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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JUN 13 2023

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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF SAN BERNARDINO**

15 FREDERICK SIMMONDS, individually and
16 on behalf of all others similarly situated,

17 Plaintiff,

18 vs.

19 TRIAGE PARTNERS CA, LLC; and DOES
20 1 through 20, inclusive,

21 Defendants.

Case No. CIVSB2212599

*Assigned for all purposes to
Hon. David Cohn
Dept. S-26*

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

Date: August 8, 2023
Time: 9:00 a.m.
Dept: S-26

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1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court 3.769 (d) and (e), Plaintiff Frederick Simmonds (“Plaintiff”)
3 requests that the Court grant preliminary approval of a class action settlement of wage and hour claims,
4 including claims under the California Private Attorneys General Act of 2004, codified at Lab. Code §
5 2698, *et seq.* (“PAGA”), against Defendant Triage Partners CA, LLC (“Triage Partners” or “Defendant”);
6 and DOES 1 through 20, inclusive (“Defendant”) (collectively, Plaintiff and Defendant referred to as,
7 the “Parties”). The putative class consists of approximately 200 non-exempt employees who worked for
8 Defendant in California (individually, “Class Member”; collectively, the “Class”) from June 16, 2018
9 until January 17, 2023 (the “Class Period”). The basic terms of the Joint Stipulation of Settlement
10 (“Settlement Agreement” or “Settlement”)¹ provide for the following:

- 11 (1) A non-reversionary Gross Settlement Amount of \$250,000.00 allocated to
12 approximately 200 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 \$83,333.33) and up to \$15,000 in reimbursement of costs to Plaintiff’s Counsel for
16 services rendered as counsel on this matter;
- 17 (3) Incentive Award of up to \$10,000.00 to Plaintiff Frederick Simmonds;
- 18 (4) Settlement Administration fees and costs of up to \$7,000.00; and
- 19 (5) Payment to the California Labor and Workforce Development Agency (“LWDA”)
20 of \$20,000 for civil penalties pursuant to PAGA. Seventy-five percent (75%) of this
21 payment will be paid to the California Labor and Workforce Development Agency
22 (“LWDA Payment”), and twenty-five percent (25%) will be paid to the Net
23 Settlement Amount for distribution to Class Members.

24 The Settlement satisfies the criteria for preliminary approval and falls well within the range of
25 reasonableness given the risks and costs of continued litigation. The Settlement was reached through

26 _____
27 ¹ A true and correct copy of the fully-executed “Joint Stipulation of Settlement” is attached as **Exhibit 1**
28 to the Declaration of Namrata Kaur in Support of Plaintiff’s Motion for Preliminary Approval of Class
Action Settlement (“Kaur 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 informed, arms-length bargaining at and after mediation between experienced attorneys. As such,
2 Plaintiff requests that the Court grant preliminary approval of the Settlement, conditionally certify the
3 Class for settlement purposes only, appoint Plaintiff as the Class Representative, appoint Plaintiff's
4 Counsel as Class Counsel, appoint Phoenix Settlement Administrators, Inc, as the Settlement
5 Administrator, authorize the Settlement Administrator to send notice of the Settlement, and set a final
6 approval hearing date.

7 **II. SUMMARY OF THE LITIGATION**

8 On June 16, 2022, Plaintiff Frederick Simmonds filed a class action complaint against Defendant
9 in the San Bernardino County Superior Court alleging that Defendant: (1) failed to pay minimum wages;
10 (2) failed to pay overtime, (3) failed to provide meal periods; (4) failed to permit rest breaks; (5) failed to
11 provide reimbursements for necessary business expenses; (6) failed to provide accurate itemized wage
12 statements; (7) failed to pay wages timely during employment; (8) failed to pay all wages due upon
13 separation of employment; (9) violated Business and Professions Code §§ 17200, et seq. Kaur Decl. ¶ 3.
14 On June 15, 2022, Plaintiff through my office provided written notice to the LWDA and Defendant
15 regarding Defendant's alleged Labor Code violations, as required by Lab. Code § 2699.3(a). The LWDA
16 did not respond to this notice, indicating it did not intend to investigate, thus allowing Plaintiff to bring a
17 PAGA claim against Defendant. Kaur Decl. ¶ 3. On January 20, 2023 Plaintiff filed a First amended
18 complaint to add Enforcement of Labor Code § 2698 et seq. ("PAGA") as a cause of action. Kaur Decl. ¶
19 3.

20 The Parties agreed to mediation early into litigation and Defendant agreed to informally produce
21 information and data in preparation thereof. Kaur Decl., ¶ 4. Through informal discovery, Defendant
22 produced Plaintiff's and class members' payroll records and time punch data and employee handbook
23 containing the written policies. Kaur Decl., ¶ 4.

24 On January 17, 2023, the Parties attended a mediation session with Jill Sperber, a respected
25 mediator, and reached a settlement. Kaur Decl., at ¶ 5. After a full day of negotiating, the Parties agreed
26 to a settlement amount. *Id.* The Parties spent the next few months negotiating the terms of the Settlement,
27 which was finalized in May of 2023. *Id.* Plaintiff submitted the Settlement to the LWDA pursuant to
28 Lab. Code § 2699(1)(2). Kaur Decl., at ¶ 5, Ex. 2 (Confirmation of Submission of Settlement to LWDA).

1 **III. SUMMARY OF THE SETTLEMENT**

2 **A. Terms of Settlement**

3 Plaintiff and Defendant agreed to settle the class claims in exchange for a Gross Settlement
4 Amount of \$250,000.00. Settlement Agreement, § 3.06(a). The Gross Settlement Amount will be used
5 to make payments for the following: (1) Individual Settlement Payments to Participating Class
6 Members; (2) attorneys’ fees to Class Counsel of up to one-third of the Gross Settlement Amount; (3)
7 reimbursement of Class Counsel’s litigation costs of up to \$15,000; (4) an Incentive Award to Plaintiff
8 of up to \$10,000.00; (5) Settlement Administration fees and costs of \$7,000; and (6) a payment to the
9 LWDA of \$20,000 pursuant to PAGA. *Id.* at § 3.06(a-f). Class Members’ Individual Settlement
10 Payments will be distributed after final approval of the Settlement and Defendant funds the Gross
11 Settlement Amount. *Id.* at § 3.06(f). The Settlement Administrator will calculate the actual estimated
12 recovery to include in the Class Notice and provide the estimated low and high range of possible
13 recovery at final approval. *See*, Settlement Agreement, Ex. A (Notice of Class Action Settlement).

14 The Individual Settlement Payments to Class Members will be allocated for tax purposes as
15 follows: 30% to wages; 70% to penalties and interest. Settlement Agreement, § 3.06(f). The employer-
16 side payroll taxes on the portion allocated to wages will be paid by Defendant separately from, and in
17 addition to the Gross Settlement Amount. *Id.* at § 3.06(f). No portion of the Gross Settlement Amount
18 will revert to Defendant. *See* Settlement Agreement at Article I(o). Funds from uncashed or undeliverable
19 checks will be tendered by the Settlement Administrator to the State Controller Unclaimed Property Fund
20 in the name of the Class Member for whom the funds are designated. *See* Settlement Agreement at §
21 3.06(f).

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

23 The Settlement Administrator will send Class Members the Notice of Class Action Settlement
24 (“Class Notice”) by first-class mail after checking for updated addresses through the National Change of
25 Address database. *See* Settlement Agreement at § 3.03. The Class Notice provides information regarding
26 the nature of the lawsuit, a summary of the substance of the settlement terms, the formula for calculating
27 Individual Settlement Payments, the individual’s estimated payout, a statement that Class Members who
28 take no action will release their claims and receive settlement checks, instructions regarding how to

1 dispute the calculations, instructions regarding how to request exclusion or object to the Settlement, the
2 date for the final approval hearing, the amounts sought for attorneys' fees and costs, the Settlement
3 Administration Costs, the Class Representative's Incentive Award, and the PAGA allocation. *See*
4 Settlement Agreement, Ex. A (Class Notice).

5 The Class Notice provides instructions for Class Members who choose to exclude themselves
6 from the Settlement. *See* Settlement Agreement, Ex. A (Class Notice). To opt out, Class Members are
7 instructed to submit a Request for Exclusion to the Settlement Administrator by a specified date (60 days
8 after the date of mailing of the Class Notice). *See* Settlement Agreement, Ex. A (Class Notice). Class
9 Members do not need to submit a claim form to participate in the Settlement. *See* Settlement Agreement,
10 Ex. A (Class Notice). Class Members are informed of how they can object to the Settlement, and the Class
11 Notice informs Class Members of the date, time, and location of the final fairness and approval hearing
12 so that they can appear in person. *See* Settlement Agreement, Ex. A (Class Notice). Accordingly, the
13 content of the Class Notice complies with the requirements of Cal. R. Ct. 3.766(d).

14 If Class Notice packets are returned as undeliverable, the Settlement Administrator will perform a
15 skip-trace or other search, and re-mail the Class Notice with an extended deadline, to opt out or object, of
16 15 days from the date of mailing or the original deadline, whichever is later. Settlement Agreement, §
17 3.03. The initial 60-day notice period and extension process ensures the notice program provides due
18 process by giving Class Members enough time to determine whether they want to participate in the
19 Settlement. This means of notice is reasonably calculated to apprise Class Members of the pendency of
20 the action. *See* Cal. R. Ct. 3.766 (d)-(f).

21 **C. Proposed Release**

22 The release to be given by Class Members is limited to the Defendant Triage Partners, CA, LLC,
23 and past, and present and/or future officers, directors, shareholders, employees, agents, payroll service
24 providers, operators, principals, owners, heirs, representatives, accountants, auditors, consultants,
25 insurers and reinsurers, successors and predecessors in interest, subsidiaries, affiliates, members,
26 divisions, fiduciaries, trustees, partners, shareholders, investors, benefit plans, parents and attorneys, if
27 any ("Released Parties"). *See* Settlement Agreement, § I(gg). Under the proposed release, Class
28 Members who do not exclude themselves from the Settlement will be deemed to have released or

1 waived the following “Released Claims” against the Released Parties during the period of June 16,
2 2018 until January 17, 2023:

3 Any and all claims alleged in Named Plaintiff’s Operative First Amended Complaint, during
4 the Class Period, including (1) failure to pay minimum wages (2) failure to pay overtime
5 wages (3) failure to provide meal periods (4) failure to authorize or permit rest periods (5)
6 failure to reimburse business expenses (6) failure to provide accurate itemized wage
7 statements (7) failure to pay all wages timely during employment (8) failure to pay wages
8 upon separation of employment (9) violation of California Business and Professions Code
9 §§17200, et seq., based on the preceding claims (“Released Claims”).

10 *See* Settlement Agreement at § 5.01.

11 PAGA Group Members will release Defendant from all claims exhausted in Plaintiff’s notice sent
12 to the LWDA and alleged in the operative complaint, including the claim for Enforcement of Labor Code
13 § 2698 et seq, which arose during the PAGA Period, regardless of whether PAGA Group Members opt
14 out of the Class Settlement. *See* Settlement Agreement at § 5.02.

15 Only Plaintiff will agree to a general release of any and all claims, whether known or unknown,
16 which exist or may exist on Plaintiff’s behalf as of the date of the Settlement, and a waiver of Civ. Code
17 § 1542. *See* Settlement Agreement at § 5.03.

18 **IV. LEGAL ARGUMENTS SUPPORTING PRELIMINARY APPROVAL**

19 **A. Provisional Certification of the Class is Appropriate**

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

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

25 Whether a class is “ascertainable” is “determined by examining (1) the class definition, (2) the
26 size of the class, and (3) the means available for identifying class members.” *Reyes v. Bd. of Supervisors*,
27 196 Cal. App. 3d 1263, 1271 (1987). Here, the Class consists of all current and former non-exempt
28 employees who are and/or were employed by Defendant in California at any time from June 16, 2018
through January 17, 2023. *See* Settlement Agreement at Article I(c). Defendant’s records show the Class
consists of approximately 200 individuals, making joinder of all Class Members impracticable. Kaur

1 Decl., ¶ 6. Further, the Class is readily ascertainable from Defendant’s business records because all
2 Class Members are current or 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 including minimum and overtime wages, meal periods,
16 rest breaks, reimbursement of necessary business expenses, accurate wage statements, pay timely during
17 employment and waiting time pay. Kaur Decl., ¶ 7. Plaintiff’s allegations present common legal and
18 factual questions of, *inter alia*, whether Defendant applied the same scheduling, timekeeping, minimum
19 and overtime pay, meal period, rest break, reimbursements and final pay policies to all Class Members;
20 whether these policies and practices resulted in Labor Code violations; whether Defendant’s conduct was
21 intentional; and whether Class Members are entitled to penalties. *Id.* These common questions could be
22 resolved using Class Members’ schedules, time punches, and payroll records, Defendant’s corporate
23 representative’s testimony, written communications between Defendant and Class Members, and Class
24 Member declarations. *Id.* Thus, the Court can and should exercise its discretion to grant conditional class
25 certification for settlement purposes.

26 *b. Plaintiff’s Claims are Typical of the Class Claims*

27 The typicality requirement is satisfied when the legal theories and facts supporting Plaintiff’s
28 claims are substantially similar to other class members. *See Classen v. Weller*, 145 Cal. App. 3d 27, 46

1 (1983). Here, Plaintiff alleges that he and other Class Members were employed by Defendant and
2 injured by Defendant's common wage and hour policies and practices, including Defendant's
3 scheduling, timekeeping, minimum wage pay, overtime pay, meal period, rest break, reimbursement of
4 necessary business expenses, timely payment during employment, inaccurate wage statements and final
5 pay practices and policies. Kaur Decl., ¶ 8. Through documents and information exchanged in informal
6 discovery, Plaintiff confirmed that these common policies and practices similarly affected Plaintiff and
7 the Class. *Id.* Thus, Plaintiff's claims arise from the same employment practices and are based on the
8 same legal theories as those applicable to other Class Members, as further explained in Plaintiff's
9 exposure analysis below.

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

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

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

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

27 Class treatment is superior to other methods of adjudication when the probability is small that
28 each class member will come forward to prove his or her claim and when the class approach would deter

1 and redress the alleged wrongdoing. *See Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 435, 446 (2000);
2 *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524, 1537-1538 (2008). Here, none of the other
3 200 Class Members had shown any interest in bearing the expense and burden of litigating their own
4 claims. Kaur Decl. ¶ 19. Thus, a class action is the superior method for seeking relief.

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

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

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

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

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

21 Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless
22 evidence to the contrary is offered. Thus, there is a presumption that settlement negotiations are
23 conducted in good faith. Here, the Settlement was the product of extensive investigation and a full day
24 mediation session with a respected mediator after exchange of informal discovery. Kaur Decl. ¶¶ 4, 5.
25 The negotiations were adversarial, conducted at arm’s length and tempered by the efforts of both sides
26 to serve the interests of their clients. *Id.* at ¶ 5.

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

1 Plaintiff's Counsel thoroughly investigated the class claims, applicable law, and potential
2 defenses. *See generally*, Kaur Decl. In particular, Plaintiff's Counsel assessed the value of the class
3 claims using Defendant's data and documents produced through informal discovery. Kaur Decl., ¶¶ 4,
4 13-18. Plaintiff's counsel personally reviewed timekeeping records and compared them to wage
5 statements to identify potential violations. Kaur Decl., ¶ 4. Accordingly, Plaintiff's Counsel fully
6 understood the strengths and weaknesses of the claims before the Parties reached a settlement. *Id.*

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

8 Plaintiff is represented by Aegis Law Firm, PC ("Class Counsel"). Class Counsel prosecute wage
9 and hour class actions on behalf of employees and others who have had their rights violated. Kaur Decl.
10 ¶¶ 21-33. The attorneys working on this case have been appointed class counsel in many cases, through
11 both contested motions and settlement approval motions. *Id.* Thus, Plaintiff's Counsel has extensive
12 experience in similar litigation and should be appointed as Class Counsel.

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

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

19 While Plaintiff and her counsel believed and continue to believe this is a strong case for
20 certification, the significant risks and expenses associated with class certification and liability
21 proceedings were taken into account. Kaur Decl., ¶ 10. To determine if the amount offered at mediation
22 was reasonable, Plaintiff's Counsel weighed that figure against many risk factors. Kaur Decl., ¶ 11. If
23 Plaintiff continued to prosecute the claims rather than accept a settlement, Plaintiff would have faced
24 deadlines to file a motion for class certification, had to have engaged in more formal written discovery
25 and taken depositions, expended time and resources to resolve disputes, prepared and filed potential
26 dispositive motions and/or discovery motions, and engaged in extensive trial preparation. Kaur Decl., ¶
27 12. An adverse ruling at any one of these stages could have prevented the Class from obtaining any
28 recovery. Kaur Decl., ¶ 12.

1 a. Exposure Analysis

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

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

10 *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 250 (2001) (citation omitted). Here, Plaintiff
11 contends that his 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. Kaur Decl., ¶ 9. Although the amount of Defendant’s potential exposure – if proven – is
14 substantial, the legitimate and serious risks of succeeding at class certification and trial compelled a
15 serious consideration of the benefit of a settlement.

16 Minimum Wage and Overtime Claims: Plaintiff’s minimum wage and overtime claims were
17 premised on the theories that Defendant failed to incorporate non-discretionary bonuses and
18 commissions into the sick pay rate. Plaintiff calculated that the claims for failure to incorporate non-
19 discretionary bonuses and commissions into the sick pay rate were approximately \$44,362.
20 Additionally, Plaintiff argued that Defendant failed to pay class members for pre-shift duties and also
21 failed to pay class members for travel time beyond their normal commute. If Plaintiff could prove these
22 claims, then \$687,168 could be added to the damages, combined. However, this claim is dependent on
23 the Court’s finding that Defendant knew or should have known that employees were working off the
24 clock and whether employees commuted beyond their normal commute, which is difficult to satisfy on
25 a class-wide basis. Kaur Decl., ¶ 13.

26 Meal Period Claims: Plaintiff’s meal period claim was potentially worth about \$1.2 million, in
27 light of the violations shown in the records. However, Defendant argued that it maintained compliant
28 written policies and provided compliant meal breaks to its employees. Thus, Plaintiff discounted this
claim for the risk that the damages could at least be reduced, and that the claim would be hard to certify
with a compliant policy. Kaur Decl., ¶ 14.

1 Rest Break Claim: Plaintiff alleged that class members were unable to take their rest breaks or
2 their rest breaks were interrupted. Plaintiff calculated the damages for this claim could reach up to \$1.3
3 million. However, Defendant argued that Defendant maintained a compliant written policy and that
4 class members actually took complaint rest breaks. As such, this claim would have relied on anecdotal
5 Class Member testimony, making it a riskier claim at class certification and liability stages. Kaur Decl.,
6 ¶ 15.

7 Reimbursements Claim: Plaintiff alleged that class members were owed reimbursements for use
8 of their personal cell-phones for work related purposes and to purchase their own tools and equipment
9 for business purposes. Plaintiff calculated the damages for this claim could reach up to \$841,185.
10 However, Defendant argued that that they maintained a provision for reimbursements. As such, this
11 claim would have relied on Class Member testimony, making it a riskier claim at class certification and
12 liability stages. Kaur Decl., ¶ 16.

13 Derivative Waiting Time and Wage Statement Penalties: Plaintiff’s Counsel also considered the
14 arguable presence of various penalties, and weighed the potential recoveries against probable defenses.
15 Specifically, Defendant could argue that Plaintiff could not prove the “willful” prong needed to obtain
16 waiting time penalties under Labor Code § 203. Additionally, Defendant could argue that Plaintiff could
17 not show that Class Members suffered an “injury” as a result of wage statement violations, as required by
18 Labor Code § 226, or that the wage statements correctly reflected the wages paid and owed. Moreover,
19 Plaintiff would not recover any of these derivative penalties if she failed to prove the underlying claims.
20 Thus, although waiting time penalties could have reached \$539,398 and the wage statement penalties
21 could have reached \$209,450 if Plaintiff prevailed on every claim, they were heavily discounted. Kaur
22 Decl. ¶ 17.

23 PAGA Claim: The PAGA claim presented even higher hurdles. Although Plaintiff’s Counsel
24 found Defendant’s exposure could potentially reach approximately \$2.3 million under Lab. Code §
25 2699(f), assuming the initial penalty rate of \$100 for each pay period, Plaintiff would have to prove a
26 violation in every pay period. Most importantly, the Court would have discretion to reduce the PAGA
27 award based on whether the amount of the award would be “unjust, arbitrary and oppressive, or
28 confiscatory.” Lab. Code § 2699(e)(2). In theory, the Court could reduce the award by 99% if it so

1 wished. Plaintiff was doubtful she could recover any PAGA penalties, especially if a large class
2 judgment was entered for the same violations. Accordingly, Plaintiff could not place a high value on
3 the PAGA penalties, and therefore allocated \$20,000 of the Gross Settlement Amount to settle these
4 claims. Kaur Decl. ¶ 18.

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

6 Plaintiff seeks an Incentive Award of up to \$10,000 for accepting the responsibilities of
7 representing the interests of the Class and assuming risks and potential costs that were not borne by any
8 other Class Members. Settlement Agreement, § 3.06(d). A named plaintiff is eligible for payment that
9 reasonably compensates him or her for undertaking and fulfilling a fiduciary duty to represent absent
10 class members. *See Cellphone Termination Fee Cases, supra*, 186 Cal. App. 4th at 1393; *Bell v. Farmers*
11 *Ins. Exch.*, 115 Cal. App. 4th 715, 726 (2004).

12 Here, Plaintiff had the option to pursue his claims individually, but instead chose to pursue this
13 class action, delaying individual recovery until approval of a class action settlement. Kaur Decl., ¶ 19.
14 Throughout the case, Plaintiff assisted counsel in gathering the evidence necessary to prosecute the class
15 claims, maintained regular contact with counsel, was available on the day of mediation and reviewed
16 the Settlement to make sure it was fair to the Class. *Id.* No action would likely have been taken by Class
17 Members individually, and no compensation would have been recovered for them, but for Plaintiff's
18 services on behalf of the Class. *Id.*

19 By actively pursuing this action, Plaintiff furthered the California public policy goal of enforcing
20 the State's wage and hour laws. *See Sav-On Drug Stores, Inc., supra*, 34 Cal. 4th at 340. The requested
21 Incentive Award for Plaintiff's service as the class representative and for a general release of all
22 employment claims is reasonable and should be preliminarily approved. At the final approval stage,
23 Plaintiff will further support the request for an Incentive Award by declaration addressing the factors
24 for the award. Kaur Decl., ¶ 20.

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

26 The purpose of an attorneys' fee award in class action litigation is to reward counsel who invested
27 in a case despite the risk of non-payment and achieved a substantial positive result for the class.
28 Attorneys' fees are awarded as a matter of equity. California courts routinely award attorneys' fees

1 equaling one-third or more of the potential value of the common fund. *See Chavez v. Netflix, Inc.*, 162
2 Cal. App. 4th 43, 66, n.11 (2008) (“Empirical studies show that, regardless of whether the percentage
3 method or the lodestar method is used, fee awards in class actions average around one-third of the
4 recovery”).

5 Plaintiff seeks appointment of Aegis Law Firm, PC as Class Counsel. The attorneys performed
6 significant work and expended litigation costs in prosecuting the matter with no guarantee of any
7 payment. Kaur Decl., ¶ 34. In doing so, my office had to forego compensable hourly work on other cases
8 so as to devote the necessary time and resources to these contingency class actions and risked recovering
9 nothing for this substantial effort. Kaur Decl., ¶ 34. Plaintiff’s Counsel seeks preliminary approval for
10 \$83,333.33 in attorneys’ fees, which is up to one-third of the Gross Settlement Amount, and up to
11 \$15,000 in reimbursement of litigation costs. Given the work performed in this matter, the extensive
12 information exchange, and substantial recovery obtained on behalf of Plaintiff and the Class, Plaintiff’s
13 Counsel achieved a settlement through efficient and diligent work. *See generally*, Kaur Decl. At final
14 approval, Plaintiff’s Counsel will fully brief the merits of its request for the award of attorneys’ fees
15 and litigation costs. Kaur Decl., ¶ 35.

16 **V. CONCLUSION**

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

21
22 Dated: June 13, 2023

AEGIS LAW FIRM, PC

23
24 By: Namrata Kaur
25 Namrata Kaur
26 Attorneys for Plaintiff
27
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