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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF STANISLAUS

JERMAINE LEE KEYS, individually and on behalf of all others similarly situated, Plaintiffs, vs. FLORY INDUSTRIES; and DOES 1 through 20, inclusive, Defendants.	Case No. CV-23-003252 *Assigned for All Purposes to:* *Judge Sonny Sandhu* *Dept. 24* **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

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I. INTRODUCTION

Pursuant to California Rules of Court 3.769 (d) and (e), Plaintiff Jermaine Lee Keys ("Plaintiff") requests that the Court grant preliminary approval of a class action settlement of wage and hour claims, including a claim under the California Private Attorneys General Act of 2004, codified at Lab. Code § 2698, *et seq.* ("PAGA"), entered into with Defendant Flory Industries ("Defendant") (collectively, Plaintiff and Defendant referred to as the "Parties"). The putative class consists of approximately 447 non-exempt employees who worked for Defendant in California (individually, "Class Member"; collectively, the "Class") from September 1, 2021, through the date of preliminary approval of the Settlement (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 Total Settlement Amount of $420,000 allocated to approximately 447 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 $140,000) and up to $30,000.00 in reimbursement of costs to Plaintiff's Counsel for services rendered as counsel on this matter;

(3) Service Payment of up to $15,000.00 to the Named Plaintiff;

(4) Settlement Administration fees and costs of up to $10,000.00; and

(5) Allocation of $25,000 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 during the PAGA Period (the "Aggrieved Employees").

With each Class Member allocated an average recovery of approximately $940 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 Julia M. Toscano in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Toscano 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, 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, arms-length bargaining at and after mediation between experienced attorneys. As such, Plaintiff requests that the Court grant preliminary approval of the Settlement, conditionally certify the Class for settlement purposes only, appoint Plaintiff as the Class Representative, appoint Plaintiff's Counsel as Class Counsel, appoint ILYM Group, Inc. as the Settlement Administrator, authorize the Settlement Administrator to send notice of the Settlement, and set a final approval hearing date.

II. SUMMARY OF THE LITIGATION

On June 12, 2023, Plaintiff filed a putative class action on behalf of Defendant's non-exempt employees alleging the following causes of action: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide meal periods, (4) failure to permit rest breaks, (5) failure to reimburse business expenses, (6) failure to provide accurate itemized wage statements,(7) failure to pay wages timely during employment, (8) failure to pay all wages due upon separation of employment, and (9) violation of Business & Professions Code § 17200 et seq. for the preceding claims. Toscano Decl., ¶ 3.

On June 12, 2023, Plaintiff's counsel provided written notice to the LWDA and Defendant regarding Defendant's alleged Labor Code violations, as required by Labor Code § 2699.3(a). Toscano Decl., ¶ 4, 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.* Therefore, on September 7, 2023, Plaintiff filed a First Amended Complaint alleging an additional cause of action against Defendant for Enforcement of Labor Code § 2698 et seq. ("PAGA") and submitted a conformed copy of the First Amended Complaint to the LWDA. *Id.*, Ex. 3.

The Parties engaged in formal discovery. Toscano Decl., ¶ 5. Plaintiff served written discovery on Defendant, in which Defendant produced Plaintiff's personnel files, policy documents, and class members' timekeeping and payroll records. *Id.* After formal discovery and engaging in numerous discussions between the Parties' attorneys, the Parties agreed to attend private mediation. *Id.* In addition to Defendant's formal discovery responses, Defendant also produced records of expense reimbursements and meal period waivers. *Id.*

On June 24, 2024, the Parties attended a mediation session with Michael Loeb, a respected mediator, and reached a settlement. Toscano Decl., ¶ 6. After a full day of negotiating, the Parties agreed to a settlement amount and executed a Memorandum of Understanding with the material terms the parties had agreed to. *Id.* The Parties spent the next few months negotiating the terms of the Settlement, which was finalized in February of 2025. *Id.*

Pursuant to the Settlement Agreement, on January 24, 2025, Plaintiff submitted an amended PAGA notice to the LWDA, which alleged additional factual allegations and violations which were investigated and raised at mediation. Toscano Decl., ¶ 7, Ex. 4. On February 7, 2025, Plaintiff also filed a Second Amended Complaint, which is the Operative Complaint, a copy of which was also submitted to the LWDA. *Id.*, Ex. 5.

On April 3, 2025, Plaintiff submitted the Settlement and this Motion to the LWDA pursuant to Labor Code section 2699(l)(2). Toscano Decl., ¶ 8. Ex. 6.

III. SUMMARY OF THE SETTLEMENT

A. Terms of Settlement

Plaintiff and Defendant agreed to settle the class claims in exchange for a Total Settlement Amount of $420,000. Settlement Agreement, § 3.1. The Total 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 $30,000; (4) a Service Payment to Plaintiff of up to $15,000; (5) Settlement Administration fees and costs of $10,000; and (6) a payment to the LWDA of $18,750 pursuant to PAGA. *Id.* at § 3.2.1 – 3.2.5.

Defendant will fund the settlement in two payments of $210,000 with the first payment due no later than 30 days after the Court grants final approval, assuming there are no objections, and the second payment due 90 days after the first payment. Settlement Agreement, § 4.3. Class Members' Individual Settlement Payments will be distributed 14 days after the settlement is funded. *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 only be provided in English; Defendant communicated with its employees in English, therefore the Parties agreed that English-only notice will be sufficient. *See* Settlement Agreement, § 1.11.

The Individual Settlement Payments to Class Members will be allocated for tax purposes as follows: 20% to wages; 80% 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 § 4.2. No portion of the Total Settlement Amount will revert to Defendant. *Id* at § 3.1. Funds from uncashed or undeliverable checks will be tendered by the Settlement Administrator to Court Appointed Special Advocates for Children ("CASA") of Stanislaus County in the name of the Class Member whose check was uncashed. *Id.* at § 4.4.3.

B. Proposed Opt-Out and Objection Process

Once the Court grants preliminary approval, Defendant will have 21 days to deliver the Class Data to the Settlement Administrator. Settlement Agreement, § 4.2. The Settlement Administrator will then have 14 days of receipt 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 Representative's Service Payment, 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 Cal. R. Ct. 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 date of mailing or the original deadline, whichever is later. Settlement Agreement, § 7.6. 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* Cal. R. Ct. 3.766 (d)-(f).

C. Proposed Release

The release to be given by Class Members is limited to Defendant and any of its past, present, and future direct or indirect parents, subsidiaries, predecessors, successors, assigns, and affiliates, as well as each of their past, present, and future officers, directors, employees, partners, members, representatives, fiduciaries, shareholders, and agents, attorneys, insurers, reinsurers, and any individual or entity which could be jointly liable with Defendant (the "Released Parties"). Settlement Agreement, § 1.39. Under the proposed release, Class Members who do not exclude themselves from the Settlement will be deemed to have released the following:

> all Claims set forth in the Action, including, but not limited to: Failure to Pay Minimum Wages, Failure to Pay Overtime Wages, Failure to Provide Meal Periods, Failure to Provide Rest Periods, Failure to Pay Sick Pay, Failure to Timely Pay Wages During Employment, Failure to Pay Wages Upon Separation, Failure to Provide Accurate, Itemized Wage Statements, Failure to Maintain Payroll Records, Failure to Timely Pay Wages Owed During Employment; Failure to Reimburse Necessary Business Expenses, and those claims predicated on the same or similar facts and/or claims alleged in the Action; as well as any claims that could have been alleged pled which arise from under the same or similar facts concerning the Plaintiff or the putative class, and; as well as any claims for relief stemming therefrom, including but not limited to claims for unpaid wages, damages,

> liquidated damages, interest, penalties (including but not limited to waiting time penalties), premiums, fees and costs, injunctive relief, declaratory relief, restitution; as well as any claims under the California Labor Code and California Industrial Welfare Commission Wage Orders, specifically for violations of California Labor Code Sections 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 233, 246, 246.5, 510, 512, 558, 1174, 1174.5, 1182, 1182.11, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, and 2698 et seq., 2800, 2802, 2804; as well as any claims under Business and Professions Code Sections &P Code 17200, 17203, 17208, "applicable Wage Orders," Civil Code §§ Sections 3287, 3289, and CCP §Code of Civil Procedure Section 1021.5; and/or any claims which could have been alleged under the same or similar facts, allegations, and/or claims pleaded in the Action.

Aggrieved Employees will release the Released Parties from all claims alleged in the Action and/or Plaintiff's PAGA notice sent to the LWDA or which could have been alleged based on the same facts alleged, which arose during the PAGA Period, regardless of whether they opt out of the Settlement. Settlement Agreement, § 5.3.

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, § 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 September 1, 2021 to the date of preliminary approval of the settlement. Settlement Agreement, §§ 1.5, 1.12. Defendant's records show the Class consists of approximately 447 individuals, making joinder of all Class Members impracticable. Toscano Decl., ¶ 9. 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. 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.

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

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

The typicality requirement is satisfied when the legal theories and facts supporting Plaintiff's claims are substantially similar to other class members. *See Classen v. Weller*, 145 Cal. App. 3d 27, 46 (1983). Here, Plaintiff alleges that he 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, expense reimbursement, meal period, and rest break practices and policies. Toscano Decl., ¶ 11. Through documents and information exchanged in formal discovery, including production of thousands of pages of documents by Defendant, Plaintiff confirmed that these common policies and practices similarly affected Plaintiff and the Class. *Id.* Thus, Plaintiff's claims arise from the same employment practices and are based on the same legal theories as those applicable to other Class Members, as further explained in Plaintiff's exposure analysis below.

c. *<u>Plaintiff and Plaintiff's Counsel Will Adequately Represent the Interests of the Proposed Class</u>*

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

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

Class treatment is superior to other methods of adjudication when the probability is small that each class member will come forward to prove his or her claim and when the class approach would deter and redress the alleged wrongdoing. *See Linder v. Thrifty Oil Co.*, 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

447 Class Members had shown any interest in bearing the expense and burden of litigating their own claims. Toscano Decl. ¶ 22. 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. The Settlement is the Result of Arm's-Length Negotiations

Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered. Thus, there is a presumption that settlement negotiations are conducted in good faith. Here, the Settlement was the product of extensive investigation and a full day mediation session with a respected mediator after extensive discovery. Toscano Decl. ¶¶ 5-6. 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 ¶ 6. The amount of Plaintiff's requested Service Award was not negotiated until after the Parties agreed to the Gross Settlement Amount and many other terms. *Id.* at ¶ 23.

b. Plaintiff's Counsel Conducted Sufficient Investigation and Discovery

Plaintiff's Counsel thoroughly investigated the class claims, applicable law, and potential defenses. *See generally,* Toscano Decl. In particular, Plaintiff's Counsel assessed the value of the class claims using Defendant's data and documents produced through formal and informal discovery. Toscano Decl., ¶ 11. Plaintiff's counsel extensively reviewed policy documents and Class Members' time and pay records to perform a thorough analysis. *Id*. Further, Plaintiff's 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, Plaintiff's Counsel fully understood the strengths and weaknesses of the claims before the Parties reached a settlement. *Id*.

c. <u>Plaintiff's Counsel is Experienced in Similar Litigation</u>

Plaintiff is represented by Aegis Law Firm, PC ("Class Counsel"). Class Counsel prosecute wage and hour class actions on behalf of employees and others who have had their rights violated. Toscano Decl. ¶¶ 26-38. The attorneys working on this case have been appointed class counsel in many cases, through both contested motions and settlement approval motions. *Id.* Thus, Plaintiff's Counsel has extensive experience in similar litigation and should be appointed as Class Counsel.

2. The Settlement is Reasonable Given the Strengths of Plaintiff's 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 Plaintiff and his 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. Toscano Decl., ¶ 13. To determine if the amount offered at mediation was reasonable, Plaintiff's Counsel weighed that figure against many risk factors. *Id.* at ¶ 15. If Plaintiff continued to prosecute the claims rather than accept a settlement, Plaintiff would have faced deadlines to file a motion for class certification, had to have engaged in more 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, Plaintiff contends that his 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. Toscano Decl., ¶ 12. 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 ¶ 14.

<u>Minimum Wage and Overtime Claims</u>: Plaintiff's minimum wage and overtime claims were premised on the theory that Defendant failed to compensate class members for all time worked, including the time spent waiting in line to clock in or clock out from work. Specifically, Plaintiff alleges that Class Members were required to wait 2-3 minutes before they could clock in/out because there were not enough timeclocks at the job site. Assuming unpaid wages of 5 minutes per shift, Plaintiff's expert calculated a maximum exposure of $1,166,717. However, Defendant argued that it maintained policies of paying for all recorded work and that there was no evidence that Class Members were required to complete any job duties before they clocked in for work. As such, this claim could become highly individualized, reliant on Class Member testimony, and difficult to certify. As such, Plaintiff assumed there was a 30% chance of success at class certification and 20% chance of success on the merits at trial, rendering the claim worth approximately 70,000. Toscano Decl., ¶ 16.

Meal Period Claims: Plaintiff's meal period claim was potentially worth about $189,961 in light of the violations shown in the records (e.g. late, short, missed meal periods). However, Defendant argued that it maintained compliant written policies and that employees could waive their meal periods. Indeed, Defendant produced evidence of signed meal waivers. Further, Defendant produced evidence that it paid a significant amount of meal period premiums for meal periods that were not waived. Thus, Plaintiff 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, Plaintiff's counsel believed there was a 30% chance succeeding at class certification and a 20% chance at trial, resulting in a value of $11,392. Toscano Decl., ¶ 17.

Rest Break Claim: Plaintiff alleged that Defendant failed to authorize timely rest breaks due to the productivity requirements imposed on Class Members. If Plaintiff could prove a 100% violation rate for each shift over 3.5 hours, then damages could reach up to $9,473,933.00. However, a 100% violation rate is unrealistic, especially in light of the fact that Defendant maintained facially compliant written rest break policies. Further, Defendant argued that Class Members could again choose to waive their rest breaks, even though one was authorized or provided. As such, this claim would have heavily relied on Class Member testimony, making it a riskier claim at class certification and liability stages. Plaintiff's counsel believed there was a 20% chance succeeding at class certification and a 10% chance at trial, resulting in a maximum value of $94,739. Toscano Decl., ¶ 18.

Expense Reimbursement Claim: Plaintiff alleged that Defendant failed to reimburse the class for business expenses necessarily incurred in carrying out their job duties. Specifically, Plaintiff alleged that he was required to use his personal cell phone at work to communicate with her manager. However, Defendant provided evidence that it issued phones or expense reimbursements to select Class Members who did require the use of cell phones to carry out their job duties. Defendant argued that Plaintiff did not need to use his personal cell phones, and to the extent he did, it was his personal choice and not a requirement in furtherance of his job duties. Further, even if Class Members, like Plaintiff, did choose to use their personal cell phones, there is no source of common proof as to who incurred expenses and whether they sought reimbursement, making the claim difficult to prove at trial. Accordingly, Plaintiff did not assign any significant value to this claim. Toscano Decl., ¶ 19.

Waiting Time and Wage Statement Penalties: Plaintiff's Counsel also considered the arguable presence of various derivative penalties, and weighed the potential recoveries against probable defenses. Specifically, Defendant could argue that Plaintiff could not prove the "willful" prong needed to obtain waiting time penalties under Labor Code section 203. Additionally, Defendant could argue that Plaintiff could not show that Class Members suffered an "injury" as a result of wage statement violations, as required by Labor Code section 226, or that the wage statements correctly reflected the wages paid and owed. Moreover, Plaintiff would not recover any of these derivative penalties if he failed to prove the underlying claims. Although the Class arguably could have seen a payout of approximately $1.9 million for waiting time penalties and $1.6 million for wage statement penalties, Plaintiff would not recover any of these derivative penalties if he failed to prove the underlying claims. Thus, Plaintiff discounted these claims assuming a 30% chance of class certification and 20% chance at the merits for both claims, resulting in a realistic value of around $76,000 for the waiting time claim and $67,000 for the wage statement claim. Toscano Decl. ¶ 20.

PAGA Claim: The PAGA claim presented even higher hurdles. Although Plaintiff's Counsel found Defendant's exposure could potentially reach approximately $3.92 million under Labor Code section 2699(f), assuming the initial penalty rate of $100 for each pay period, Plaintiff 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. 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 $25,000 of the Gross Settlement Amount to settle these claims. Toscano Decl. ¶ 21.

C. The Requested Service Award for Plaintiff

Plaintiff seeks a Service Award of up to $15,000 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, Plaintiff had the option to pursue his claims individually, but instead chose to pursue this class action, delaying individual recovery until approval of a class action settlement. Toscano Decl., ¶ 22. Throughout the case, Plaintiff assisted counsel in gathering the evidence necessary to prosecute the class claims, maintained regular contact with counsel, was available on the day of mediation and communicated with his 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 Plaintiff's services on behalf of the Class. *Id.*

By actively pursuing this action, Plaintiff 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 Plaintiff's service as the class representative and for a general release of all employment claims is reasonable and should be preliminarily approved. At the final approval stage, Plaintiff will further support the request for the Service by declarations addressing the factors for the award. Toscano Decl., ¶ 24.

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").

Plaintiff seeks appointment of Aegis Law Firm, PC as Class Counsel. The attorneys performed significant work and expended litigation costs in prosecuting the matter with no guarantee of any payment. Toscano Decl., ¶ 38. Plaintiff's Counsel seeks preliminary approval for $140,000.00 in attorneys' fees, which is up to one-third of the Gross Settlement Amount, and up to $30,000.00 in reimbursement of litigation costs. Given the work performed in this matter, the extensive information exchange, and substantial recovery obtained on behalf of Plaintiff and the Class, Plaintiff's Counsel achieved a settlement through efficient and diligent work. *See generally,* Toscano Decl. At final approval, Plaintiff's Counsel will fully brief the merits of its request for the award of attorneys' fees and litigation costs. *Id.* at ¶ 39.

V. CONCLUSION

The Parties have negotiated a fair and reasonable Settlement of the class claims in light of the risks present in this case. Plaintiff has 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: April 3, 2025

AEGIS LAW FIRM, PC

By: ______________________
Julia Toscano
Attorneys for Plaintiff