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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

ALEJANDRA RODGERS, individually and on behalf of all others similarly situated, Plaintiff, vs. NO ORDINARY MOMENTS, INC.; and DOES 1 through 20, inclusive, Defendants.	Case No. 30-2023-01349601-CU-OE-CXC Related Case No. 30-2023-01359416-CU-OE-CXC *Assigned for all purposes to:* *Hon. Melissa R. McCormick, Dept. CX105* **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA SETTLEMENT** Date: August 7, 2025 Time: 2:00 p.m. Dept: CX105 Reservation No. 74601833

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I. INTRODUCTION

Pursuant to Rule of Court 3.769 (c) and (d), Plaintiffs Alejandra Rodgers and Milania Monroe ("Plaintiffs") request that the Court grant preliminary approval of a class action settlement of wage and hour claims, including a claim under the Private Attorneys General Act of 2004, codified at Labor Code §§ 2698, *et seq.* ("PAGA"), entered into with Defendant No Ordinary Moments, Inc. ("Defendant"). The settlement releases claims on behalf of the all persons currently or formerly employed by Defendant in the State of California at anytime during the Class Period (individually, "Class Member"; collectively, the "Class"). The Class Period is defined as the period from July 17, 2021 through the earlier of June 20, 2025, or the date of the Preliminary Approval Order, whichever occurs first. The basic terms of the CLASS ACTION AND PAGA SETTLEMENT AGREEMENT (the "Settlement Agreement" or "Settlement")[1] provide for the following:

(1) A non-reversionary Gross Settlement Amount of $960,000.00 allocated to approximately 1,065 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 $320,000) for attorney fees and up to $30,000.00 in reimbursement of costs to Plaintiffs' Counsel for services rendered as counsel on this matter;

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

(4) Settlement Administration fees and costs of up to $12,550.00; and

(5) Allocation of $50,000.00 for PAGA penalties. Seventy-five percent (75%) of this payment will be paid to the 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").

[1] A true and correct copy of the fully-executed "CLASS ACTION AND PAGA SETTLEMENT AGREEMENT" is attached as **Exhibit 1** to the Declaration of Kristy R. Connolly in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Connolly Decl."), filed concurrently herewith. Unless otherwise defined herein, all capitalized terms in this Motion will be used as such terms are defined and used in the Settlement.

With each Class Member receiving an average recovery of approximately $495 from the Net 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. Plaintiffs request that the Court grant preliminary approval of the Settlement, conditionally certify the Class, appoint Plaintiffs as the Class Representatives, appoint Plaintiffs' 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

a. Rodgers Action

On September 19, 2023, Plaintiff Alejandra Rodgers commenced a lawsuit by filing a complaint alleging causes of action against Defendant for (1) Failure to Pay Minimum Wages, (2) Failure to Pay Overtime Wages, (3) Failure to Provide Meal Periods, (4) Failure to Permit Rest Breaks, (5) Failure to Reimburse Business Expenses, (6) Failure to Provide Accurate Itemized Wage Statements, (7) Failure to Pay Wages Timely During Employment, (8) Failure to Pay all Wages Due Upon Separation of Employment; and (9) Violation of Business and Professions Code Sections 17200 et seq. Connolly Decl., ¶ 3. On September 18, 2023, Ms. Rodgers 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 Ms. Rodgers to bring a PAGA claim against Defendant. *Id.* Therefore, on January 9, 2024, Ms. Rodgers filed a First Amended Complaint adding a PAGA claim and submitted a filed copy of the First Amended Complaint to the LWDA. *Id.*; Exhibit 3.

Plaintiff then proceeded with formal discovery, in which she served Defendant with written discovery requests seeking *inter alia*, her personnel file, data and information about the class, relevant policy documents, and time and pay records. Connolly Decl., ¶ 5. After Defendant served its responses, the Parties meet and conferred extensively, including preparing a *Belaire-West* opt-out notice for putative class members' contact information and determining a proper sample size for the class' time and pay records. *Id.*

b. Monroe Action

On November 6, 2023, Plaintiff Milania Monroe commenced her lawsuit by filing a Complaint alleging causes of action against Defendant for (1) Minimum Wage Violations, (2) Overtime Violations, (3) Meal Period Violations, (4) Rest Period Violations, (5) Wage Statement Violations, (6) Waiting Time Penalties, (7) Work Expenditure Violations; (8) Violation of Unfair Competition Law; and (9) PAGA Penalties.

c. Global Mediation

On September 4, 2024, the Court ordered the Rodgers Action and the Monroe Action related. Connolly Decl., ¶ 6.

After completing some initial discovery and engaging in several discussions about the case, the Parties agreed to attend private, global mediation. Connolly Decl., ¶ 7. In addition to the personnel files and policy documents already produced in formal discovery, Defendant also provided Plaintiffs with a sampling of class members' timekeeping and pay records. *Id.* To prepare for mediation, Plaintiffs' Counsel worked with experts to analyze the time-keeping and payroll data related to the claims in order to evaluate the potential damages and penalties. *Id.*

On April 21, 2025, the Parties attended a mediation session with Daniel Buckley, a respected mediator and former judge. Connolly Decl., ¶ 8. After a full day of negotiating, the Parties agreed to a settlement amount and executed a Memorandum of Understanding with the material settlement terms in place. The Parties spent the next month negotiating the terms of the Settlement, which was finalized in June of 2025. *Id.* 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.*

On July 2, 2025, Plaintiffs submitted the Settlement and this Motion to the LWDA pursuant to Labor Code section 2699(l)(2). Connolly Decl., ¶ 9; Exhibit 4.

III. SUMMARY OF THE SETTLEMENT

A. Terms of Settlement

Plaintiffs and Defendant agreed to settle the class claims in exchange for a Gross Settlement Amount of $960,000.00. Settlement Agreement, § 3.1. The Gross Settlement Amount will be used to make payments for the following: (1) attorneys' fees to Class Counsel of up to one-third of the Gross

Settlement Amount; (2) reimbursement of Class Counsel's litigation costs of up to $30,000; (3) a Service Payment to each Named Plaintiff of up to $10,000; (4) Settlement Administration fees and costs of $12,550; and (5) an allocation of $50,000 to settle the PAGA claims, $37,500 of which will be paid to the LWDA pursuant to PAGA. *Id.* at §§ 3.2.1 – 3.2.5. After making the foregoing deductions, the Net Settlement Amount is estimated to be $527,450.00 which will be used to make the Individual Class Payments to each Participating Class Member. *Id.* at § 3.2.4.

Class Members do not need to submit a claim form to participate in the Settlement. Settlement Agreement, § 3.1. Pursuant to the Settlement Agreement, Defendant will fully fund the Gross Settlement Amount within 30 days of the date the Court grants final approval of the settlement and enters judgment, or a later date if the judgment is appealed. *Id.* at § 4.3. The Settlement Administrator will then disburse all of the above-deductions, including Class Members' Individual Settlement Payments, within 10 days of receipt of the funds. *Id.* at § 4.4. Individual Settlement Payments will be calculated by comparing the total number of Workweeks for the Class to each individual Class Member's number of Workweeks. *Id.* at § 3.2.4. Based on an estimated 84,501 total Workweeks in the Class, each Workweek is estimated to be worth approximately $6.24 ($527,450/84,501 = $6.24). Once the Settlement Administrator receives the Class Data from Defendant, 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 (Class Notice).

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

B. Proposed Opt-Out and Objection Process

Once the Court grants preliminary approval, Defendant will have 10 business days to deliver the Class Data to the Settlement Administrator. Settlement Agreement, § 4.2. The Settlement Administrator will then have 15 business days to send Class Members the Notice Packets, which consist of the Class Notice, Dispute Form, and Opt-Out Form, by first-class mail after checking for updated addresses through the National Change of Address database. *Id.* at §§ 4.3.1, 7.4.2; Exhibits A, B, and C. The Class Notice provides information regarding the nature of the lawsuit, a summary of the substance of the settlement terms, the formula for calculating Individual Settlement Payments, the individual's estimated payout, a statement that Class Members who take no action will release their claims and receive settlement checks, instructions regarding how to dispute the calculations, instructions regarding how to request exclusion or object to the Settlement, the date for the final approval hearing, the amounts sought for attorneys' fees and costs, the Settlement Administration Costs, the Class Representatives' Service Payments, and the PAGA allocation. *See* Settlement Agreement, Ex. A (Class Notice). 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.

Class Members will have 60 days to request exclusion from the class portion of the settlement, object to the settlement, or challenge the Workweeks and/or PAGA Pay Periods allocated to the Class Member (the "Response Deadline"). Settlement Agreement, § 1.13. The Class Notice provides instructions for Class Members who choose to exclude themselves from the Settlement. *Id.* at § 7.5.1. The Notice Packet also contains an Opt-Out Form for Class Members' convenience. Settlement Agreement, Ex. C. Class Members do not need to submit a claim form to participate in the Settlement. *See* Class Notice at p. 2. Class Members will also be provided with a Dispute Form to the extent they wish to challenge the number of Workweeks and/or PAGA Pay Periods allocated to them. Settlement Agreement, Ex. B. Class Members are also 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 Rule of Court Rule 3.766(f).

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 Response Deadline of additional

14 days beyond the original Response Deadline. Settlement Agreement, § 1.13. 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. Rule of Court Rule 3.766 (d)-(f).

C. Proposed Release

The release to be given by Class Members is limited to Defendant and its former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns subsidiaries and affiliates. (the "Released Parties"). Settlement Agreement, § 1.11. Under the proposed release, Class Members who do not exclude themselves from the Settlement will be deemed to have released the Released Parties from all claims under state or local law, whether statutory, common law, or administrative law, arising out of or related to allegations set forth in the Complaints or PAGA Notices, including but not limited to: failure to pay minimum wages; failure to pay overtime wages; meal period violations; rest period violations; failure to reimburse business expenses; itemized wage statement violations; failure to pay wages when due; unfair competition, including but not limited to, injunctive relief; liquidated damages, penalties of any nature; interest; fees; costs; and all other claims and allegations made or that could have been made based on the allegations in the Actions. *Id.* at § 5.2. Aggrieved Employees will release the Released Parties from all claims for PAGA penalties arising during the PAGA Period that were alleged, or reasonably could have been alleged, based on the facts stated in the operative complaints in the Actions, and the PAGA Notices, regardless of whether the Aggrieved Employee opts out of the Settlement. *Id.* at § 5.3.

Only Plaintiffs Rodgers and Monroe 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 Civil Code section 1542. Settlement Agreement, § 5.1.

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 persons currently or formerly employed by Defendant as non-exempt employees in the State of California at any time during the Class Period. Settlement Agreement, § 1.5. The Class Period is defined as July 17, 2021 through the earlier of June 20, 2025, or the date of the Preliminary Approval Order, whichever occurs first. *Id.* at § 1.12. Defendant's records show the Class consists of approximately 1,065 individuals, making joinder of all Class Members impracticable. Connolly Decl., ¶ 10. Further, the Class is readily ascertainable from Defendant's business records because all Class Members are current or former employees of Defendant. *Id.*

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

"The '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. <u>Common Questions Predominate</u>

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

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

b. *Plaintiffs' Claims are Typical of the Class Claims*

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

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

Certification requires adequacy of both the proposed class representative(s) and proposed class counsel. With respect to the class representative, a plaintiff must adequately represent and protect the interests of other members of the class and demonstrate that his or her claim is not inconsistent with the claims of other members of the class. *See Capitol People First v. State Dep't of Developmental Servs.*, 155 Cal. App. 4th 676, 696-697 (2007). Here, Plaintiffs' interests are coextensive with the interests of the Class. Plaintiffs demonstrated an ability to advocate for the interests of the Class by litigating this action, gathering documents and information, being available on the day of mediation to answer questions, meeting with their 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 and Frontier Law Center have expended considerable time and effort on this case and will continue to do so through final approval. *See generally,* Connolly Decl.; Declaration of Adam Rose ("Rose Decl."). Accordingly, Plaintiffs should be appointed the Class Representatives, and Plaintiffs' Counsel should be appointed Class Counsel

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

Class treatment is superior to other methods of adjudication when the probability is small that each class member will come forward to prove his or her claim and when the class approach would deter and redress the alleged wrongdoing. *See Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 435, 446 (2000); *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524, 1537-1538 (2008). Here, none of the other 1,063 Class Members had shown any interest in bearing the expense and burden of litigating their own claims. Connolly Decl., ¶ 25. 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. Plaintiffs 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. Connolly Decl., ¶¶ 5-8. 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 ¶ 8. The amount of Plaintiffs' requested Service Awards was not negotiated until after the Parties agreed to the Gross Settlement Amount and many other terms. *Id.* at ¶ 26.

b. *Plaintiffs' Counsel Conducted Sufficient Investigation and Discovery*

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

c. *Plaintiffs' Counsel is Experienced in Similar Litigation*

Plaintiffs are represented by Aegis Law Firm, PC and Frontier Law Center ("Class Counsel"). Class Counsel prosecute wage and hour class actions on behalf of employees and others who have had their rights violated. Connolly Decl. ¶¶ 28-40; Rose Decl. The attorneys working on this case have been appointed class counsel in many cases, through both contested motions and settlement approval motions. *Id.* Thus, Plaintiffs' Counsel has extensive experience in similar litigation and should be appointed as Class Counsel.

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

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

While Plaintiffs and their counsel believed and continue to believe this is a strong case for certification, the significant risks and expenses associated with class certification and liability proceedings were taken into account. Connolly Decl., ¶ 14. To determine if the amount offered at mediation was reasonable, Plaintiffs' Counsel weighed that figure against many risk factors. *Id.* at ¶ 15. If Plaintiffs continued to prosecute the claims rather than accept a settlement, Plaintiffs would have faced deadlines to file a motion for class certification, had to have engaged in 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. <u>Exposure Analysis</u>

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

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

Wershba v. Apple Computer, Inc., 91 Cal. App. 4th 224, 250 (2001) (citation omitted).Here, Plaintiffs contend that their claims are based on Defendant's common, class-wide policies and procedures, and that liability could be determined on a class-wide basis without dependence on individual assessments of liability. Connolly Decl., ¶ 13. Although the amount of Defendant's potential exposure – if proven –

is substantial, the legitimate and serious risks of succeeding at class certification and trial compelled a serious consideration of the benefit of a settlement. *Id.* at ¶ 15.

Minimum Wage and Overtime Claims: Plaintiffs' minimum wage and overtime claims were premised on the theory that Defendant failed to compensate class members for all time worked by requiring them to continue working after clocking out before their replacement arrived. Connolly Decl., ¶ 16. Specifically, Plaintiffs worked for Defendant as caregivers working with developmentally disabled clients who required around-the-clock care. *Id.* As a result, Plaintiffs alleged that Defendant maintained a strict policy against unauthorized overtime, effectively requiring employees to clock out at their scheduled end times while continuing to work unpaid until replacements arrived so as to not leave the patient without care. *Id.* Assuming unpaid wages of fifteen minutes per shift, Plaintiffs' expert calculated a maximum exposure of $604,988.00. *Id.* However, Defendant argued that it maintained policies of paying for all recorded work and that there was no evidence that it required class members to not record their accurate time worked or to continue working after clocking out. *Id.* As such, this claim could become highly individualized and difficult to certify. *Id.* Therefore, Plaintiffs assumed there was a 60% chance of success at class certification and 30% chance of success on the merits at trial, rendering the claim worth approximately $108,898. *Id.*

Overtime Wage Rate Claim: Plaintiffs' unpaid overtime wages claim was also based on the theory that Defendant failed to properly calculate the overtime rate to include nondiscretionary bonuses. Connolly Decl., ¶ 17. Specifically, Plaintiffs argued that Defendant only adjusted the overtime rate in the pay period in which the bonus paid, but that it should have been adjusted in every pay period worked for which the bonus was earned. *Id.* Plaintiffs alleged that Defendant paid quarterly bonuses and that Defendant should have paid a true-up to account for the overtime worked in the quarter for which the bonus was paid. Plaintiffs' expert calculated that this claim was worth approximately $110,024.60. *Id.* However, Defendant provided authority that supported its method of calculating the overtime rate, which could also show that Defendant did not "willfully" fail to pay wages owed, as needed to recover waiting time penalties. *Id.* As such, Plaintiff assumed there was a 70% chance of success at class certification and 50% chance of success on the merits at trial, rendering the claim worth approximately $38,509. *Id.*

Meal Period Claim: Plaintiffs' expert's analysis showed there were approximately 316,387 shifts of over 6.0 hours worked, and nearly all of these shifts reflected an on-duty meal period. Connolly Decl., ¶ 18. If the Court found Defendant's on-duty meal agreements to be unlawful, then damages could reach up to $5,986,789. *Id.* However, Plaintiffs did consider that Defendant produced signed, written on-duty meal agreements. *Id.* Defendant further argued that, pursuant to Wage Order 15, Defendant did not need to provide on-duty meal agreements to those who worked as personal attendants. *Id.* In light of these defenses, Plaintiffs' counsel believed there was a 50% chance succeeding at class certification and a 10% chance at trial, resulting in a realistic settlement value of $299,339. *Id.*

Rest Break Claim: Plaintiffs similarly alleged that Defendant failed to authorize or permit duty-free rest breaks due to the staffing needs of the patients and Defendant's failure to schedule sufficient coverage. Connolly Decl., ¶ 19. If Plaintiffs could prove a 100% violation rate for each shift over 3.5 hours, then damages could reach up to $6,338,543. *Id.* Furthermore, to the extent a rest break was not provided, Defendant argued that class members could waive their right to a rest break and that the inquiry would be highly individualized. *Id.* This claim would have relied on Class Member testimony, making it a riskier claim at class certification and liability stages. *Id.* Plaintiffs' counsel believed there was a 50% chance succeeding at class certification and a 10% chance at trial, resulting in a value of $326,927. *Id.*

Expense Reimbursements Claim: Plaintiffs argued that class members were not reimbursed for expenses incurred related to the use of their personal cell phones for work purposes. Connolly Decl., ¶ 20. Specifically, Plaintiffs alleged that they were required to use their personal cell phones to record their time worked. *Id.* If Plaintiffs could prove that class members should have been reimbursed at a rate of $50 per month, then this claim would be worth $1,007,400.00. *Id.* However, Defendant argued that it changed its expense reimbursement policy in May of 2022 to begin reimbursing Class Members at a rate of $5 per pay period. *Id.* Whether this amount sufficiently reimbursed class members would be subject to individualized determinations as to the whether each employee was properly reimbursed or under-reimbursed for his or her expenses, and by how much. *Id.* Therefore, Plaintiffs' counsel believed there was a 20% chance succeeding at class certification and a 10% chance at trial, resulting in a realistic value of $20,148. *Id.*

Plaintiffs' Counsel also considered the arguable presence of various derivative penalties, and weighed the potential recoveries against probable defenses. Connolly Decl., ¶ 21. Specifically, as discussed above, Defendant could argue that Plaintiffs could not prove the "willful" prong needed to obtain waiting time penalties under Labor Code section 203. *Id.* Additionally, Defendant could argue that Plaintiffs could not show that Class Members suffered an "injury" as a result of the derivative wage statement violations, as required by Labor Code section 226. *Id.* Moreover, Plaintiffs would not recover any derivative penalties if they failed to prove the underlying claims. *Id.* Thus, Plaintiffs discounted these claims assuming a 20% chance of class certification and 10% chance at the merits for both claims, resulting in a realistic value of $39,580 for the waiting time claim and $52,954 for the wage statement claim. *Id.*

The PAGA claim presented even higher hurdles. Connolly Decl., ¶ 22. Although Plaintiffs' Counsel found Defendant's exposure could potentially reach approximately $3,921,100 assuming the initial penalty rate of $100 for each pay period, Plaintiffs would have to prove a violation in all 39,211 pay periods. *Id.* 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). Connolly Decl., ¶ 22. 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 Defendant could show that it had a good faith belief that it was operating in compliance with Wage Order 15. *Id.* Accordingly, Plaintiffs could not place a high value on the PAGA penalties, and therefore allocated $50,000 of the Gross Settlement Amount to settle these claims. *Id.*

Finally, Plaintiffs also considered that Defendant obtained arbitration agreements signed by nearly the entire Class. Connolly Decl., ¶ 23. If the Court found these to be enforceable, then the Class would be foreclosed on collecting any damages and this action would be limited to seeking civil penalties under PAGA. *Id.*

After accounting for the defenses and risks discussed above for each claim, Plaintiffs believed that the likely award at trial would be around $926,355. Connolly Decl., ¶ 24. Therefore, Plaintiffs believe the Gross Settlement Amount of $960,000 is reasonable, fair, and adequate for the claims asserted. *Id.*

C. The Requested Service Award for Plaintiffs

Plaintiffs each seek 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. 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., ¶ 25. 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 their attorneys during the day of mediation to answer critical questions, and reviewed the Settlement to make sure it was fair to the Class. *Id.* No action would likely have been taken by Class Members individually, and no compensation would have been recovered for them, but for Plaintiffs' services on behalf of the Class. *Id.*

By actively pursuing this action, Plaintiffs furthered the California public policy goal of enforcing the State's wage and hour laws. *See Sav-On Drug Stores, Inc.*, *supra*, 34 Cal. 4th at 340. The requested Service Awards for Plaintiffs' service as the class representatives and for a general release of all employment claims is reasonable and should be preliminarily approved. At the final approval stage, Plaintiffs will further support the request for the Service by declarations addressing the factors for the award. Connolly Decl., ¶ 27.

D. The Requested Attorneys' Fees and Costs

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

Plaintiffs seek appointment of Aegis Law Firm, PC and Frontier Law Center as Class Counsel. The attorneys performed significant work and expended litigation costs in prosecuting the matter with no guarantee of any payment. Connolly Decl., ¶ 40. Plaintiffs’ Counsel seeks preliminary approval for $320,000.00 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[2]. Given the work performed in this matter, the extensive information exchange, and substantial recovery obtained on behalf of Plaintiffs and the Class, Plaintiffs’ Counsel achieved a settlement through efficient and diligent work. *See generally,* Connolly Decl.; Rose Decl. At final approval, Plaintiffs’ Counsel will fully brief the merits of its request for the award of attorneys’ fees and litigation costs. *Id.* at ¶ 43.

V. <u>CONCLUSION</u>

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

Dated: July 2, 2025 **AEGIS LAW FIRM, PC**

By: *<u>/s/ Kristy R. Connolly</u>*
Kristy R. Connolly
Attorneys for Plaintiffs

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[2] Plaintiffs have signed a fee-split agreement with their counsel for purposes of sharing any fees awarded by this Court. The fee-split is as follows: 50% to Aegis Law Firm, PC and 50% to Frontier Law Center. Connolly Decl., ¶ 41.