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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
14 **FOR THE COUNTY OF VENTURA**

15 LUCA MERCURI, individually and on  
16 behalf of all others similarly situated,

17 Plaintiffs,

18 vs.

19 SKYSKOPES, INC.; and DOES 1 through  
20 20, inclusive,

21 Defendants.

Case No. 2023CUOE14396

*Assigned for all purposes to:*

*Hon. Henry J. Walsh*

*Dept. 42*

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

27 Date: April 17, 2025

28 Time: 8:30 a.m.

Dept: 42

**TABLE OF CONTENTS**

|      |                                                                                                                         |    |
|------|-------------------------------------------------------------------------------------------------------------------------|----|
| I.   | INTRODUCTION .....                                                                                                      | 1  |
| II.  | SUMMARY OF THE LITIGATION .....                                                                                         | 2  |
| III. | SUMMARY OF THE SETTLEMENT.....                                                                                          | 3  |
| A.   | Terms of Settlement.....                                                                                                | 3  |
| B.   | Proposed Opt-Out and Objection Process.....                                                                             | 4  |
| C.   | Proposed Release .....                                                                                                  | 5  |
| IV.  | LEGAL ARGUMENTS SUPPORTING PRELIMINARY APPROVAL .....                                                                   | 5  |
| A.   | Provisional Certification of the Class is Appropriate .....                                                             | 5  |
| 1.   | The Proposed Class is Numerous and Ascertainable .....                                                                  | 6  |
| 2.   | A Well-Defined Community of Interest Exists Among Class Members.....                                                    | 6  |
| 3.   | A Class Action is Superior to a Multitude of Individual Lawsuits.....                                                   | 8  |
| B.   | The Settlement Meets the Standards for Preliminary Approval.....                                                        | 8  |
| 1.   | The Settlement is Entitled to a Presumption of Fairness .....                                                           | 8  |
| 2.   | The Settlement is Reasonable Given the Strengths of Plaintiff’s Claims and the<br>Risks and Expense of Litigation ..... | 9  |
| C.   | The Requested Service Award for Plaintiff .....                                                                         | 12 |
| D.   | The Requested Attorneys’ Fees and Costs .....                                                                           | 13 |
| V.   | CONCLUSION.....                                                                                                         | 14 |

## **TABLE OF AUTHORITIES**

### **Cases**

|                                                                                                                      |       |
|----------------------------------------------------------------------------------------------------------------------|-------|
| <i>Bell v. Farmers Ins. Exch.</i> , 115 Cal. App. 4th 715, 726 (2004).....                                           | 13    |
| <i>Brinker Restaurant Corp. v. Superior Court</i> , 53 Cal. 4th 1004, 1021 (2012).....                               | 5, 6  |
| <i>Capitol People First v. State Dep't of Developmental Servs.</i> , 155 Cal. App. 4th 676, 696-697 (2007).....      | 7     |
| <i>Cellphone Termination Fee Cases</i> , 186 Cal. App. 4th 1380, 1389 (2010) .....                                   | 8, 13 |
| <i>Chavez v. Netflix, Inc.</i> , 162 Cal. App. 4th 43, 66, n.11 (2008).....                                          | 13    |
| <i>Classen v. Weller</i> , 145 Cal. App. 3d 27, 46 (1983).....                                                       | 7     |
| <i>Dunk v. Ford Motor Co.</i> , 48 Cal. App. 4th 1794, 1802 (1996) .....                                             | 8     |
| <i>Fireside Bank v. Superior Court</i> , 40 Cal. 4th 1069, 1089 (2007).....                                          | 6     |
| <i>Ghazaryan v. Diva Limousine, Ltd.</i> , 169 Cal. App. 4th 1524, 1537-1538 (2008) .....                            | 8     |
| <i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal. App. 4th 116, 129 (2008).....                                   | 9     |
| <i>Linder v. Thrifty Oil Co.</i> , 23 Cal. 4th 429, 435, 446 (2000) .....                                            | 8     |
| <i>Munoz v. BCI Coca-Cola Bottling Co. of L.A.</i> , 186 Cal. App. 4th 399, 407 (2010).....                          | 9     |
| <i>North County Contractor's Ass'n., Inc. v. Touchstone Ins. Servs.</i> , 27 Cal. App. 4th 1085, 1089-90 (1994)..... | 8     |
| <i>Rebney v. Wells Fargo Bank</i> , 220 Cal. App. 3d 1117, 1139 (1991).....                                          | 10    |
| <i>Richmond v. Dart Industries, Inc.</i> , 29 Cal. 3d 462, 470 (1981).....                                           | 6     |
| <i>Sav-On Drug Stores, Inc. v. Superior Court</i> , 34 Cal. 4th 319, 327 (2004) .....                                | 6, 13 |
| <i>Wershba v. Apple Computer, Inc.</i> , 91 Cal. App. 4th 224, 250 (2001).....                                       | 10    |

### **Statutes**

|                                                             |    |
|-------------------------------------------------------------|----|
| Business and Professions Code § 17200, <i>et seq.</i> ..... | 2  |
| Cal. Lab. Code § 226.....                                   | 12 |
| Lab. Code § 203 .....                                       | 11 |
| Labor Code section 2699(1)(2).....                          | 3  |
| Labor Code section 2699.3(a).....                           | 2  |

### **Other**

|                                                  |   |
|--------------------------------------------------|---|
| California Rules of Court 3.769 (d) and (e)..... | 1 |
|--------------------------------------------------|---|

|   |                                                                                 |   |
|---|---------------------------------------------------------------------------------|---|
| 1 | California Rules of Court Rule 3.766 (d)-(f) .....                              | 5 |
| 2 | California Rules of Court Rule 3.766(d).....                                    | 4 |
| 3 | <b>Treatises</b>                                                                |   |
| 4 | Conte & Newberg, <i>Newberg on Class Actions</i> , § 11.26 (4th ed. 2002) ..... | 8 |

1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court 3.769 (d) and (e), Plaintiff Luca Mercuri (“Plaintiff”)  
3 requests that the Court grant preliminary approval of a class action settlement of wage and hour claims,  
4 including a representative claim under the California Private Attorneys General Act of 2004, codified  
5 at Labor Code §§ 2698, *et seq.* (“PAGA”), entered into with Defendant SkySkopes, Inc. (“Defendant”)  
6 (collectively, Plaintiff and Defendant referred to as the “Parties”). The putative class consists of  
7 approximately 284 non-exempt, hourly employees who worked for Defendant in California  
8 (individually, “Class Member”; collectively, the “Class”) from September 21, 2019 to January 13, 2025  
9 (the “Class Period”). The basic terms of the Class Action and PAGA Settlement Agreement (“Settlement  
10 Agreement” or “Settlement”)<sup>1</sup> provide for the following:

- 11 (1) A non-reversionary Gross Settlement Amount of \$426,000.00 allocated to  
12 approximately 290 Class Members on a pro rata basis according to the number of  
13 weeks each Class Member worked during the Class Period;  
14 (2) An award of up to one-third of the Gross Settlement Amount (currently  
15 \$142,000.00) and up to \$20,000.00 in reimbursement of costs to Plaintiff’s  
16 Counsel for services rendered as counsel on this matter;  
17 (3) Service Payment of up to \$10,000.00 to the Named Plaintiff;  
18 (4) Settlement Administration fees and costs of up to \$10,000.00; and  
19 (5) Allocations of \$15,000.00 for resolution of civil penalties under PAGA. Seventy-  
20 five percent (75%) of this payment will be paid to the California Labor and  
21 Workforce Development Agency (“LWDA Payment”), and twenty-five percent  
22 (25%) will be paid to Class Members who worked for Defendant during the PAGA  
23 Period (the “Aggrieved Employees”).

24 With each Class Member allocated an average recovery of approximately \$789 from the Net  
25

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26 <sup>1</sup> A true and correct copy of the fully-executed “Class Action and PAGA 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.

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 September 21, 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 provide accurate itemized wage statements; (6) failure to pay all wages due upon separation of employment; (7) violation of Business and Professions Code § 17200, *et seq.*; for the preceding claims. Connolly Decl., ¶ 3. On September 21, 2023, Plaintiff's counsel also provided written notice to the LWDA and Defendant regarding Defendant's alleged Labor Code violations, as required by Labor Code section 2699.3(a). *Id.* at ¶ 4, Exhibit 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.* at ¶ 3. As such, on December 28, 2023, Plaintiff filed a First Amended the Complaint adding a PAGA claim. *Id.*

In April of 2024, Plaintiff served Defendant with Special Interrogatories and Requests for Production of Documents, along with a proposed *Belaire-West* opt-out notice and stipulated protective order. Connolly Decl., ¶ 5. After engaging in numerous discussions, the Parties agreed to attend a private mediation session with a stay on formal discovery. *Id.* To prepare for mediation, Defendant informally produced Plaintiff's personnel file, relevant policy documents, and a 25% sample of employees' timekeeping and payroll records. *Id.* Plaintiff's Counsel engaged an expert to quantify the potential exposure using the time and payroll records. *Id.*

On September 26, 2024, the Parties attended a mediation session with Craig J. Ackerman, a respected mediator. Connolly Decl., ¶ 6. The Parties accepted a mediator's proposal at the end of the mediation. *Id.* The Parties spent the next several months negotiating the terms of the Settlement, which

1 was finalized in March of 2025. *Id.* The negotiations were adversarial, conducted at arm's length and  
2 tempered by the efforts of both sides to serve the interests of their clients. *Id.*

3 On March 19, 2025, Plaintiff submitted the Settlement and this Motion to the LWDA pursuant to  
4 Labor Code section 2699(1)(2). Connolly Decl., ¶ 7, Ex. 2.

### 5 **III. SUMMARY OF THE SETTLEMENT**

#### 6 **A. Terms of Settlement**

7 Plaintiff and Defendant agreed to settle the class claims in exchange for a Gross Settlement  
8 Amount of \$426,000.00. Settlement Agreement, § 3.1. The Gross Settlement Amount will be used to  
9 make payments for the following: (1) Individual Settlement Payments to Participating Class Members;  
10 (2) attorneys' fees to Class Counsel of up to one-third of the Gross Settlement Amount; (3)  
11 reimbursement of Class Counsel's litigation costs of up to \$20,000.00; (4) a Service Payment to Plaintiff  
12 of up to \$10,000.00; (5) Settlement Administration fees and costs of \$10,000.00; and (6) a payment to  
13 the LWDA of \$20,000.00 pursuant to PAGA. *Id.* at § 3.1 – 3.2.5.

14 Class Members do not need to submit a claim form to participate in the Settlement. Settlement  
15 Agreement, § 3.1. Pursuant to the Settlement Agreement, Defendant will fully fund the Gross Settlement  
16 Amount within 10 business days of the date the Court grants final approval of the settlement and enters  
17 judgment, or a later date if the judgment is appealed. *Id.* at § 4.4. Class Members' Individual Settlement  
18 Payments will be distributed within 10 business days after Defendant fully funds the Gross Settlement  
19 Amount. *Id.* at § 4.4. Individual Settlement Payments will be calculated by comparing the total number  
20 of Workweeks for the Class to each individual Class Member's number of Workweeks. *Id.* at § 3.2.4.  
21 The Settlement Administrator will calculate the actual estimated recovery to include in the Class Notice  
22 and provide the estimated low and high range of possible recovery at final approval. *Id.* at § 7.4.2;  
23 Settlement Agreement, Ex. A (Notice of Class Action Settlement). The class notice will be provided in  
24 English and Spanish. *See* Settlement Agreement, § 1.11.

25 The Individual Settlement Payments to Class Members will be allocated for tax purposes as  
26 follows: 1/3 to wages; 2/3 to penalties and interest. Settlement Agreement, § 3.2.4.1. The employer-side  
27 payroll taxes on the portion allocated to wages will be paid by Defendant separately from, and in  
28 addition to the Gross Settlement Amount. *Id.* at § 4.3. No portion of the Gross Settlement Amount will

1 revert to Defendant. *Id.* at § 3.1. Funds from uncashed or undeliverable checks will be tendered by the  
2 Settlement Administrator to the State Controller Unclaimed Property Fund in the name of the Class  
3 Member for whom the funds are designated. *Id.* at § 4.4.3.

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

5 Once the Court grants preliminary approval, Defendant will have ten business days to deliver the  
6 Class Data to the Settlement Administrator. Settlement Agreement, § 4.2. The Settlement Administrator  
7 will then have ten business days to send Class Members the Notice of Class Action Settlement (“Class  
8 Notice”) by first-class mail after checking for updated addresses through the National Change of Address  
9 database. *Id.* at §§ 4.3.1, 7.4.2. The Class Notice provides information regarding the nature of the  
10 lawsuit, a summary of the substance of the settlement terms, the formula for calculating Individual  
11 Settlement Payments, the individual’s estimated payout, a statement that Class Members who take no  
12 action will release their claims and receive settlement checks, instructions regarding how to dispute the  
13 calculations, instructions regarding how to request exclusion or object to the Settlement, the date for the  
14 final approval hearing, the amounts sought for attorneys’ fees and costs, the Settlement Administration  
15 Costs, the Class Representative’s Service Payment, and the PAGA allocation. *See* Settlement  
16 Agreement, Ex. A (Class Notice).

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

27 If Class Notice packets are returned as undeliverable, the Settlement Administrator will perform a  
28 skip-trace or other search, and re-mail the Class Notice with an extended deadline, to opt out or object, of

1 14 days from the date of mailing or the original deadline, whichever is later. Settlement Agreement, §  
2 7.6. The initial 60-day notice period and extension process ensures the notice program provides due  
3 process by giving Class Members enough time to determine whether they want to participate in the  
4 Settlement. This means of notice is reasonably calculated to apprise Class Members of the pendency of  
5 the action. *See* California Rules of Court Rule 3.766 (d)-(f).

### 6 **C. Proposed Release**

7 The release to be given by Class Members is limited to Defendant and all of its current and former  
8 officers, directors, subsidiaries, affiliates, shareholders, owners, members, agents, employees, managers,  
9 attorneys, predecessors, successors, assigns, PEO's, staffing agencies, insurers, insureds and any and all  
10 other persons, firms, companies, corporations, and partnerships which could be deemed a joint employer  
11 with Defendant under the law (the "Released Parties"). Settlement Agreement, § 1.40. Under the  
12 proposed release, Class Members who do not exclude themselves from the Settlement will be deemed  
13 to have released the following:

14 any and all claims arising during the Class Period and alleged in the Operative Complaint  
15 and in the PAGA Notice in the Case, and all claims that arise from the claims and legal  
16 theories and primary rights associated with the claims alleged in the Operative Complaint  
17 and PAGA Notice, including the claims for failure to pay minimum wages, failure to pay  
18 overtime wages, failure to provide meal periods, failure to provide rest periods, failure to  
provide accurate itemized wage statements and wage statement penalties, failure to pay all  
wages due on separation and waiting time penalties, and unfair business practice claims  
based on the foregoing.

19 *Id* at § 5.1. Aggrieved Employees will release the Released Parties from all claims for PAGA penalties  
20 arising during the PAGA Period that were alleged, or reasonably could have been alleged, based on the  
21 facts stated in the First Amended and the PAGA Notice, regardless of whether the Aggrieved Employee  
22 opts out of the Class Settlement. *Id* at §§ 5.2, 7.5.4.

## 23 **IV. LEGAL ARGUMENTS SUPPORTING PRELIMINARY APPROVAL**

### 24 **A. Provisional Certification of the Class is Appropriate**

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

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

2           Whether a class is “ascertainable” is “determined by examining (1) the class definition, (2) the  
3 size of the class, and (3) the means available for identifying class members.” *Reyes v. Bd. of Supervisors*,  
4 196 Cal. App. 3d 1263, 1271 (1987). Here, the Class consists all persons currently or formerly employed  
5 by Defendant as a non-exempt, hourly employee in the State of California at any time during September  
6 21, 2019 to January 13, 2025. Settlement Agreement, §§ 1.5, 1.12. At the time of mediation in September  
7 of 2024, Defendant’s records show the Class consists of approximately 284 individuals, making joinder  
8 of all Class Members impracticable. Connolly Decl., ¶ 8. Further, the Class is readily ascertainable from  
9 Defendant’s business records because all Class Members are current or former employees of Defendant.  
10 *Id.*

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

12           “[T]he ‘community of interest requirement embodies three factors: (1) predominant common  
13 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3)  
14 class representatives who can adequately represent the class.’” *Fireside Bank v. Superior Court*, 40 Cal.  
15 4th 1069, 1089 (2007) (quoting *Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 470 (1981)).

16                   a.       Common Questions Predominate

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

22           Plaintiff alleged that Defendant maintained uniform employment policies and/or practices that  
23 illegally deprived Class Members of lawful wages, meal periods, rest breaks, accurate wage statements,  
24 and waiting time pay. Connolly Decl., ¶ 9. Plaintiff’s allegations present common legal and factual  
25 questions of, *inter alia*, whether Defendant applied the same scheduling, timekeeping, minimum and  
26 overtime pay, meal period, and rest break policies to all Class Members; whether these policies and  
27 practices resulted in Labor Code violations; whether Defendant’s conduct was intentional; and whether  
28 Class Members are entitled to penalties. *Id.* These common questions could be resolved using Class

1 Members' schedules, time punches, and payroll records, Defendant's corporate representative's  
2 testimony, written communications between Defendant and Class Members, and Class Member  
3 declarations. *Id.* Thus, the Court can and should exercise its discretion to grant conditional class  
4 certification for settlement purposes.

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

6 The typicality requirement is satisfied when the legal theories and facts supporting Plaintiff's  
7 claims are substantially similar to other class members. *See Classen v. Weller*, 145 Cal. App. 3d 27, 46  
8 (1983). Here, Plaintiff alleges that he and other Class Members were employed by Defendant and  
9 injured by Defendant's common wage and hour policies and practices, including Defendant's  
10 scheduling, timekeeping, minimum wage pay, overtime pay, meal period, and rest break practices and  
11 policies. Connolly Decl., ¶ 10. Through documents and information exchanged in discovery, Plaintiff  
12 confirmed that these common policies and practices similarly affected Plaintiff and the Class. *Id.* Thus,  
13 Plaintiff's claims arise from the same employment practices and are based on the same legal theories as  
14 those applicable to other Class Members, as further explained in Plaintiff's exposure analysis below.

15 *c. Plaintiff and Plaintiff's Counsel Will Adequately Represent the Interests of*  
16 *the Proposed Class*

17 Certification requires adequacy of both the proposed class representative(s) and proposed class  
18 counsel. With respect to the class representative, a plaintiff must adequately represent and protect the  
19 interests of other members of the class and demonstrate that his or her claim is not inconsistent with the  
20 claims of other members of the class. *See Capitol People First v. State Dep't of Developmental Servs.*,  
21 155 Cal. App. 4th 676, 696-697 (2007). Here, Plaintiff's interests are coextensive with the interests of  
22 the Class. Plaintiff demonstrated an ability to advocate for the interests of the Class by litigating this  
23 action, gathering documents and information, being available on the day of mediation to answer  
24 questions, meeting with his attorneys on several occasions to understand the claims and theories of  
25 liability at issue, assisting attorneys in preparing for mediation, reviewing the proposed settlement  
26 agreement to understand its legal effect, and obtaining a fair settlement on behalf of Class Members  
27 who stand to recover a substantial amount under the Settlement.

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

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

5 Class treatment is superior to other methods of adjudication when the probability is small that  
6 each class member will come forward to prove his or her claim and when the class approach would deter  
7 and redress the alleged wrongdoing. *See Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 435, 446 (2000);  
8 *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524, 1537-1538 (2008). Here, none of the other  
9 284 Class Members had shown any interest in bearing the expense and burden of litigating their own  
10 claims. Connolly Decl. ¶ 21. Thus, a class action is the superior method for seeking relief.

### 11 **B. The Settlement Meets the Standards for Preliminary Approval**

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

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

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

#### 26 *a. The Settlement is the Result of Arm's-Length Negotiations*

27 Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless  
28 evidence to the contrary is offered. Thus, there is a presumption that settlement negotiations are

1 conducted in good faith. Here, the Settlement was the product of extensive investigation and a full day  
2 mediation session with a respected mediator after extensive discovery. Connolly Decl. ¶¶ 4-8. The  
3 negotiations were adversarial, conducted at arm's length and tempered by the efforts of both sides to  
4 serve the interests of their clients. *Id.* at ¶ 9. The amount of Plaintiff's requested Service Award was not  
5 negotiated until after the Parties agreed to the Gross Settlement Amount and many other terms. *Id.* at ¶  
6 24.

7 *b. Plaintiff's Counsel Conducted Sufficient Investigation and Discovery*

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

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

18 Plaintiff is represented by Aegis Law Firm, PC ("Class Counsel"). Class Counsel prosecute wage  
19 and hour class actions on behalf of employees and others who have had their rights violated. Connolly  
20 Decl. ¶¶ 23-35. The attorneys working on this case have been appointed class counsel in many cases,  
21 through both contested motions and settlement approval motions. *Id.* Thus, Plaintiff's Counsel has  
22 extensive experience in similar litigation and should be appointed as Class Counsel.

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

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

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

10 *a. Exposure Analysis*

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

14 Compromise is inherent and necessary in the settlement process . . . even if “the relief afforded  
15 by the proposed settlement is substantially narrower than it would be if the suits were to be  
16 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.”

17 *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 250 (2001) (citation omitted). Here, Plaintiff  
18 contends that his claims are based on Defendant's common, class-wide policies and procedures, and  
19 that liability could be determined on a class-wide basis without dependence on individual assessments  
20 of liability. Connolly Decl., ¶ 11. Although the amount of Defendant's potential exposure – if proven –  
21 is substantial, the legitimate and serious risks of succeeding at class certification and trial compelled a  
22 serious consideration of the benefit of a settlement, as discussed below. *Id.* at ¶ 13.

23 Unpaid Wages: Plaintiff's unpaid wages claim was based on the theory that Defendant failed to  
24 properly calculate the regular rate when two rates of pay were paid during the same workweek for  
25 purposes of overtime, meal period premiums, and sick pay. Specifically, Plaintiff alleged that overtime  
26 should have been paid at the blended rate of pay, which is the weighted average for all rates of pay  
27 earned in the workweek. Plaintiff's expert calculated that this claim was worth approximately \$27,309.  
28 However, Defendant argued that it followed a “rate in effect” plan, with some pay periods actually

1 resulting in an overpayment of wages. Furthermore, Defendant provided evidence that it adjusted its  
2 payroll practices by December 2023, in which shift differentials were adjusted to be built into the base  
3 pay, thereby cutting off liability for this claim. With evidence refuting Defendant's common failure to  
4 adjust the regular rate of pay for all class members, this claim could be difficult to certify. As such,  
5 Plaintiff assumed there was a 70% chance of success at class certification and 50% chance of success  
6 on the merits at trial, rendering the claim worth about \$9,000. Connolly Decl., ¶ 14.

7 Meal Period Claims: Plaintiff's meal period claim was potentially worth about \$163,636 in light  
8 of the violations shown in the records. However, Defendant argued that it maintained compliant written  
9 policies and that employees could waive their meal periods. Indeed, Defendant provided evidence of  
10 signed meal waivers. Further, it provided evidence that it paid meal period premiums when it was  
11 determined that a meal period was not provided, rather than the employee voluntarily missing a lunch.  
12 Thus, Plaintiff discounted this claim for the risk that the damages could at least be reduced, and that the  
13 claim would be hard to certify with a compliant policy. As such, Plaintiff's counsel believed there was  
14 a 60% chance succeeding at class certification and a 40% chance at trial, resulting in a value of about  
15 \$40,000. Connolly Decl., ¶ 15.

16 Rest Break Claim: Plaintiff alleged that Defendant failed to authorize timely rest breaks due to  
17 the productivity requirements imposed on class members. If Plaintiff could prove a 100% violation rate  
18 for each shift over 3.5 hours, then damages could reach up to \$664,806. However, Defendant argued  
19 that it maintained compliant written rest break policies and that class members could again choose to  
20 waive their rest breaks. As such, this claim would have relied on Class Member testimony, making it a  
21 riskier claim at class certification and liability stages. Plaintiff's counsel believed there was a 50%  
22 chance succeeding at class certification and a 30% chance at trial, resulting in a value of about \$99,000.  
23 Connolly Decl., ¶ 16.

24 Waiting Time and Wage Statement Penalties: Plaintiff's Counsel also considered the arguable  
25 presence of various derivative penalties, and weighed the potential recoveries against probable defenses.  
26 Specifically, Defendant could argue that Plaintiff could not prove the "willful" prong needed to obtain  
27 waiting time penalties under Labor Code § 203. Additionally, Defendant could argue that Plaintiff could  
28 not show that Class Members suffered an "injury" as a result of wage statement violations, as required by

1 Labor Code § 226, or that the wage statements correctly reflected the wages paid and owed. Moreover,  
2 Plaintiff would not recover any of these derivative penalties if he failed to prove the underlying claims.  
3 Although the Class arguably could have seen a payout of \$948,485 for waiting time penalties and  
4 \$207,300 wage statement penalties, Plaintiff would not recover any of these derivative penalties if he  
5 failed to prove the underlying claims. Thus, Plaintiff discounted these claims assuming a 40% chance of  
6 class certification and 30% chance at the merits for both claims, resulting in a realistic value of \$113,818  
7 for the waiting time claim and about \$24,000 for the wage statement claim. Connolly Decl. ¶ 17.

8 Arbitration Agreements: Additionally, Plaintiff considered that although he did not sign an  
9 arbitration agreement, about 130 class members did. If the Court found that these arbitration agreements  
10 included a valid class action waiver, then the size of the class could be greatly reduced. As such, Plaintiff  
11 had to consider the risk to the class of proceeding with litigation if a settlement was not reached. Connolly  
12 Decl. ¶ 18.

13 PAGA Claim: The PAGA claim presented even higher hurdles. Although Plaintiff's Counsel  
14 found Defendant's exposure could potentially reach approximately \$255,300 under Lab. Code §  
15 2699(f), assuming the initial penalty rate of \$100 for each pay period, Plaintiff would have to prove a  
16 violation in every pay period. Most importantly, the Court would have discretion to reduce the PAGA  
17 award based on whether the amount of the award would be "unjust, arbitrary and oppressive, or  
18 confiscatory." Lab. Code § 2699(e)(2). In theory, the Court could reduce the award by 99% if it so  
19 wished. Plaintiff was doubtful he could recover any PAGA penalties, especially in light of Defendant's  
20 compliant written policies. Accordingly, Plaintiff could not place a high value on the PAGA penalties,  
21 and therefore, the Parties allocated \$15,000 of the Gross Settlement Amount to settle these claims.  
22 Connolly Decl. ¶ 19.

### 23 **C. The Requested Service Award for Plaintiff**

24 Plaintiff seeks a Service Award of up to \$10,000.00 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. A named plaintiff is eligible for payment that reasonably compensates him or her  
27 for undertaking and fulfilling a fiduciary duty to represent absent class members. *See Cellphone*  
28

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

3 Throughout the case, Plaintiff assisted counsel in gathering the evidence necessary to prosecute  
4 the class claims, maintained regular contact with counsel, was available on the day of mediation and  
5 communicated with his attorneys during the day of mediation to answer critical questions, and reviewed  
6 the Settlement to make sure it was fair to the Class. Connolly Decl., ¶ 20. No action would likely have  
7 been taken by Class Members individually, and no compensation would have been recovered for them,  
8 but for Plaintiff's services on behalf of the Class. *Id.*

9 By actively pursuing this action, Plaintiff furthered the California public policy goal of enforcing  
10 the State's wage and hour laws. *See Sav-On Drug Stores, Inc., supra*, 34 Cal. 4th at 340. The requested  
11 Service Award for Plaintiff's service as the class representative and for a general release of all  
12 employment claims is reasonable and should be preliminarily approved. At the final approval stage,  
13 Plaintiff will further support the request for the Service by declaration addressing the factors for the  
14 award. Connolly Decl., ¶ 22.

#### 15 **D. The Requested Attorneys' Fees and Costs**

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

23 Plaintiff seeks appointment of Aegis Law Firm, PC as Class Counsel. The attorneys performed  
24 significant work and expended litigation costs in prosecuting the matter with no guarantee of any  
25 payment. Connolly Decl., ¶ 36. Plaintiff's Counsel seeks preliminary approval for \$142,000.00 in  
26 attorneys' fees, which is up to one-third of the Gross Settlement Amount, and up to \$20,000.00 in  
27 reimbursement of litigation costs. Given the work performed in this matter, the extensive information  
28 exchange, and substantial recovery obtained on behalf of Plaintiff and the Class, Plaintiff's Counsel

1 achieved a settlement through efficient and diligent work. *See generally*, Connolly Decl. At final  
2 approval, Plaintiff's Counsel will fully brief the merits of its request for the award of attorneys' fees  
3 and litigation costs. *Id.* at ¶ 37.

4 **V. CONCLUSION**

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

9  
10 Dated: March 19, 2025

**AEGIS LAW FIRM, PC**

11  
12 By: /s/ Kristy R. Connolly  
13 Kristy R. Connolly  
14 Attorneys for Plaintiff  
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