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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF SACRAMENTO**

16 CARLOS HERNANDEZ JR., individually
17 and on behalf of all others similarly situated,

18 Plaintiffs,

19 vs.

20 HANFORD SAND & GRAVEL, INC.;
21 HANFORD READY-MIX, INC.; and DOES
22 1-10, inclusive,

23 Defendants.

Case No. 34-2022-00314657

Assigned for All Purposes to:
Judge Jill H. Talley
Dept. 25

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

Date: February 17, 2023
Time: 9:00 a.m.
Dept: 25

Reservation No.: 2703561

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1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court 3.769 (d) and (e), Plaintiff Carlos Hernandez Jr. (“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 Hanford Sand & Gravel, Inc. (“Defendant”) (collectively,
6 Plaintiff and Defendant referred to as, the “Parties”). The putative class consists of approximately 146
7 non-exempt employees who performed work for Defendant in California (individually, “Class
8 Member”; collectively, the “Class”) from January 28, 2018 through February 28, 2023, or the date the
9 court grants Preliminary Approval of the Settlement, whichever is later (the “Class Period”). The basic
10 terms of the Joint Stipulation of Settlement (“Settlement Agreement” or “Settlement”)¹ provide for the
11 following:

- 12 (1) A non-reversionary Gross Settlement Amount of \$1,000,000.00 to the class
13 members, and if the number of workweeks exceeds 11,362, - by more than 8%, the
14 Gross Settlement Amount will increase pro rata at a rate of \$88.01 per additional
15 workweek.
- 16 (2) An award of up to one-third of the Gross Settlement Amount (currently \$
17 333,333.33) and up to \$25,000 in reimbursement of costs to Plaintiff’s Counsel for
18 services rendered as counsel on this matter;
- 19 (3) Incentive Award of up to \$10,000.00 for Plaintiff Carlos Hernandez Jr.;
- 20 (4) Settlement Administration fees and costs of up to approximately \$7,000.00; and
- 21 (5) Payment of \$40,000 for civil penalties pursuant to PAGA. Seventy-five percent
22 (75%) of this payment will be paid to the California Labor and Workforce
23 Development Agency (“LWDA Payment”), and twenty-five percent (25%) will be
24 paid to the Net Settlement Amount for distribution to Class Members.

25 The Settlement satisfies the criteria for preliminary approval and falls well within the range of
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 reasonably given the risks and costs of continued litigation. The Settlement was reached through
2 informed, arms-length bargaining at and after mediation between experienced attorneys. As such,
3 Plaintiff requests that the Court grant preliminary approval of the Settlement, conditionally certify the
4 Class for settlement purposes only, appoint Plaintiff as the Class Representative, appoint Plaintiff's
5 Counsel as Class Counsel, appoint Phoenix Settlement Administrator, as the Settlement Administrator,
6 authorize the Settlement Administrator to send notice of the Settlement, and set a final approval hearing
7 date.

8 9 **II. SUMMARY OF THE LITIGATION**

10 On January 27, 2022, Plaintiff Carlos Hernandez Jr. filed a class action Complaint on behalf of
11 persons who performed work as non-exempt employees for Defendants Hanford Sand & Gravel, Inc. and
12 Hanford Ready Mix, Inc. ("Defendants"). Kaur Decl., ¶ 3. On January 27, 2022, before adding a PAGA
13 claim, Plaintiff submitted a letter to the LWDA alleging Labor Code violations committed by Defendants
14 Hanford Sand & Gravel, Inc. and Hanford Ready Mix, Inc. Kaur Decl., ¶ 3. On April 4, 2022, Plaintiff
15 filed his First Amended Complaint adding PAGA as a Cause of Action. Kaur Decl., ¶ 4. After the case
16 was filed, Plaintiff's counsel began discussions with Defendants' counsel regarding the status of
17 Defendant Hanford Ready-Mix, Inc. as a properly named defendant. Defendants' counsel provided
18 Plaintiff's counsel with evidence that Hanford Ready-Mix, Inc. did not employ Plaintiff in the relevant
19 time period. After reviewing the information and documents, Plaintiff agreed to seek dismissal of
20 Defendant Hanford Ready-Mix, Inc. without prejudice. Kaur Decl. at ¶ 5. On August 4, 2022 Plaintiff
21 filed a Request for Dismissal of Individual & Class Action Claims Against Defendant Hanford Ready-
22 Mix, Inc. Without Prejudice. Kaur Decl. at ¶ 5.

23 Plaintiff alleges the following causes of action in Plaintiff's operative First Amended Complaint:
24 (1) failure to pay wages; (2) failure to provide meal breaks; (3) failure to permit rest breaks; (4) failure to
25 provide accurate itemized wage statements; (5) failure to pay all wages due upon separation of
26 employment; (6) failure to reimburse necessary business expenses; (8) violation of Business and
27 Professions Code § 17200, *et seq.*, and (9) enforcement of Labor Code § 2698 *et seq.* ("PAGA"). Kaur
28 Decl. at ¶ 6.

1 On July 8, 2022, Plaintiff served written discovery on Defendant which requested documents and
2 information including time punch data, pay data and wage statements, contact information, and job titles
3 of Plaintiff and Class Members, and the written policies provided to them during their employment. Kaur
4 Decl. at ¶ 7. Before written responses to discovery were served by Defendant, the parties agreed to private
5 mediation and to exchange informal discovery. Kaur Decl. at ¶ 7. Plaintiff's counsel assessed the value of
6 the class claims by analyzing the proposed Class Members' time and pay records, as well as Defendant's
7 relevant policies and practices, produced by Defendant through informal discovery, prior to mediation, to
8 identify potential violations. Kaur Decl. at ¶ 7.

9 On December 20, 2022, the parties participated in a private mediation with Jill R. Sperber, Esq. via
10 videoconference. With the assistance of Ms. Sperber, and through continued negotiations following
11 mediation, the Parties reached the following binding Settlement to globally resolve all class and
12 representative wage and hour claims. Kaur Decl. at ¶ 8.

13 The negotiations were adversarial, conducted at arm's length and tempered by the efforts of both
14 sides to serve the interests of their clients. Kaur Decl. at ¶ 9. On January 20, 2023 Plaintiff submitted
15 the Settlement to the LWDA pursuant to Lab. Code § 2699(1)(2). Kaur Decl. at ¶ 9, **Exhibit 2**
16 (Confirmation of Submission of Settlement to LWDA).

17 18 **III. SUMMARY OF THE SETTLEMENT**

19 **A. Terms of Settlement**

20 Plaintiff and Defendant agreed to settle the class claims in exchange for a Gross Settlement
21 Amount of \$1,000,000.00 subject to a pro rata under the conditions set forth in Section 3.04(e) of the
22 Settlement Agreement. *See* Settlement Agreement, § 3.06(a). The Gross Settlement Amount will be used
23 to make payments for the following: (1) Individual Settlement Payments to Participating Class
24 Members; (2) attorneys' fees to Class Counsel of up to one-third of the Gross Settlement Amount; (3)
25 reimbursement of Class Counsel's litigation costs of up to \$25,000; (4) Incentive Award of up to
26 \$10,000.00 for Plaintiff; (5) Settlement Administration fees and costs of \$7,000.00; and (6) an allocation
27 of 40,000 of the Gross Settlement Amount in consideration of the claims made under PAGA. *Id.* at §
28 3.06(a-f). The Settlement Administrator will calculate the actual estimated recovery to include in the Class

1 Notice and provide the estimated low and high range of possible recovery at final approval. *See* Settlement
2 Agreement, Exhibit A (Notice of Class Action Settlement).

3 The individual Settlement Payments will be calculated by comparing the total Qualifying
4 Workweeks for the Class to each individual Class Member’s Qualifying Workweeks. *See* Settlement
5 Agreement at § 3.06(f). The Individual Settlement Payments to Class Members will be allocated for tax
6 purposes as follows: 15% to wage and 85% allocated to interest and penalties. *See* Settlement Agreement
7 at § 3.06(f). The employer-side payroll taxes on the portion allocated to wages will be paid by Defendant
8 separately from, and in addition to the Gross Settlement Amount. *Id.* at § 3.06(f). No portion of the
9 Gross Settlement Amount will revert to Defendant. *See* Settlement Agreement at § I(n). Participating
10 Class Members shall have 180 days from the date their Individual Settlement Payment checks are dated
11 to cash their Settlement checks. Any checks that are not cashed upon the expiration of the 180-day time
12 period will be void, and the uncashed funds shall be paid the State Controller Unclaimed Property Fund
13 in the name of the Class Member for whom the funds are designated. *See* Settlement Agreement at §
14 3.06(f).

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

16 The Settlement Administrator will send Class Members the Notice of Class Action Settlement
17 (“Class Notice”) by first-class mail after checking for updated addresses through the National Change of
18 Address database. *See* Settlement Agreement at § 3.03. The Class Notice provides information regarding
19 the nature of the lawsuit, a summary of the substance of the settlement terms, the formula for calculating
20 Individual Settlement Payments, the individual’s estimated payout, a statement that Class Members who
21 take no action will release their claims and receive settlement checks, instructions regarding how to
22 dispute the calculations, instructions regarding how to request exclusion or object to the Settlement, the
23 date for the final approval hearing, the amounts sought for attorneys’ fees and costs, the Settlement
24 Administration Costs, the class representative’s Incentive Award, the PAGA allocation, and information
25 on how to access the court’s website to view the case records. *See* Settlement Agreement, Ex. A (Class
26 Notice).

27 The Class Notice provides instructions for Class Members who choose to exclude themselves
28 from the Settlement. *See* Settlement Agreement, Exhibit A (Class Notice). To opt out, Class Members

1 are instructed to submit a Request for Exclusion to the Settlement Administrator by a specified date (30
2 days after the date of mailing of the Class Notice). *See* Settlement Agreement, Exhibit A (Class Notice).
3 Class Members do not need to submit a claim form to participate in the Settlement. *See* Settlement
4 Agreement, Exhibit A (Class Notice). Class Members are informed of how they can object to the
5 Settlement, and the Class Notice informs Class Members of the date, time, and location of the final fairness
6 and approval hearing so that they can appear in person or virtually if the Court so requires. *See* Settlement
7 Agreement, Exhibit A (Class Notice). Accordingly, the content of the Class Notice complies with the
8 requirements of Cal. R. Ct. 3.766(d).

9 If Class Notice packets are returned as undeliverable, the Settlement Administrator will perform a
10 skip-trace or other search, and re-mail the Class Notice. If a class member's notice is re-mailed, the Class
11 member shall have fifteen (15) calendar days from the re-mailing, or sixty (60) calendar days from the
12 date of the initial mailing, whichever is later, in which to postmark objections or requests for exclusion.
13 *See* Settlement Agreement at § 3.03. The initial 60-day notice period and extension process ensure the
14 notice program provides due process by giving Class Members enough time to determine whether they
15 want to participate in the Settlement. This means of notice is reasonably calculated to apprise Class
16 Members of the pendency of the action. *See* Cal. R. Ct. 3.766 (d)-(f).

17 **C. Proposed Release**

18 The release to be given by Class Members is limited to Defendant Hanford Sand & Gravel, Inc.
19 , Hanford Ready Mix, Inc., and past, present and/or future officers, directors, shareholders, employees,
20 agents, payroll service providers, operators, principals, owners, heirs, representatives, accountants,
21 auditors, consultants, insurers and reinsurers, successors and predecessors in interest, subsidiaries,
22 affiliates, members, divisions, fiduciaries, trustees, partners, shareholders, investors, benefit plans,
23 parents and attorneys, if any. *See* Settlement Agreement, §I(gg). Under the proposed release, Class
24 Members who do not exclude themselves from the Settlement will be deemed to have released or
25 waived the following "Released Claims" against the Released Parties during the period of January 28,
26 2018 through February 28, 2023, or the date the court grants Preliminary Approval of the Settlement,
27 whichever is later.

1 all claims, actions, demands, causes of action, suits, debts, obligations, guarantees, costs,
2 expenses, attorneys' fees, damages, restitution, injunctive relief, penalties, rights or
3 liabilities, of any nature and description whatsoever, arising during the Class Period or the
4 PAGA Period alleged in Plaintiff's Operative Complaint, or Complaint, or which could have
5 been alleged based on the facts alleged in the Operative Complaint or Complaint, including
6 but not limited to violation of Labor Code Sections 201, 202, 203, 204, 210, 226, 226.3,
7 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1198, 2800, 2802, 2698
8 for (1) failure to pay wages (2) failure to provide meal periods (3) failure to provide rest
breaks (4) failure to provide accurate itemized wage statements (5) failure to pay all wages
upon separation of employment (6) failure to reimburse necessary business expenses (7)
failure to pay overtime (8) violation of California Business and Professions Code §§17200,
et seq., based on the preceding claims ("Released Claims").

9 See Settlement agreement at § 5.01. As for the PAGA Release, "the State of California and PAGA Group
10 Members release the Released Parties from all claims exhausted in Plaintiff's notice(s) sent to the LWDA
11 and alleged in the operative complaint, which arose during the PAGA Period, regardless of whether
12 PAGA Group Members opt out of the Class Settlement." *Id.* at § 5.02. PAGA Group Members" means
13 all Class Members employed by Defendant at any time between January 28, 2021 through February 28,
14 2023, or the date the court grants Preliminary Approval of the Settlement, whichever is later. *See*
15 Settlement agreement at §I(bb). In addition to these releases Plaintiff will individually agree to a general
16 release, and a waiver of Civ. Code § 1542. *Id.* at § 5.03.

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

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

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

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

24 Whether a class is "ascertainable" is "determined by examining (1) the class definition, (2) the
25 size of the class, and (3) the means available for identifying class members." *Reyes v. Bd. of Supervisors*,
26 196 Cal. App. 3d 1263, 1271 (1987). Here, the Class consists of non-exempt employees of Defendant in
27 California at any time from January 28, 2018 through February 28, 2023, or the date the court grants
28

1 Preliminary Approval of the Settlement, whichever is later. Kaur Decl. ¶ 10. Defendant’s records show
2 the Class consists of approximately 146 individuals, making joinder of all Class Members impracticable.
3 Kaur Decl. ¶ 10. Further, the Class is readily ascertainable from Defendant’s business records because
4 all Class Members currently or formerly worked for Defendant. *Id.*

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

6 “[T]he ‘community of interest requirement embodies three factors: (1) predominant common
7 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3)
8 class representatives who can adequately represent the class.’” *Fireside Bank v. Superior Court*, 40 Cal.
9 4th 1069, 1089 (2007) (quoting *Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 470 (1981)).

10 *a. Common Questions Predominate*

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

16 Plaintiff alleged that Defendant maintained uniform employment policies and/or practices that
17 illegally deprived Class Members of all wages, meal periods, rest breaks, waiting time pay, accurate
18 itemized wage statements and reimbursements of business expenses. Kaur Decl. ¶ 11. Plaintiff’s
19 allegations present common legal and factual questions of, *inter alia*, whether Defendant applied the same
20 scheduling, timekeeping, minimum and overtime pay, wage statements, meal period, rest break policies,
21 waiting time policies and reimbursement of business expenses policies, to all Class Members; whether
22 these policies and practices resulted in Labor Code violations; whether Defendant’s conduct was
23 intentional; and whether Class Members are entitled to penalties. *Id.*

24 These common questions could be resolved using Class Members’ schedules, time punches, and
25 payroll records, Defendant’s corporate representative’s testimony, written communications between
26 Defendant and Class Members, and Class Member declarations. Kaur Decl. ¶ 11. Thus, the Court can and
27 should exercise its discretion to grant conditional class certification for settlement purposes.
28

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

2 The typicality requirement is satisfied when the legal theories and facts supporting Plaintiff's
3 claims are substantially similar to other class members. *See Classen v. Weller*, 145 Cal. App. 3d 27, 46
4 (1983). Here, Plaintiff alleges that he and other Class Members performed work for Defendant and was
5 injured by Defendant's common wage and hour policies and practices, including Defendant's
6 scheduling, timekeeping, minimum wage pay, overtime pay, meal period and rest break policies, waiting
7 time policies and business expense reimbursement practices. Kaur Decl. ¶ 12. Through documents and
8 information exchanged, Plaintiff confirmed that these common policies and practices similarly affected
9 Plaintiff and the Class. *Id.* Thus, Plaintiff's claims arise from the same employment practices and are
10 based on the same legal theories as those applicable to other Class Members, as further explained in
11 Plaintiff's exposure analysis below.

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

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

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

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

2 Class treatment is superior to other methods of adjudication when the probability is small that
3 each class member will come forward to prove his or her claim and when the class approach would deter
4 and redress the alleged wrongdoing. *See Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 435, 446 (2000);
5 *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524, 1537-1538 (2008). Here, none of the other
6 146 Class Members had shown any interest in bearing the expense and burden of litigating their own
7 claims. Kaur Decl. ¶ 15. Thus, a class action is the superior method for seeking relief.

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

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

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

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

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

24 Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless
25 evidence to the contrary is offered. Thus, there is a presumption that settlement negotiations are
26 conducted in good faith. Here, the Settlement was the product of a full day mediation session with a
27 respected mediator after adequate investigation. Kaur Decl. ¶¶ 7-9. The negotiations were adversarial,
28 conducted at arm’s length and tempered by the efforts of both sides to serve the interests of their clients.

1 *Id.* at ¶ 9. The amount of Plaintiff’s requested Incentive Award was negotiated and agreed upon during
2 the mediation. *Id.* at ¶ 9.

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

4 Plaintiff’s Counsel thoroughly investigated the class claims, applicable law, and potential
5 defenses. *See generally*, Kaur Decl. In particular, Plaintiff’s Counsel assessed the value of the class
6 claims using Defendant’s data and documents produced through informal discovery. Kaur Decl. ¶ 7.
7 Plaintiff’s counsel extensively reviewed time records and compared them to payroll documents to
8 identify potential violations. *Id.* Accordingly, Plaintiff’s Counsel fully understood the strengths and
9 weaknesses of the claims before the Parties reached a settlement. *Id.*

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

11 Plaintiff is represented by Aegis Law Firm, PC (“Class Counsel”). Class Counsel prosecutes wage
12 and hour class actions on behalf of employees and others who have had their rights violated. Kaur Decl.
13 ¶¶ 28-30. The attorneys working on this case have been appointed class counsel in many cases, through
14 both contested motions and settlement approval motions. *Id.* Thus, Plaintiff’s Counsel has extensive
15 experience in similar litigation and should be appointed as Class Counsel.

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

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

22 While Plaintiff and his counsel believed and continue to believe this is a strong case for
23 certification, the significant risks and expenses associated with class certification and liability
24 proceedings were taken into account. Kaur Decl. ¶¶ 16-24. To determine if the amount offered at
25 mediation was reasonable, Plaintiff’s Counsel weighed that figure against many risk factors. If Plaintiff
26 continued to prosecute the claims rather than accept a settlement, Plaintiff would have faced deadlines
27 to file a motion for class certification, had to have engaged in more formal written discovery and taken
28 depositions, expended time and resources to resolve disputes, prepared and filed potential dispositive

1 motions and/or discovery motions, and engaged in extensive trial preparation. An adverse ruling at any
2 one of these stages could have prevented the Class from obtaining any recovery. Kaur Decl. ¶¶ 16-18.

3 *a. Exposure Analysis*

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

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

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

18 Minimum wage and overtime claims

19 Plaintiff’s minimum wage and overtime claims were premised on the theories that (i)
20 Defendant paid class members non-discretionary bonuses, but excluded these bonuses from overtime
21 calculations and (ii) Defendant failed to pay class members for reporting time wages. Plaintiff calculated
22 that the overtime claim was worth approximately \$20,051 and the minimum wage claim was worth
23 approximately \$65,000.00. However, Plaintiff lacked records for class members to prove the exact time
24 for calculating the reporting time, making it difficult to prove this claim. Accordingly, Plaintiff
25 discounted this claim significantly in evaluating the case for settlement. Kaur Decl. ¶ 19.

26 Meal and Rest Break Claims:

27 Plaintiff’s theory of liability for meal and rest break violations was based on Defendant’s
28 failure to maintain legal meal and rest break policies. Plaintiff calculated that the rest and meal breaks
violation was worth approximately \$ 2,459,189.00 in total. However, these claims would be difficult to

1 prove given the lack of records earlier in the class period. Plaintiff would have to rely on class member
2 testimony, which made this claim risky for class certification and proving damages. Additionally,
3 Defendant argued the majority of the class was exempt from meal and rest break requirements because
4 they were commercial drivers. If Defendant succeeded in proving that defense, the meal and rest break
5 claims would be worth nothing. Kaur Decl. ¶ 20.

6 Expense Reimbursement Claims:

7 Plaintiff's and class members' theory of liability for reimbursement of business expenses
8 violations was based on Defendant's failure to reimburse class members for the use of business-related
9 personal cell phone expenses. Plaintiff calculated that the reimbursement for business expenses
10 violation was worth approximately \$91,714.00. However, Plaintiff faced the risk of failing to prove cell
11 phone use was "required" and "necessary" under the legal standard. As such, this claim was discounted
12 to account for these substantial risks. Kaur Decl. ¶ 21.

13 Inaccurate wage statements:

14 Plaintiff alleged that Defendant did not meet its recordkeeping obligations or duty to furnish
15 accurate itemized wage statements as the wage statements that Defendant issued to class members did not
16 accurately report all overtime wages earned, all applicable hourly rates, all meal and rest break premiums.
17 Plaintiff calculated that the inaccurate wage statement claim was worth approximately \$427,350.
18 However, Defendant could show that class members did not suffer an injury as a result of the wage
19 statement violations or that any inaccuracies were accidental. As such, this claim was discounted to
20 account for these substantial risks. Kaur Decl. ¶ 22.

21 Waiting Time Penalty Claims:

22 Plaintiff alleged waiting time penalties were owed as a derivative penalty from the other
23 violations. Plaintiff calculated that the waiting time penalties was worth approximately \$492,745, but
24 Defendant could defeat this claim if Defendant proved a good faith defense. As such, this claim was
25 discounted for that risk and the risk of not prevailing on the underlying claims. Kaur Decl. ¶ 23.

26 PAGA Claim:

27 The PAGA claim presented even higher hurdles. Although Plaintiff's Counsel found Defendant's
28 exposure could potentially reach approximately \$433,300 under Lab. Code § 2699(f), assuming the

1 initial penalty rate of \$100 for each pay period, Plaintiff would have to prove a violation in every pay
2 period. Most importantly, the Court would have discretion to reduce the PAGA award based on whether
3 the amount of the award would be “unjust, arbitrary and oppressive, or confiscatory.” Lab. Code §
4 2699(e)(2). In theory, the Court could reduce the award by 99% if it so wished. Given the small size of
5 the employer, Plaintiff was doubtful he could recover significant PAGA penalties, especially if a large
6 class judgment was entered for the same violations. Accordingly, Plaintiff could not place a high value
7 on the PAGA penalties, and therefore allocated \$40,000 of the Gross Settlement Amount to settle these
8 claims. Kaur Decl. ¶ 24.

9 Ultimately, the damages estimates were extremely liberal and assumed the best-case scenario for
10 every Class Member. Kaur Decl., ¶ 25. Reaching a compromise at this stage will allow Class Members to
11 obtain compensation for their claims without having to file and litigate their own cases. *Ibid.*

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

13 Plaintiff seeks an Incentive Award of up to \$10,000.00 total for the Plaintiff for accepting the
14 responsibilities of representing the interests of the Class and assuming risks and potential costs that were
15 not borne by any other Class Members. *See* Settlement Agreement at § 3.06(d). A named plaintiff is
16 eligible for payment that reasonably compensates him or her for undertaking and fulfilling a fiduciary
17 duty to represent absent class members. *See Cellphone Termination Fee Cases, supra*, 186 Cal. App.
18 4th at 1393; *Bell v. Farmers Ins. Exch.*, 115 Cal. App. 4th 715, 726 (2004).

19 Here, Plaintiff had the option to pursue their claims individually, but instead chose to pursue this
20 class action, delaying individual recovery until approval of a class action settlement. Kaur Decl. ¶ 26.
21 Throughout the case, Plaintiff assisted counsel in gathering the evidence necessary to prosecute the class
22 claims, maintained regular contact with counsel, was available on the day of mediation, communicated
23 with his attorneys to answer critical questions, and reviewed the Settlement to make sure it was fair to
24 the Class. *Id.* No action would likely have been taken by Class Members individually, and no
25 compensation would have been recovered for them, but for Plaintiff’s services on behalf of the Class.
26 *Id.*

27 By actively pursuing this action, Plaintiff furthered the California public policy goal of enforcing
28 the State’s wage and hour laws. *See Sav-On Drug Stores, Inc., supra*, 34 Cal. 4th at 340. The requested

1 Incentive Award for Plaintiff’s service as the class representatives and for a general release of all
2 employment claims is reasonable and should be preliminarily approved. At the final approval stage,
3 Plaintiff will further support the request for an Incentive Award by a declaration addressing the factors
4 for the award. Kaur Decl. ¶ 27.

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

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

13 Plaintiff seeks appointment of Aegis Law Firm, PC as Class Counsel. Plaintiff’s attorneys
14 performed significant work and expended litigation costs in prosecuting the matter with no guarantee
15 of any payment. Kaur Decl. ¶ 41. Plaintiff’s attorneys had to forego compensable hourly work on other
16 cases so as to devote the necessary time and resources to these contingency class actions and risked
17 recovering nothing for this substantial effort. Kaur Decl. ¶ 41. Plaintiff’s Counsel seeks preliminary
18 approval for \$333,333.33 in attorneys’ fees, which is up to one-third of the Gross Settlement Amount,
19 and up to \$25,000 in reimbursement of litigation costs. Given the work performed in this matter, the
20 extensive information exchange, and substantial recovery obtained on behalf of Plaintiff and the Class,
21 Plaintiff’s Counsel achieved a settlement through efficient and diligent work. *See generally*, Kaur Decl.
22 At final approval, Plaintiff’s Counsel will fully brief the merits of its request for the award of attorneys’
23 fees and litigation costs. Kaur Decl. ¶ 42.

24 **V. CONCLUSION**

25 The Parties have negotiated a fair and reasonable Settlement of the class claims in light of the
26 risks present in this case. Plaintiff has appropriately presented the materials and information necessary
27
28

1 for preliminarily approval, and therefore, respectfully requests that the Court preliminarily approve the
2 Settlement and schedule a date to conduct the final approval hearing.

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4 Dated: January 23, 2023

AEGIS LAW FIRM, PC

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6 By: *Namrata Kaur*
7 Namrata Kaur
8 Attorneys for Plaintiff
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