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13 and on behalf of all others similarly situated

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

DEBRA ANN GONZALEZ, individually
and on behalf of all others similarly situated,

Plaintiff,

vs.

HAYWARD F2, INC.; EAST BAY F2,
INC.; DUBLIN F2, INC.; TRACY F2, INC.;
and DOES 1 through 20, inclusive,

Defendants.

Case No. 21CV001198

Assigned for All Purposes to:
Judge Evelio Grillo
Dept. 21

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

Date: November 15, 2022
Time: 10:00 a.m.
Dept.: 21

Reservation No.: 076037124463

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1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court 3.769 (d) and (e), Plaintiff Debra Ann Gonzalez (“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 Defendants Hayward F2, Inc., East Bay F2, Inc., Dublin F2, Inc., and
6 Tracy F2, Inc. (“Defendants”) (collectively, Plaintiff and Defendants referred to as, the “Parties”). The
7 putative class consists of approximately 284 persons who performed work, for Defendants in California
8 (individually, “Class Member”; collectively, the “Class”) during the Class Period of May 1, 2017,
9 through July 8, 2022 (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 \$475,000.00 allocated to
12 approximately 284 Class Members on a pro rata basis according to the weeks
13 worked by each Class Member worked during the Class Period;
- 14 (2) An award of up to one-third of the Gross Settlement Amount (currently
15 \$158,333.33) and up to \$25,000 in reimbursement of costs to Plaintiff’s Counsel
16 for services rendered as counsel on this matter;
- 17 (3) Incentive Award of up to \$5,000 to Plaintiff Debra Ann Gonzalez;
- 18 (4) Settlement Administration fees and costs of up to \$8,000; and
- 19 (5) Payment to the California Labor and Workforce Development Agency (“LWDA”)
20 of \$35,000 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.

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 Class Action Administration, 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 October 26, 2021, Plaintiff filed this action on behalf of Defendants' non-exempt employees.
9 Kaur Decl., ¶ 3. On October 26, 2021, before adding a PAGA claim, Plaintiff provided written notice to
10 the LWDA and Defendants as required by Lab. Code § 2699.3(a). Kaur Decl., ¶ 3. On February 8, 2022,
11 Plaintiff amended her complaint to add a cause of action for PAGA. Kaur Decl., ¶ 3. On June 27, 2022,
12 Plaintiff provided supplemental notice to the LWDA and Defendants of additional facts and theories. *Id.*
13 at ¶ 4. On September 23, 2022, Plaintiff filed her Second Amended complaint. Kaur Decl., ¶ 4. Plaintiff
14 alleges the following causes of action in the Second Amended Complaint: (1) failure to provide meal
15 periods (2) failure to permit rest breaks (3) failure to provide accurate itemized wage statements (4) failure
16 to pay wages upon separation of employment (5) failure to reimburse necessary business expenses (6)
17 violation of California Business and Professions Code §§ 17200, *et seq.*, (7) any claims asserted under
18 the Private Attorney General Act, § 2698 *et seq.* ("PAGA") and (8) failure to pay wages. Kaur Decl., ¶ 4.

19 On December 29, 2021, Plaintiff served written discovery on Defendant which requested
20 documents and information including time punch data, pay data and wage statements, contact information,
21 and job titles of Plaintiff and Class Members, and the written policies provided to them during their
22 employment. Kaur Decl., ¶ 5.

23 Before written responses to discovery were served by Defendant, the parties agreed to private
24 mediation. Kaur Decl., ¶ 6. On July 8, 2022, the Parties attended a mediation session with Jill R. Sperber,
25 Esq., a respected mediator. Kaur Decl., ¶ 7. The Parties reached a class-wide settlement at mediation. Kaur
26 Decl., ¶ 7. The Parties spent the next several months negotiating the terms of the Settlement, which was
27 finalized in September of 2022. Kaur Decl., ¶ 8. On October 17, 2022, Plaintiff submitted the Settlement
28 to the LWDA pursuant to Lab. Code § 2699(1)(2). Kaur Decl., ¶ 8, Exhibit 2 (Confirmation of

1 Submission of Settlement to LWDA).

2 **III. SUMMARY OF THE SETTLEMENT**

3 **A. Terms of Settlement**

4 Plaintiff and Defendants agreed to settle the class claims in exchange for a Gross Settlement
5 Amount of \$475,000,000. Settlement Agreement, § 3.06(a). The Gross Settlement Amount will be used
6 to make payments for the following: (1) Individual Settlement Payments to Participating Class
7 Members; (2) attorneys’ fees to Class Counsel of up to one-third of the Gross Settlement Amount; (3)
8 reimbursement of Class Counsel’s litigation costs of up to \$25,000; (4) an Incentive Award to Plaintiff
9 Debra Ann Gonzalez of up to \$5,000.00; (5) Settlement Administration fees and costs of \$8,000; and
10 (6) a payment of \$35,500 in PAGA penalties. *Id.* at § 3.06(a-f). Class Members’ Individual Settlement
11 Payments will be distributed after final approval of the Settlement and Defendants fund the Gross
12 Settlement Amount. *Id.* at § 3.06(f). Individual Settlement Payments will be calculated by comparing
13 the total Qualifying Workweeks for the Class to each individual Class Member’s Qualifying
14 Workweeks. Settlement Agreement, § 3.06(f). The Settlement Administrator will calculate the actual
15 estimated recovery to include in the Class Notice and provide the estimated low and high range of
16 possible recovery at final approval. *See* Settlement Agreement, Exhibit A (Notice of Class Action
17 Settlement).

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

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

26 The Settlement Administrator will send Class Members the Notice of Class Action Settlement
27 (“Class Notice”) by first-class mail after checking for updated addresses through the National Change of
28 Address database. Settlement Agreement, § 3.03. The Class Notice provides information regarding the

1 nature of the lawsuit, a summary of the substance of the settlement terms, the formula for calculating
2 Individual Settlement Payments, the individual's estimated payout, a statement that Class Members who
3 take no action will release their claims and receive settlement checks, instructions regarding how to
4 dispute the calculations, instructions regarding how to request exclusion or object to the Settlement, the
5 date for the final approval hearing, the amounts sought for attorneys' fees and costs, the Settlement
6 Administration Costs, the class representative's Incentive Award, the PAGA allocation, and information
7 on how to access the court's website to view the case records. *See* Settlement Agreement, Exhibit A
8 (Class Notice).

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

18 If Class Notice packets are returned as undeliverable, the Settlement Administrator will perform a
19 skip-trace or other search, and re-mail the Class Notice with an extended deadline, to opt out or object, of
20 15 days from the date of mailing or the original deadline, whichever is later. Settlement Agreement, §
21 3.03. The initial 60-day notice period ensures the notice program provides due process by giving Class
22 Members enough time to determine whether they want to participate in the Settlement. This means of
23 notice is reasonably calculated to apprise Class Members of the pendency of the action. *See* Cal. R. Ct.
24 3.766 (d)-(f).

25 C. Proposed Release

26 The release to be given by Class Members is limited to the Defendants and their past, present,
27 and future parents, affiliates, subsidiaries, divisions, predecessors, successors, partners, joint venturers,
28 affiliated organizations, shareholders, board members, insurers, reinsurers and assigns, and each of

1 their past, present and future officers, directors, trustees, agents, employees, attorneys, contractors,
2 representatives, benefits plans sponsored or administered by the Released Parties, divisions, units, and
3 branches, and any other persons or entities acting on behalf of or in concert with any of the foregoing
4 (“Released Parties”). Settlement Agreement, Art. I(ff). Under the proposed release, Class Members
5 who do not exclude themselves from the Settlement will be deemed to have released or waived the
6 following “Released Claims” against the Released Parties during the period of May 1, 2017, through
7 July 8, 2022:

8 any and all claims arising during the Class Period alleged in Named Plaintiff’s Operative
9 Complaint or which could have been alleged based on the facts alleged in the Operative
10 Complaint, including but not limited to violation of Labor Code Sections 201, 202, 203, 204,
11 210, 226, 226.3, 226.7, 512, 558, 1174, 1174.5, 2800, 2802, for (1) failure to provide meal
12 periods (2) failure to authorize or permit rest periods (3) failure to furnish accurate itemized
13 wage statements (4) failure to pay wages upon separation of employment and within the
14 required time (5) failure to reimburse necessary business expenses (6) failure to pay all wages
15 owed, (7) violation of California Business and Professions Code §§17200, et seq., based on
16 the preceding claims and (8) failure to pay wages.

17 *Id.* at § 5.01. The operative period for the Release will be from May 1, 2017 through July 8, 2022. *Id.* at
18 §I(g). As for the PAGA Release, “the State of California and PAGA Group Members release the Released
19 Parties from all claims exhausted in Plaintiff’s notice(s) sent to the LWDA and alleged in the operative
20 complaint, which arose during the PAGA Period, regardless of whether PAGA Group Members opt out
21 of the Class Settlement.” *Id.* at § 5.02. PAGA Group Members” means all Class Members employed by
22 Defendants at any time between October 26, 2020 through July 8, 2022. *Id.* at §I(aa). Only Plaintiff will
23 agree to a general release of any and all claims, whether known or unknown, which exist or may exist on
24 Plaintiff’s behalf as of the date of the Settlement, and a waiver of Civ. Code § 1542. *Id.* at § 5.03.

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

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

27 Class certification is appropriate when there exists (1) an ascertainable and sufficiently numerous
28 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

1 Whether a class is “ascertainable” is “determined by examining (1) the class definition, (2) the
2 size of the class, and (3) the means available for identifying class members.” *Reyes v. Bd. of Supervisors*,
3 196 Cal. App. 3d 1263, 1271 (1987). Here, the Class consists of all current and former non-exempt
4 individuals who are or were employed by Defendants, however titled, in California at any time from May
5 1, 2017, through July 8, 2022. Defendants’ records show the Class consists of approximately 284
6 individuals, making joinder of all Class Members impracticable. Kaur Decl. ¶ 9. Further, the Class is
7 readily ascertainable from Defendants’ business records because all Class Members are current or
8 former employees of Defendants. *Id.*

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

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

14 *a. Common Questions Predominate*

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

20 Plaintiff alleged that Defendants maintained uniform employment policies and/or practices that
21 illegally deprived Class Members of lawful meal periods, rest breaks, accurate wage statements, timely
22 payment of wages upon separation, waiting time pay and reimbursement of necessary business expenses.
23 Kaur Decl. ¶ 10. Plaintiff’s allegations present common legal and factual questions of, *inter alia*, whether
24 Defendants applied the same scheduling, timekeeping, pay, meal period policies, rest break policies, and
25 reimbursement of business expenses to all Class Members; whether these policies and practices resulted
26 in Labor Code violations; whether Defendants’ conduct was intentional; and whether Class Members are
27 entitled to penalties. *Id.*

1 These common questions could be resolved using Class Members’ schedules, time punches, and
2 pay records, Defendants’ corporate representative’s testimony, written communications between
3 Defendants and Class Members, and Class Member declarations. Kaur Decl. ¶ 10. Thus, the Court can
4 and should exercise its discretion to grant conditional class 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 she and other Class Members were employed by Defendants and injured
9 by Defendants’ common wage and hour policies and practices, including Defendants’ scheduling,
10 timekeeping, pay, meal period, and rest break, business reimbursement practices. Kaur Decl. ¶ 11.
11 Through documents and information exchanged, including production of hundreds of pages of
12 documents by Defendants, and tens of thousands of lines of data, Plaintiff confirmed that these common
13 policies and practices similarly affected Plaintiff and the Class. *Id.* Thus, Plaintiff’s claims arise from
14 the same employment practices and are based on the same legal theories as those applicable to other
15 Class Members, as further explained in Plaintiff’s exposure analysis below.

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

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

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*, Kaur Decl. Accordingly, Plaintiff should be
3 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. Kaur Decl. ¶ 14. 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 a full day mediation session with a
2 respected mediator after production of extensive documents and data. Kaur Decl. ¶¶ 5-7. 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. Kaur Decl. ¶ 8.

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

6 Plaintiff’s Counsel thoroughly investigated the class claims, applicable law, and potential
7 defenses. *See generally*, Kaur Decl. In particular, Plaintiff’s Counsel assessed the value of the class
8 claims using Defendants’ data and documents produced prior to mediation. Plaintiff’s counsel engaged
9 an expert to quantify the potential exposure using the time and payroll records, and then assessed the
10 risks associated with each claims meriting reductions in the likely recovery at trial. Kaur Decl. ¶ 5-7.
11 Accordingly, Plaintiff’s Counsel fully understood the strengths and weaknesses of the claims before the
12 Parties reached a settlement.

13 *c. Plaintiff’s Counsel is Experienced in Similar Litigation*

14 Plaintiff is represented by Aegis Law Firm, PC (“Class Counsel”). Class Counsel prosecute wage
15 and hour class actions on behalf of employees and others who have had their rights violated. Kaur Decl.
16 ¶¶ 25-27. The attorneys working on this case have been appointed class counsel in many cases, through
17 both contested motions and settlement approval motions. *Id.* Thus, Plaintiff’s Counsel has extensive
18 experience in similar litigation and should be appointed as Class Counsel.

19 **2. The Settlement is Reasonable Given the Strengths of Plaintiff’s Claims and**
20 **the Risks and Expense of Litigation**

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

25 While Plaintiff and her counsel believed and continue to believe this is a strong case for
26 certification, the significant risks and expenses associated with class certification and liability
27 proceedings were taken into account. Kaur Decl. ¶ 15-22. To determine if the amount offered to settle
28 was reasonable, Plaintiff’s Counsel weighed that figure against many risk factors. If Plaintiff continued

1 to prosecute the claims rather than accept a settlement, Plaintiff would have faced deadlines to file a
2 motion for class certification, had to engage in more formal written discovery and taken depositions,
3 expended time and resources to resolve disputes, prepared and filed potential dispositive motions and/or
4 discovery motions, and engaged in extensive trial preparation. An adverse ruling at any one of these
5 stages could have prevented the Class from obtaining any recovery. Kaur Decl. ¶ 15-17.

6 a. Exposure Analysis

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

10 Compromise is inherent and necessary in the settlement process . . . even if “the relief afforded
11 by the proposed settlement is substantially narrower than it would be if the suits were to be
12 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.”

13 *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 250 (2001) (citation omitted). Here, Plaintiff
14 contend that his claims are based on Defendants’ common, class-wide policies and procedures, and that
15 liability could be determined on a class-wide basis without dependence on individual assessments of
16 liability. Kaur Decl. ¶ 16. Although the amount of Defendants’ potential exposure – if proven – is
17 substantial, the legitimate and serious risks of succeeding at class certification and trial compelled a
18 serious consideration of the benefit of a settlement. Kaur Decl. ¶ 16.

19 Meal and Rest Break Claims: Plaintiffs’ theory of liability for meal and rest break violations was
20 based on Defendants’ alleged lack of coverage for Class Members to take meal and rest breaks, as well
21 as failure to include bonuses in the rate of pay for premiums. Plaintiff and other class members allege
22 they were too busy to take a timely lunch break due to customers, large workloads, and lack of coverage.
23 Plaintiff estimated meal period violation claim to be worth about \$620,000 and the rest break claim to
24 be worth about \$650,000. Kaur Decl. ¶ 18. However, Defendants would have strong arguments against
25 these claims considering that their policies were facially compliant and they paid some premiums. Kaur
26 Decl. ¶ 18.

27 Expense Reimbursement claims: Plaintiffs alleged Class Members were required to use their
28 personal cellphones to contact the sales department and managers to complete their job duties.

1 Although Defendants paid some cell phone reimbursements, not all class members received an
2 expense reimbursement. Plaintiff valued this claim to be worth approximately \$126,642. Kaur Decl. ¶
3 19.

4 Derivative Waiting Penalty Claims: Plaintiffs' Counsel also considered the arguable presence of
5 various penalties, and weighed the potential recoveries against probable defenses. Defendants allegedly
6 failed to issue accurate itemized wage statements stating the gross and net wages earned, and failed to pay
7 all wages due upon separation of employment. Assuming Plaintiff proved all of the underlying claims,
8 Plaintiff calculated \$1 million in waiting time penalties and \$320,400 in wage statement penalties.
9 However, Defendant could defeat these claims at trial if it proved the violations were not willful or it acted
10 in good faith. Kaur Decl. ¶ 20.

11 PAGA claims: The PAGA claim presented even higher hurdles. Although Plaintiffs' Counsel found
12 Defendants' exposure could potentially reach approximately \$330,000 under Labor Code section 2699(f),
13 assuming the initial penalty rate of \$100 for each pay period, Plaintiffs would have to prove a violation in
14 every pay period. Most importantly, the Court would have discretion to reduce the PAGA award based on
15 whether the amount of the award would be "unjust, arbitrary and oppressive, or confiscatory." Lab. Code
16 § 2699(e)(2).

17 In theory, the Court could reduce the award by 99% if it so wished. Given Defendant's payment
18 of at least some meal period premiums and expense reimbursements, Plaintiffs were doubtful they could
19 recover any PAGA penalties, especially if a large class judgment was entered for the same violations.
20 Accordingly, Plaintiffs could not place a high value on the PAGA penalties, and therefore allocated
21 \$35,000.00 of the Gross Settlement Amount to settle these claims. Kaur Decl. ¶ 21.

22 Ultimately, the damages estimates were extremely liberal and assumed the best-case scenario for
23 every Class Member. Kaur Decl., ¶ 22. Reaching a compromise at this stage will allow Class Members to
24 obtain compensation for their claims without having to file and litigate their own cases. *Ibid.*

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

26 Plaintiff seeks an Incentive Award of up to \$5,000 to Plaintiff Debra Ann Gonzalez, for accepting
27 the responsibilities of representing the interests of the Class and assuming risks and potential costs that
28 were not borne by any other Class Members. Settlement Agreement, § 3.06(d). A named plaintiff is

1 eligible for payment that reasonably compensates him or her for undertaking and fulfilling a fiduciary
2 duty to represent absent class members. *See Cellphone Termination Fee Cases, supra*, 186 Cal. App.
3 4th at 1393; *Bell v. Farmers Ins. Exch.*, 115 Cal. App. 4th 715, 726 (2004).

4 Here, Plaintiff had the option to pursue her wage and hour claims individually, but instead chose
5 to pursue this class action, delaying individual recovery until approval of a class action settlement.
6 Throughout the case, Plaintiff assisted counsel in gathering the evidence necessary to prosecute the class
7 claims, maintained regular contact with counsel, was available on the day of mediation to answer
8 questions, and reviewed the Settlement to make sure it was fair to the Class. Kaur Decl. ¶ 23. No action
9 would likely have been taken by Class Members individually, and no compensation would have been
10 recovered for them, but for Plaintiff’s services on behalf of the Class. Kaur Decl. ¶ 23.

11 By actively pursuing this action, Plaintiff furthered the California public policy goal of enforcing
12 the State’s wage and hour laws. *See Sav-On Drug Stores, Inc., supra*, 34 Cal. 4th at 340. The requested
13 Incentive Award for Plaintiff’s service as the class representative is reasonable and should be
14 preliminarily approved. At the final approval stage, Plaintiff will further support the request for an
15 Incentive Award by a declaration that addresses the factors for the award. Kaur Decl. ¶ 24.

16 **D. The Requested Attorneys’ Fees and Costs**

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

24 Plaintiff seeks appointment of Aegis Law Firm, PC as Class Counsel. The attorneys performed
25 significant work and expended litigation costs in prosecuting the matter with no guarantee of any
26 payment, attorneys had to forego compensable hourly work on other cases so as to devote the necessary
27 time and resources to these contingency class actions and risked recovering nothing for this substantial
28 effort which included hundreds of hours worked by the attorneys. Kaur Decl. ¶ 38. Plaintiff’s Counsel

1 seeks preliminary approval for \$158,333.33 in attorneys' fees, which is up to one-third of the Gross
2 Settlement Amount, and up to \$25,000 in reimbursement of litigation costs. Given the work performed
3 in this matter, the extensive information exchange, and substantial recovery obtained on behalf of
4 Plaintiff and the Class, Plaintiff's Counsel achieved a settlement through efficient and diligent work.
5 *See generally*, Kaur Decl. At final approval, Plaintiff's Counsel will fully brief the merits of its request
6 for the award of attorneys' fees and litigation costs. Kaur Decl. ¶ 39.

7 **V. CONCLUSION**

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

12
13
14 Dated: October 19, 2022

AEGIS LAW FIRM, PC

15
16 By: Namrata Kaur
17 Namrata Kaur
18 Jessica L. Campbell
19 Attorneys for Plaintiff
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Court Reservation Receipt

Reservation

Reservation ID:
076037124463

Status:
RESERVED

Reservation Type:
Motion for Order (Granting Preliminary Approval of
Class Action Settlement)

Number of Motions:
1

Case Number:
21CV001198

Case Title:
GONZALEZ vs HAYWARD F2, INC., et al.

Filing Party:
Debra Ann Gonzalez (Plaintiff)

Location:
Rene C. Davidson Courthouse - Department 21

Date/Time:
November 15th 2022, 10:00AM

Confirmation Code:
CR-ELQ5X7W8E9DCUWDJS

Fees

Description	Fee	Qty	Amount
Motion for Order (name extension)	.00	1	.00
Court Technology Fee	1.00	1	1.00
TOTAL			\$1.00

Payment

Amount:
\$1.00

Type:
Visa

Account Number:
XXXX7221

Authorization:
05044B

Payment Date:
2022-08-23

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