimony received by Class Members) to support that wages were unpaid under these theories in every pay period. The reliance on supportive testimony through depositions and declarations renders the value of this claim uncertain. Furthermore, Defendant provided evidence that they added 1 minute Class Members’ pay for undergoing temperature screenings, thereby reducing the potential estimated damages. As such, Plaintiff assumed there was a 70% chance of success at class certification and 30% chance of success on the merits at trial, rendering the claim worth approximately \$90,271. Connolly Decl., ¶ 18.

Meal Period Claims: Plaintiff’s meal period claim was potentially worth about \$154,118 in light of the violations shown in the records. However, Defendant argued that they maintained compliant written policies and that employees could waive their meal periods. Further, they provided evidence that they paid a significant amount of meal period premiums. Thus, Plaintiff discounted this claim for

1 the risk that the damages could at least be reduced, and that the claim would be hard to certify with a
2 compliant policy and the existence of written meal period waivers. As such, Plaintiff's counsel believed
3 there was a 40% chance succeeding at class certification and a 20% chance at trial, resulting in a value
4 of \$12,329. Connolly Decl., ¶ 19.

5 Rest Break Claim: Plaintiff alleged Defendants failed to provide rest breaks at the required
6 intervals due a rest break policy that only authorized rest breaks in four-hour increments rather than
7 "major fractions thereof." If Plaintiffs could prove a 100% violation rate for each shift between 6-8
8 hours and 10-12 hours, then damages could reach up to \$2,512,735. However, Defendant argued that
9 despite the written policy, it complied with its obligations to provide rest breaks that employees could
10 waive their rest breaks, making liability difficult to prove. As such, this claim would have relied on
11 Class Member testimony, making it a riskier claim at the liability stages. As such, Plaintiff's counsel
12 believed there was a 70% chance succeeding at class certification and a 30% chance at trial, resulting
13 in a value of \$527,674. Connolly Decl., ¶ 20.

14 Unreimbursed Business Expenses Claims: Plaintiff argued that Class Members were not
15 reimbursed for expenses related to personal vehicles. Specifically, Plaintiff alleged that she was required
16 to use her personal vehicle to drive to special events for work. Plaintiff's expert calculated unreimbursed
17 business expenses to be valued at around \$1,442,700 assuming \$30 of unreimbursed expenses per
18 month. However, Defendant argued that it maintained a policy and practice permitting class members
19 to seek reimbursement of business expenses and that class members were offered other modes of
20 transportation to use in place of their personal vehicles. Further, even if class members did resort to
21 their personal vehicles for work, there is no source of common proof as to who incurred expenses,
22 whether those expenses were necessary in light of the other transportation offered, and whether they
23 sought reimbursement, making the claim difficult to prove at trial. Plaintiff's counsel believed there was
24 a 20% chance succeeding at class certification and a 10% chance at trial, resulting in a value of \$28,854.
25 Connolly Decl., ¶ 21.

26 Derivative Waiting Time Penalties: Plaintiff's Counsel also considered the arguable presence of
27 derivative waiting time and wage statement penalties, and weighed the potential recoveries against
28 probable defenses. Specifically, Defendants could argue that Plaintiff could not prove the "willful" prong

1 needed to obtain waiting time penalties under Labor Code § 203. Additionally, Plaintiff considered the
2 fact that Defendant could argue that Plaintiff could not show that Class Members suffered an “injury”
3 because of the wage statement violations, as required by Labor Code section 226. Plaintiff would also
4 have to overcome damaging precedent to prove the Class deserved penalties. *See, e.g., Alonzo v.*
5 *Maximum, Inc.*, 832 F. Supp. 2d 1122, 1134-1137 (C.D. Cal. 2011)(finding insufficient evidence of bad
6 faith or actual injury). Moreover, Plaintiff would not recover these derivative penalties if she failed to
7 prove the underlying claims. Thus, although the waiting time and wage statement penalties could have
8 reached \$5.19 million and 6.08 million, respectively, if Plaintiff prevailed, Plaintiff discounted this claims
9 assuming a 40% chance of class certification and 30% chance at the merits, resulting in a realistic value
10 of \$623,292 and \$730,398, respectively. Connolly Decl. ¶ 22.

11 PAGA Claim: The PAGA claim presented even higher hurdles. Although Plaintiff’s Counsel
12 found Defendants’ exposure could potentially reach approximately \$2,482,900 under Lab. Code §
13 2699(f), assuming the initial penalty rate of \$100 for each pay period, Plaintiff would have to prove a
14 violation in every pay period. Most importantly, the Court would have discretion to reduce the PAGA
15 award based on whether the amount of the award would be “unjust, arbitrary and oppressive, or
16 confiscatory.” Lab. Code § 2699(e)(2). In theory, the Court could reduce the award by 99% if it so
17 wished, especially in light of Defendant’s compensation practices of adding a minute to Class Members
18 time worked for health screenings and the high number of meal period premiums paid to the Class.
19 Plaintiff was doubtful she could recover any PAGA penalties, especially if a large class judgment was
20 entered for the same violations. Accordingly, Plaintiff could not place a high value on the PAGA
21 penalties, and therefore allocated \$50,000 of the Gross Settlement Amount to settle these claims.
22 Connolly Decl. ¶ 23.

23 **C. The Requested Incentive Award for Plaintiff**

24 Plaintiff seeks an Incentive Award of up to \$15,000.00 for accepting the responsibilities of
25 representing the interests of the Class and assuming risks and potential costs that were not borne by any
26 other Class Members. Settlement Agreement, § 3.07(d). A named plaintiff is eligible for payment that
27 reasonably compensates him or her for undertaking and fulfilling a fiduciary duty to represent absent
28

1 class members. *See Cellphone Termination Fee Cases, supra*, 186 Cal. App. 4th at 1393; *Bell v. Farmers*
2 *Ins. Exch.*, 115 Cal. App. 4th 715, 726 (2004).

3 Here, Plaintiff had the option to pursue her claims individually, but instead chose to pursue this
4 class action, delaying individual recovery until approval of a class action settlement. Connolly Decl., ¶
5 24. Throughout the case, Plaintiff assisted counsel in gathering the evidence necessary to prosecute the
6 class claims, helped respond to written discovery, maintained regular contact with counsel, was
7 available on the two full days of mediation and communicated with her attorneys during the days of
8 mediation to answer critical questions, and reviewed the Settlement to make sure it was fair to the Class.
9 *Id.* Plaintiff was also deposed, and provided crucial testimony in support of mediations and in
10 preparation of her Motion for Class Certification. *Id.* No action would likely have been taken by Class
11 Members individually, and no compensation would have been recovered for them, but for Plaintiff's
12 services on behalf of the Class. *Id.*

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

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

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

27 Plaintiff seeks appointment of Aegis Law Firm, PC as Class Counsel. The attorneys performed
28 significant work and expended litigation costs in prosecuting the matter with no guarantee of any

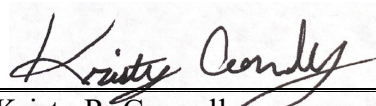
1 payment. Connolly Decl., ¶ 40. Plaintiff's Counsel seeks preliminary approval for \$700,000.00 in
2 attorneys' fees, which is up to one-third of the Gross Settlement Amount, and up to \$25,000.00 in
3 reimbursement of litigation costs. Given the work performed in this matter, the extensive information
4 exchange, and substantial recovery obtained on behalf of Plaintiff and the Class, Plaintiff's Counsel
5 achieved a settlement through efficient and diligent work. *See generally*, Connolly Decl. At final
6 approval, Plaintiff's Counsel will fully brief the merits of its request for the award of attorneys' fees
7 and litigation costs. *Id.* at ¶ 41.

8 **V. CONCLUSION**

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

13
14 Dated: June 6, 2024

AEGIS LAW FIRM, PC

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16 By: 
17 Kristy R. Connolly
18 Attorneys for Plaintiff
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