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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

LUIS SANCHEZ, individually and on behalf
of all others similarly situated,

Plaintiffs,

vs.

CRH CALIFORNIA WATER, INC.; and
DOES 1 through 20, inclusive,

Defendants.

Case No. 22STCV25586

Assigned For All Purposes To:

Judge Kenneth R. Freeman

Dept. 14

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

Date: October 8, 2024

Time: 10:00 a.m.

Dept: 14

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1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court 3.769 (d) and (e), Plaintiffs Luis Sanchez and Juan Jauregui
3 (“Plaintiff”) requests that the Court grant preliminary approval of a class action settlement of wage and
4 hour claims, including a claim under the California Private Attorneys General Act of 2004, codified at
5 Lab. Code § 2698, *et seq.* (“PAGA”), entered into with Defendant CRH California Water (“Defendant”)
6 (collectively, Plaintiffs and Defendant referred to as the “Parties”). The putative class consists of
7 approximately 900 non-exempt employees who worked for Defendant in California (individually,
8 “Class Member”; collectively, the “Class”) from August 9, 2018 to January 8, 2024 (the “Class Period”).
9 The basic terms of the Class Action and PAGA Settlement Agreement and Class Notice (“Settlement
10 Agreement” or “Settlement”)¹ provide for the following:

- 11 (1) A non-reversionary Gross Settlement Amount of \$2,400,000.00 allocated a pro rata
12 basis according to the number of weeks each Class Member worked during the
13 Class Period;
- 14 (2) An award of up to one-third of the Gross Settlement Amount (currently \$800,000)
15 and up to \$30,000.00 in reimbursement of costs to Plaintiffs’ Counsel for services
16 rendered as counsel on this matter;
- 17 (3) Service Payments of up to \$10,000.00 to each of the Named Plaintiff (\$20,000
18 total);
- 19 (4) Settlement Administration fees and costs of up to \$13,500.00; and
- 20 (5) Allocations of \$100,000 for resolution of civil penalties under PAGA. Seventy-
21 five percent (75%) of this payment will be paid to the California Labor and
22 Workforce Development Agency (“LWDA Payment”), and twenty-five percent
23 (25%) will be paid to Class Members who worked for Defendant during the PAGA
24 Period (the “Aggrieved Employees”).

25 _____
26 ¹ A true and correct copy of the fully-executed “Class Action and PAGA Settlement Agreement and
27 Class Notice” is attached as **Exhibit 1** to the Declaration of Kristy R. Connolly in Support of Plaintiffs’
28 Motion for Preliminary Approval of Class Action Settlement (“Connolly Decl.”), filed concurrently
herewith. Unless otherwise defined herein, all capitalized terms in this Motion will be used as such terms
are defined and used in the Settlement.

1 With each Class Member allocated an average recovery of approximately \$1,596 from the Net
2 Settlement Amount, the Settlement satisfies the criteria for preliminary approval and falls well within
3 the range of reasonableness given the risks and costs of continued litigation. The Settlement was reached
4 through informed, arms-length bargaining at and after mediation between experienced attorneys. As
5 such, Plaintiffs request that the Court grant preliminary approval of the Settlement, conditionally certify
6 the Class for settlement purposes only, appoint Plaintiffs as the Class Representatives, appoint
7 Plaintiffs' Counsel as Class Counsel, appoint Phoenix Settlement Administrator as the Settlement
8 Administrator, authorize the Settlement Administrator to send notice of the Settlement, and set a final
9 approval hearing date.

10 **II. SUMMARY OF THE LITIGATION**

11 On August 9, 2022, Plaintiff Sanchez filed a putative class action on behalf of Defendant's non-
12 exempt employees alleging the following causes of action: 1) Failure to Pay Minimum Wages; (2) Failure
13 to Pay Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to Permit Rest Breaks; (5) Failure
14 to Reimburse Business Expenses; (6) Failure to Provide Accurate Itemized Wage Statements; (7) Failure
15 to Pay Wages Timely During Employment; (8) Failure to Pay All Wages Due Upon Separation of
16 Employment; and (9) Violation of Business and Professions Code §§ 17200, et seq.; for the preceding
17 claims. Connolly Decl., ¶ 3. Additionally, on August 9, 2022, Plaintiffs' counsel provided written notice
18 to the LWDA and Defendant regarding Defendant's alleged Labor Code violations, as required by Lab.
19 Code § 2699.3(a), on behalf of Plaintiff Sanchez. *Id.* at ¶ 4, Exhibit. 3. The LWDA did not respond to this
20 notice, indicating it did not intend to investigate, thus allowing Plaintiff to bring a PAGA claim against
21 Defendant. *Id.* As such, on November 8, 2022, Plaintiff amended his complaint to add a PAGA claim. *Id.*

22 On July 14, 2023, Plaintiff Jauregui filed a putative class action on behalf of Defendant's non-
23 exempt employees who performed work on a commission-only basis. Connolly Decl., ¶ 5. This action
24 was pending in the Orange County Superior Court with the Case No. 30-2023-01336814-CU-OE-CXC.
25 *Id.*

26 The Parties agreed to attend early, global mediation. Connolly Decl., ¶ 6. Defendant informally
27 produced Plaintiffs' personnel files, policy documents regarding bonuses and commissions, timekeeping,
28 meal and rest breaks, and a 20% sample of class members' timekeeping and payroll records. *Id.*

1 On October 10, 2023, the Parties attended private mediation with Lynn Frank, a respected wage
2 and hour mediator. Connolly Decl., ¶ 7. Although the action did not settle at mediation, the mediator made
3 a mediator's proposal which was eventually accepted by all Parties. *Id.* The Parties spent the next few
4 months negotiating the terms of the Settlement, which was finalized in February of 2024. *Id.*

5 Pursuant to the terms of the Settlement Agreement, the Parties stipulated to add Mr. Jauregui as a
6 second named plaintiff and class representative to this action. Connolly Decl., ¶ 8. The operative Second
7 Amended Complaint was filed on January 9, 2024. *Id.* Accordingly, Mr. Jauregui dismissed his action
8 pending in the Orange County Superior Court so that the Parties can seek this Court's approval of the
9 Settlement in one action. *Id.*

10 On April 9, 2024, Plaintiffs submitted the Settlement to the LWDA pursuant to Lab. Code §
11 2699(1)(2). Connolly Decl., ¶ 9. Exhibit 4 (Confirmation of Submission of Settlement to LWDA).

12 **III. SUMMARY OF THE SETTLEMENT**

13 **A. Terms of Settlement**

14 Plaintiffs and Defendant agreed to settle the claims in exchange for a Gross Settlement Amount
15 of \$2,400,000.00. Settlement Agreement, § 3.1. The Gross Settlement Amount will be used to make
16 payments for the following: (1) Individual Settlement Payments to Participating Class Members; (2)
17 attorneys' fees to Class Counsel of up to one-third of the Gross Settlement Amount; (3) reimbursement
18 of Class Counsel's litigation costs of up to \$30,000; (4) a Service Payment to each named Plaintiff of
19 up to \$10,000 (\$20,000 total); (5) Settlement Administration fees and costs of \$13,500; and (6) a
20 payment to the LWDA of \$75,000 pursuant to PAGA. *Id.* at § 3.2.1 – 3.2.5. Class Members' Individual
21 Settlement Payments will be distributed after final approval of the Settlement and after Defendant funds
22 the Gross Settlement Amount. *Id.* at § 4.3. Individual Settlement Payments will be calculated by
23 comparing the total Qualifying Workweeks for the Class to each individual Class Member's Qualifying
24 Workweeks. *Id.* at § 3.2.4. The Settlement Administrator will calculate the actual estimated recovery to
25 include in the Class Notice and provide the estimated low and high range of possible recovery at final
26 approval. *Id.* at § 7.4.2; Settlement Agreement, Ex. A (Notice of Class Action Settlement). The class
27 notice will be provided in English along with a Spanish translation. *See* Settlement Agreement, § 1.11.
28

1 Once the Court grants final approval and enters judgment, Plaintiffs will provide Notice of Entry of Final
2 Judgment and the Settlement Administrator will post the Notice on its website.

3 The Individual Settlement Payments to Class Members will be allocated for tax purposes as
4 follows: 20% to wages; 80% to penalties and interest. Settlement Agreement, § 3.2.4.1. The employer-
5 side payroll taxes on the portion allocated to wages will be paid by Defendant separately from, and in
6 addition to the Gross Settlement Amount. *Id.* at § 4.2. No portion of the Gross Settlement Amount will
7 revert to Defendant. *Id.* at § 3.1. Funds from uncashed or undeliverable checks will be tendered by the
8 Settlement Administrator to the State Controller Unclaimed Property Fund in the name of the Class
9 Member for whom the funds are designated. *Id.* at § 4.4.3.

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

11 Once the Court grants preliminary approval, Defendant will have 21 days to deliver the Class Data
12 to the Settlement Administrator. Settlement Agreement, § 4.2. The Settlement Administrator will then
13 have 14 days to send Class Members the Notice of Class Action Settlement (“Class Notice”) by first-class
14 mail after checking for updated addresses through the National Change of Address database. *Id.* at § 8.4.2.
15 The Class Notice provides information regarding the nature of the lawsuit, a summary of the substance
16 of the settlement terms, the formula for calculating Individual Settlement Payments, the individual’s
17 estimated payout, a statement that Class Members who take no action will release their claims and
18 receive settlement checks, instructions regarding how to dispute the calculations, instructions regarding
19 how to request exclusion or object to the Settlement, the date for the final approval hearing, the amounts
20 sought for attorneys’ fees and costs, the Settlement Administration Costs, the Class Representatives’
21 Service Payments, and the PAGA allocation. *See* Settlement Agreement, Ex. A (Class Notice).

22 The Class Notice provides instructions for Class Members who choose to exclude themselves
23 from the Settlement. *See* Settlement Agreement § 8.5.1. To opt out, Class Members are instructed to
24 submit a Request for Exclusion to the Settlement Administrator by a specified date (60 days after the date
25 of mailing of the Class Notice). *See* Settlement Agreement, Ex. A (Class Notice), pp. 1, 6. Class Members
26 do not need to submit a claim form to participate in the Settlement. *Id.* at p. 2. Class Members are informed
27 of how they can object to the Settlement, and the Class Notice informs Class Members of the date, time,
28 and location of the final fairness and approval hearing so that they can appear in person. *Id.* at pp. 2, 8.

1 The Class Notice also informs Class Members to check the Administrator's website or contact Class
2 Counsel to verify the date and time of the Final Approval Hearing. *Id.* at p. 8. Accordingly, the content of
3 the Class Notice complies with the requirements of Cal. R. Ct. 3.766(d).

4 If Class Notice packets are returned as undeliverable, the Settlement Administrator will perform a
5 skip-trace or other search, and re-mail the Class Notice with an extended deadline, to opt out or object, of
6 14 days from the date of mailing or the original deadline, whichever is later. Settlement Agreement, §
7 8.4.4. The initial 60-day notice period and extension process ensures the notice program provides due
8 process by giving Class Members enough time to determine whether they want to participate in the
9 Settlement. This means of notice is reasonably calculated to apprise Class Members of the pendency of
10 the action. *See* Cal. R. Ct. 3.766 (d)-(f).

11 **C. Proposed Release**

12 The release to be given by Class Members is limited to Defendant and each of its former and
13 present directors, officers, shareholders, owners, members, agents, representatives, attorneys, insurers,
14 partners, franchisors, including but not limited to Culligan International, investors shareholders,
15 administrators, joint venturers, predecessors, successors, assigns, subsidiaries, and affiliates (the
16 “Released Parties”). Settlement Agreement, § 1.41. Under the proposed release, Class Members who
17 do not exclude themselves from the Settlement will be deemed to have released the following:

18 all causes of action and claims pled in the Action and all other claims, such as those under
19 the California Labor Code, Industrial Welfare Commission Wage Orders, regulations,
20 and/or other provisions of law, that could have been alleged based on the facts pled in the
21 Action, including, but not limited to, all of the following claims for relief: (i) failure to pay
22 all regular wages, minimum wages and overtime wages due (Cal. Lab. Code §§ 510, 558,
23 1194, 1194.2, 1197, 1197.1, & 1198); (ii) failure to provide compliant meal periods (Cal.
24 Lab. Code §§ 226.7 & 512); (iii) failure to provide compliant rest breaks (Cal. Lab. Code §
25 226.7); (iv) failure to timely pay wages during employment (Cal. Lab. Code §§ 204 & 210);
26 (v) failure to provide complete, accurate wage statements (Cal. Lab. Code § 226); (vi) failure
27 to pay wages timely at time of termination or resignation (Cal. Lab. Code §§ 201-203); (vii)
28 failure to reimburse necessary business expenditures (Cal. Lab. Code §§ 2800 & 2802);

(viii) unfair business practices that could have been premised on the claims, causes of action or legal theories of relief described above or any of the claims, causes of action or legal theories of relief pleaded in the operative complaint (Cal. Bus. & Prof. Code § 17200, *et seq.*); (ix) any claim for costs and attorneys’ fees and expenses; and (x) any claim arising from the claims described above under applicable federal, state, local or territorial law as well as applicable regulations and Industrial Welfare Commission Wage Orders.

Settlement Agreement, § 6.3.

Aggrieved Employees will release the Released Parties from all claims that were alleged in the Actions or could have been alleged in the Action and the PAGA notice exhausted in Plaintiffs’ notice(s) sent to the LWDA and alleged in the operative complaint, regardless of whether Aggrieved Employees opt out of the Class. *See* Settlement Agreement, §§ 6.4, 8.5.4.

Only Plaintiffs will agree to a general release of any and all claims, whether known or unknown, which exist or may exist on Plaintiffs’ behalf as of the date of the Settlement, and a waiver of Civ. Code § 1542. Settlement Agreement, §§ 6.1 – 6.2.

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 California citizens currently or formerly employed by Defendant in California at any time from August 9, 2018 to January 8, 2024. Settlement Agreement, §§ 1.5, 1.12. Defendant’s records show the Class consists of approximately 900 individuals, making joinder of all Class Members impracticable. Connolly Decl., ¶ 10. Further, the Class

1 is readily ascertainable from Defendant's business records because all Class Members are current or
2 former employees of Defendant. *Id.*

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

4 "[T]he 'community of interest requirement embodies three factors: (1) predominant common
5 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3)
6 class representatives who can adequately represent the class.'" *Fireside Bank v. Superior Court*, 40 Cal.
7 4th 1069, 1089 (2007) (quoting *Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 470 (1981)).

8 a. Common Questions Predominate

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

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

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

26 The typicality requirement is satisfied when the legal theories and facts supporting Plaintiff's
27 claims are substantially similar to other class members. *See Classen v. Weller*, 145 Cal. App. 3d 27, 46
28 (1983). Here, Plaintiffs allege that they and other Class Members were employed by Defendant and

1 injured by Defendant's common wage and hour policies and practices, including Defendant's
2 scheduling, timekeeping, minimum wage pay, overtime pay, meal period, and rest break practices and
3 policies. Connolly Decl., ¶ 12. Through documents and information exchanged in informal discovery,
4 Plaintiffd confirmed that these common policies and practices similarly affected Plaintiff and the Class.
5 *Id.* Thus, Plaintiff's claims arise from the same employment practices and are based on the same legal
6 theories as those applicable to other Class Members, as further explained in Plaintiff's exposure analysis
7 below.

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

10 Certification requires adequacy of both the proposed class representative(s) and proposed class
11 counsel. With respect to the class representative, a plaintiff must adequately represent and protect the
12 interests of other members of the class and demonstrate that his or her claim is not inconsistent with the
13 claims of other members of the class. *See Capitol People First v. State Dept of Developmental Servs.*,
14 155 Cal. App. 4th 676, 696-697 (2007). Here, Plaintiffs' interests are coextensive with the interests of
15 the Class. Plaintiffs demonstrated an ability to advocate for the interests of the Class by litigating this
16 action, gathering documents and information, being available on the day of mediation to answer
17 questions, meeting with their attorneys on several occasions to understand the claims and theories of
18 liability at issue, assisting attorneys in preparing for mediation, reviewing the proposed settlement
19 agreement to understand its legal effect, and obtaining a fair settlement on behalf of Class Members
20 who stand to recover a substantial amount under the Settlement.

21 Likewise, Aegis Law Firm, PC has expended considerable time and effort on this case and will
22 continue to do so through final approval. *See generally*, Connolly Decl. Accordingly, Plaintiffs should
23 be appointed Class Representatives, and Plaintiffs' Counsel should be appointed Class Counsel

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

25 Class treatment is superior to other methods of adjudication when the probability is small that
26 each class member will come forward to prove his or her claim and when the class approach would deter
27 and redress the alleged wrongdoing. *See Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 435, 446 (2000);
28 *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524, 1537-1538 (2008). Here, none of the other

1 900 Class Members had shown any interest in bearing the expense and burden of litigating their own
2 claims. Connolly Decl. ¶ 21. Thus, a class action is the superior method for seeking relief.

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

4 Preliminary approval is warranted if the settlement falls within a “reasonable range.” *See North*
5 *County Contractor’s Ass’n., Inc. v. Touchstone Ins. Servs.*, 27 Cal. App. 4th 1085, 1089-90 (1994);
6 Conte & Newberg, *Newberg on Class Actions*, § 11.26 (4th ed. 2002). In reviewing the fairness of a
7 class action settlement, due regard should be given to what is “otherwise a private consensual
8 agreement between the parties.” *Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380, 1389
9 (2010). The inquiry “must be limited to the extent necessary to reach a reasoned judgment that the
10 agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties,
11 and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Id.*

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

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

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

19 Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless
20 evidence to the contrary is offered. Thus, there is a presumption that settlement negotiations are
21 conducted in good faith. Here, the Settlement was the product of extensive investigation and a full day
22 mediation session with a respected mediator after informal discovery. Connolly Decl. ¶¶ 6-7. The
23 negotiations were adversarial, conducted at arm’s length and tempered by the efforts of both sides to
24 serve the interests of their clients. *Id.* at ¶ 7. The amount of Plaintiffs’ requested Service Awards was
25 not negotiated until after the Parties agreed to the Gross Settlement Amount and many other terms. *Id.*
26 at ¶ 22.

27 *b. Plaintiffs’ Counsel Conducted Sufficient Investigation and Discovery*

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

9 *c. Plaintiff's Counsel is Experienced in Similar Litigation*

10 Plaintiffs are represented by Aegis Law Firm, PC and Haines Law Group, APC ("Class Counsel").
11 Class Counsel prosecute wage and hour class actions on behalf of employees and others who have had
12 their rights violated. Connolly Decl. ¶¶ 24-36; Declaration of Paul Haines. The attorneys working on
13 this case have been appointed class counsel in many cases, through both contested motions and
14 settlement approval motions. *Id.* Thus, Plaintiffs' Counsel has extensive experience in similar litigation
15 and should be appointed as Class Counsel.

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

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

22 While Plaintiffs and their counsel believed and continue to believe this is a strong case for
23 certification, the significant risks and expenses associated with class certification and liability
24 proceedings were taken into account. Connolly Decl., ¶ 14. To determine if the amount offered at
25 mediation was reasonable, Plaintiffs' Counsel weighed that figure against many risk factors. If Plaintiffs
26 continued to prosecute the claims rather than accept a settlement, Plaintiffs would have faced deadlines
27 to file a motion for class certification, had to have engaged in formal written discovery and taken
28 depositions, expended time and resources to resolve disputes, prepared and filed potential dispositive

1 motions and/or discovery motions, and engaged in extensive trial preparation. An adverse ruling at any
2 one of these stages could have prevented the Class from obtaining any recovery. *Id.* at ¶¶ 16-17.

3 a. Exposure Analysis

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

7 Compromise is inherent and necessary in the settlement process . . . even if “the relief afforded
8 by the proposed settlement is substantially narrower than it would be if the suits were to be
9 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.”

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

16 Plaintiffs’ unpaid wages claim was premised on the theory that Defendant failed to incorporate
17 commissions into the regular rate of pay for purposes of overtime. Plaintiffs alleged that class members
18 earned commissions based on the items and contracts sold. Plaintiff’s expert calculated that this regular
19 rate claim was worth approximately \$202,500. However, Defendant presented evidence of workweeks
20 in which it did adjust the regular rate to account for these payments. Plaintiffs argued that Defendant
21 should have used the formula which resulted in a more economically beneficial method of compensation
22 for the employees. As such, Plaintiffs assumed there was an 80% chance of success at class certification
23 and 50% chance of success on the merits at trial, rendering the claim worth approximately \$81,000.
24 Connolly Decl., ¶ 16.

25 Plaintiffs’ meal period claim was potentially worth about \$400,759 in light of the violations
26 shown in the records. However, Defendant argued that it maintained compliant written policies and that
27 employees could waive their meal periods, as evidenced by the signed meal period waivers. Further,
28 Defendant provided evidence of over 2,200 instances of meal period premium payments. Thus, Plaintiffs

1 discounted this claim for the risk that the damages could at least be reduced, and that the claim would
2 be hard to certify with a compliant policy. As such, Plaintiffs' counsel believed there was a 60% chance
3 succeeding at class certification and a 40% chance at trial, resulting in a value of \$96,182. Connolly
4 Decl., ¶ 17.

5 Plaintiffs alleged that Defendant failed to separately compensate class members who were paid
6 on a commission-only basis separately for rest periods and non-productive time worked. For shifts
7 where class members were not separately compensated for rest breaks and non-productive time, the
8 damages could reach up to \$1,732,323. However, Defendant argued that this commission plan only
9 impacted 96 employees and that these employees also earned hourly wages, thereby reducing the
10 number of workweeks in which Defendant failed to separately compensate for rest periods. Plaintiffs'
11 counsel believed there was an 80% chance succeeding at class certification and a 60% chance at trial,
12 resulting in a value of \$831,515. Connolly Decl., ¶ 18.

13 Plaintiffs' Counsel also considered the arguable presence of various derivative penalties, and
14 weighed the potential recoveries against probable defenses. Specifically, Defendant could argue that
15 Plaintiffs could not prove the "willful" prong needed to obtain waiting time penalties under Labor Code
16 § 203. Additionally, Defendant could argue that Plaintiffs could not show that Class Members suffered an
17 "injury" as a result of wage statement violations, as required by Labor Code § 226, or that the wage
18 statements correctly reflected the wages paid and owed. Moreover, Plaintiffs would not recover any of
19 these derivative penalties if they failed to prove the underlying claims. Although the Class arguably could
20 have seen a payout of approximately \$2.5 million for waiting time penalties and \$2.3 million for wage
21 statement penalties, Plaintiffs would not recover any of these derivative penalties if they failed to prove
22 the underlying claims. Thus, Plaintiffs discounted these claims assuming a 60% chance of class
23 certification and 40% chance at the merits for both claims, resulting in a realistic value of \$608,042 for
24 the waiting time claim and \$561,600 for the wage statement claim. Connolly Decl., ¶ 19.

25 The PAGA claim presented even higher hurdles. Although Plaintiffs' Counsel found Defendant's
26 exposure could potentially reach approximately \$4,382,200 under Lab. Code § 2699(f), assuming the
27 initial penalty rate of \$100 for all 43,822 pay periods, Plaintiffs would have to prove a violation in every
28 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 Awards for Plaintiffs

Plaintiffs seeks a Service Award of up to \$10,000 each 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, 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 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 representative 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 Awards by declarations addressing the factors for the award. Connolly Decl., ¶ 23.

D. The Requested Attorneys’ Fees and Costs

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

8 Plaintiff seeks appointment of Aegis Law Firm, PC and Haines Law Group, APC as Class
9 Counsel. The attorneys performed significant work and expended litigation costs in prosecuting the
10 matter with no guarantee of any payment. Connolly Decl., ¶ 39. Plaintiffs' Counsel seeks preliminary
11 approval for \$800,000 in attorneys' fees, which is up to one-third of the Gross Settlement Amount, and
12 up to \$30,000.00 in reimbursement of litigation costs. Given the work performed in this matter, the
13 extensive information exchange, and substantial recovery obtained on behalf of Plaintiff and the Class,
14 Plaintiff's Counsel achieved a settlement through efficient and diligent work. *See generally*, Connolly
15 Decl. At final approval, Plaintiffs' Counsel will fully brief the merits of its request for the award of
16 attorneys' fees and litigation costs. *Id.* at ¶ 40.

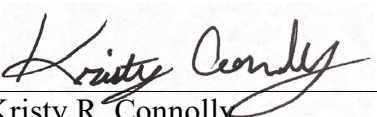
17 **V. CONCLUSION**

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

22
23 Dated: April 8, 2024

AEGIS LAW FIRM, PC

24
25 By:



Kristy R. Connolly
Attorneys for Plaintiff