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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN**

STACIE HORTON, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

EVERSIDE HEALTH, LLC;
HEALTHSTAT WELLNESS, INC.; and
DOES 1 through 20, inclusive,

Defendants.

Case No. BCV-21-101366 TSC

*Assigned for All Purposes to:
Hon. Judge Thomas S. Clark
Dept. 17*

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

Date: May 31, 2023
Time: 8:30 a.m.

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1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court 3.769 (d) and (e), Plaintiff Stacie Horton (“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 Healthstat Wellness, Inc. (“Defendant”) (collectively,
6 Plaintiff and Defendant referred to as, the “Parties”). The putative class consists of approximately 82
7 current and former non-exempt employees who are or were employed by Defendant in California
8 (individually, “Class Member”; collectively, the “Class”) at anytime during the Class Period of June 16,
9 2017 through July 19, 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 \$450,000.00 allocated to
12 approximately 82 Class Members and the number of Qualifying Workweeks as
13 9,037. If the number of Class Members increases by more than 10% (which is more
14 than 91 Class Members and 9,941) as of the end of the Class Period, there will be a
15 pro rata adjustment to the Gross Settlement Amount equal to \$4,945.95 per
16 additional class member and/or \$45.26 per additional Qualifying Workweek;
- 17 (2) An award of up to one-third of the Gross Settlement Amount (currently
18 \$150,000.00) and up to \$10,000 in reimbursement of costs to Plaintiff’s Counsel
19 for services rendered as counsel on this matter;
- 20 (3) Incentive Award of up to \$10,000 to Plaintiff Stacie Horton;
- 21 (4) Settlement Administration fees and costs of up to \$6,000; and
- 22 (5) Allocation of \$20,000 of the Gross Settlement Amount to claims made under
23 PAGA. Seventy-five percent (75%) of this payment will be paid to the California
24 Labor and Workforce Development Agency (“LWDA Payment”), and twenty-five
25

26
27 ¹ A true and correct copy of the fully-executed “Joint Stipulation of Settlement” is attached as **Exhibit 1** to the Declaration
28 of Namrata Kaur in Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement (“Kaur Decl.”), filed
concurrently herewith.

percent (25%) will be paid to the Net Settlement Amount for distribution to PAGA Group Members.

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

II. SUMMARY OF THE LITIGATION

On June 16, 2021, Plaintiff filed this action on behalf of Defendant Everside Health, LLC and Defendant Healthstat Wellness, Inc.'s ("Defendants") non-exempt employees. Kaur Decl., ¶ 3. On June 15, 2021, Plaintiff provided written notice to the LWDA and Defendants as required by Lab. Code § 2699.3(a). Kaur Decl., ¶ 3. On August 30, 2021, Plaintiff filed a separate action alleging a single cause of action for violation of the California Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*) ("PAGA), entitled *Stacie Horton v. Everside Health, LLC and Healthstat Wellness, Inc.*, Kern Superior Court, Case No. BCV-21-102008. Kaur Decl., ¶ 4. Plaintiff alleged the following causes of action in her Class Action Complaint: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to permit rest breaks; (5) failure to provide accurate itemized wage statements; (6) failure to pay all wages due upon separation of employment; and (7) violation of Business and Professions Code §§ 17200, *et seq.* Kaur Decl., ¶ 5.

On August 27, 2021, Plaintiff served written discovery on Defendants which requested documents and information including time punch data, pay data and wage statements, contact information, and job titles of Plaintiff and Class Members, and the written policies provided to them during their employment. Kaur Decl., ¶ 6. After several discussions between Plaintiff's and Defendants' attorneys and after Defendant Everside Health, LLC provided Plaintiff with a declaration from the Vice President of People Operations for Everside Health, LLC stating that Everside Health, LLC has not employed any putative

1 class members during the class period, Plaintiff agreed to seek dismissal of Defendant Everside Health,
2 LLC without prejudice. Kaur Decl., ¶ 7. Accordingly, on January 26, 2022, Plaintiff filed a request for
3 voluntary dismissal of Defendant Everside Health, LLC without prejudice pursuant to CRC 3.770. Kaur
4 Decl., ¶ 7.

5 During the meet and confer process, the parties agreed to private mediation and to exchange
6 informal discovery. Kaur Decl., ¶ 8. Prior to the scheduled mediation, the Parties discussed damages and
7 were able to reach a resolution between themselves. Kaur Decl., ¶ 8. The Parties spent the next several
8 months negotiating the terms of the Settlement. Kaur Decl., ¶ 8. Plaintiff submitted the Settlement to the
9 LWDA pursuant to Lab. Code § 2699(1)(2). *Id.* at ¶ 8, Exhibit 2 (Confirmation of Submission of
10 Settlement to LWDA) Kaur Decl., ¶ 8.

11 On March 2, 2023, the Court denied Plaintiff's Motion for Preliminary Approval, without
12 Prejudice. In doing so the Court noted that Plaintiff's class action in the Kern County Superior Court, Case
13 No. BCV-21-101366 and Plaintiff's PAGA only action in the Kern County Superior Court, Case No.
14 BCV-21-102008 had yet to be consolidated, and ordered the Parties submit a stipulation and proposed
15 order consolidating the Class Action and PAGA Action as a precondition to the Court ruling on Plaintiff's
16 Motion for Preliminary Approval. On March 8, 2023, the parties filed a Joint Stipulation to consolidate
17 the Related Actions. Kaur Decl., ¶ 8. On March 10, 2023 Court noticed consolidation of cases and
18 assignment to Judge for all purposes. Kaur Decl., ¶ 8. Accordingly, as case number BCV-21-102008 has
19 been consolidated with case number BCV-21-101366, Plaintiff has filed the instant motion for preliminary
20 approval.

21 **III. SUMMARY OF THE SETTLEMENT**

22 **A. Terms of Settlement**

23 Plaintiff and Defendant agreed to settle the class claims in exchange for a Gross Settlement
24 Amount of \$450,000.00. *See* Settlement Agreement, § 3.06(a). The Gross Settlement Amount will be
25 used to make payments for the following: (1) Individual Settlement Payments to Participating Class
26 Members; (2) attorneys' fees to Class Counsel of up to one-third of the Gross Settlement Amount; (3)
27 reimbursement of Class Counsel's litigation costs of up to \$10,000; (4) an Incentive Award to Plaintiff
28 Stacie Horton of up to \$10,000.00; (5) Settlement Administration fees and costs of \$6,000; and (6) a

1 Payment of \$20,000 for civil penalties pursuant to PAGA. *Id.* at § 3.06(a-f). The Settlement Administrator
2 will calculate the actual estimated recovery to include in the Class Notice and provide the estimated low
3 and high range of possible recovery at final approval. *See* Settlement Agreement, Exhibit A (Notice of
4 Class Action Settlement).

5 Individual Settlement Payments will be calculated by comparing the total Qualifying Workweeks
6 for the Class to each individual Class Member's Qualifying Workweeks. Settlement Agreement, §
7 3.06(f). The Individual Settlement Payments to Class Members will be allocated for tax purposes as
8 follows: 20% to wages; 10% to penalties; and 70% to interest. *See* Settlement Agreement, § 3.06(f). The
9 employer-side payroll taxes on the portion allocated to wages will be paid by Defendant separately
10 from, and in addition to the Gross Settlement Amount. *Id.* at § 3.06(f). No portion of the Gross
11 Settlement Amount will revert to Defendant. *See* Settlement Agreement at § I(n). Participating Class
12 Members shall have 180 days from the date their Individual Settlement Payment checks are dated to cash
13 their Settlement checks. Any checks that are not cashed upon the expiration of that 180-day time period
14 will be void, and the uncashed funds shall be paid to the State Controller Unclaimed Property Fund in the
15 name of the Class Member for whom the funds are designated. *Id.* at § 3.06(f).

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

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

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

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

19 **C. Proposed Release**

20 The release to be given by Class Members is limited to the Defendant and any of its former and
21 present or any of its current or past predecessors, successors, affiliates, subsidiaries, parent companies,
22 employees, insurers, agents, consultants, legal representatives, and any other related entities, and each of
23 their past, present and future officers, shareholders, owners, members, directors, partners, agents,
24 managers, lawyers, employees, assigns, insurers, predecessors-in-interest, successors-in-interest, and
25 underwriters. (“Released Parties”). *See* Settlement Agreement, § I(ff). Under the proposed release,
26 Class Members who do not exclude themselves from the Settlement will be deemed to have released
27 or waived the following “Released Claims” against the Released Parties during the period of June 16,
28 2017 through July 19, 2022:

including but not limited to Defendant's (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize or permit rest periods; (5) failure to furnish accurate itemized wage statements wage statement violations; (6) failure to pay wages upon separation of employment and within the required time; (7) violation of California Business and Professions Code §§17200, *et seq.*,

Id. at § 5.01. The State of California and PAGA Group Members release the Released Parties from all claims exhausted in Plaintiff's notice(s) sent to the LWDA and alleged in the operative complaint, which arose during the PAGA Period, regardless of whether PAGA Group Members opt out of the Class Settlement. *See* Settlement Agreement § 5.02. Only Plaintiff will agree to a general release of any and all claims, whether known or unknown, which exist or may exist on Plaintiff's behalf as of the date of the execution of the Settlement, and a waiver of Civ. Code § 1542. *Id.* at § 5.03.

IV. LEGAL ARGUMENTS SUPPORTING PRELIMINARY APPROVAL

A. Provisional Certification of the Class is Appropriate

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

1. The Proposed Class is Numerous and Ascertainable

Whether a class is "ascertainable" is "determined by examining (1) the class definition, (2) the size of the class, and (3) the means available for identifying class members." *Reyes v. Bd. of Supervisors*, 196 Cal. App. 3d 1263, 1271 (1987). Here, the Class consists of all current and former non-exempt individuals who are or were employed by Defendant, in California at any time from June 16, 2017 through July 19, 2022 *See* Settlement Agreement at §I (c) and § I(g). Defendant's records show the Class consists of approximately 82 individuals, making joinder of all Class Members impracticable. Kaur Decl. ¶ 9. Further, the Class is readily ascertainable from Defendant's business records because all Class Members are current or former non-exempt employees of Defendant. *Id.*

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

"[T]he 'community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3)

1 class representatives who can adequately represent the class.”” *Fireside Bank v. Superior Court*, 40 Cal.
2 4th 1069, 1089 (2007) (quoting *Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 470 (1981)).

3 *a. Common Questions Predominate*

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

9 Plaintiff alleged that Defendant maintained uniform employment policies and/or practices that
10 illegally deprived Class Members of minimum and overtime wages, meal periods, rest breaks, waiting
11 time pay and accurate wage statements. Kaur Decl. ¶ 10. Plaintiff’s allegations present common legal and
12 factual questions of, inter alia, whether Defendants applied the same scheduling, timekeeping, minimum
13 and overtime pay, wage statements, meal period, rest break policies and waiting time policies to all Class
14 Members; whether these policies and practices resulted in Labor Code violations; whether Defendant’s
15 conduct was intentional; and whether Class Members are entitled to penalties. *Id.*

16 These common questions could be resolved using Class Members’ schedules, time punches, and
17 payroll records, Defendant’s corporate representative’s testimony, written communications between
18 Defendant and Class Members, and Class Member declarations. Kaur Decl. ¶ 10. Thus, the Court can and
19 should exercise its discretion to grant conditional class certification for settlement purposes.

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

21 The typicality requirement is satisfied when the legal theories and facts supporting Plaintiff’s
22 claims are substantially similar to other class members. *See Classen v. Weller*, 145 Cal. App. 3d 27, 46
23 (1983). Here, Plaintiff alleges she and other Class Members were employed by Defendant and were
24 injured by Defendant’s common wage and hour policies and practices, including Defendant’s
25 scheduling, timekeeping, pay, meal and rest break practices, waiting time practices. Kaur Decl. ¶ 11.
26 Through documents and information exchanged, Plaintiff confirmed that these common policies and
27 practices similarly affected Plaintiff and the Class. *Id.* Thus, Plaintiff’s claims arise from the same
28 employment practices and are based on the same legal theories as those applicable to other Class

Members, as further explained in Plaintiff's exposure analysis below.

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

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

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

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

Class treatment is superior to other methods of adjudication when the probability is small that each class member will come forward to prove his or her claim and when the class approach would deter and redress the alleged wrongdoing. *See Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 435, 446 (2000); *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524, 1537-1538 (2008). Here, none of the other 82 Class Members had shown any interest in bearing the expense and burden of litigating their own claims. Kaur Decl. ¶ 14. Thus, a class action is the superior method for seeking relief.

B. The Settlement Meets the Standards for Preliminary Approval

Preliminary approval is warranted if the settlement falls within a "reasonable range." *See North County Contractor's Ass'n., Inc. v. Touchstone Ins. Servs.*, 27 Cal. App. 4th 1085, 1089-90 (1994); Conte & Newberg, *Newberg on Class Actions*, § 11.26 (4th ed. 2002). In reviewing the fairness of a

1 class action settlement, due regard should be given to what is “otherwise a private consensual
2 agreement between the parties.” *Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380, 1389
3 (2010). The inquiry “must be limited to the extent necessary to reach a reasoned judgment that the
4 agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties,
5 and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Id.*

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

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

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

13 Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless
14 evidence to the contrary is offered. Thus, there is a presumption that settlement negotiations are
15 conducted in good faith. Here, the Settlement was the product of several discussions between Plaintiff’s
16 counsel and Defense Counsel prior to the scheduled mediation. Kaur Decl. ¶8. The negotiations were
17 adversarial, conducted at arm’s length and tempered by the efforts of both sides to serve the interests of
18 their clients. *Id.* at ¶ 8.

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

20 Plaintiff’s Counsel thoroughly investigated the class claims, applicable law, and potential
21 defenses. *See generally*, Kaur Decl. In particular, Plaintiff’s Counsel assessed the value of the class
22 claims using Defendant’s data and documents produced prior to mediation. Plaintiff’s counsel assessed
23 the risks associated with each claims meriting reductions in the likely recovery at trial. Accordingly,
24 Plaintiff’s Counsel fully understood the strengths and weaknesses of the claims before the Parties
25 reached a settlement. Kaur Decl. ¶ 8.

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

27 Plaintiff is represented by Aegis Law Firm, PC (“Class Counsel”). Class Counsel prosecute wage
28 and hour class actions on behalf of employees and others who have had their rights violated. Kaur Decl.

¶¶ 26-39. The attorneys working on this case have been appointed class counsel in many cases, through both contested motions and settlement approval motions. *Id.* Thus, Plaintiff’s Counsel has extensive experience in similar litigation and should be appointed as Class Counsel.

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

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

While Plaintiff and her counsel believed and continue to believe this is a strong case for class certification, the significant risks and expenses associated with class certification and liability proceedings were taken into account. Kaur Decl. ¶ 15. To determine if the amount offered to settle was reasonable, Plaintiff’s Counsel weighed that figure against many risk factors. If Plaintiff continued to prosecute the claims rather than accept a settlement, Plaintiff would have faced deadlines to file a motion for class certification, had to engage in more formal written discovery and take depositions, expended time and resources to resolve disputes, prepared and filed potential dispositive motions and/or discovery motions, and engaged in extensive trial preparation. An adverse ruling at any one of these stages could have prevented the Class from obtaining any recovery. Kaur Decl. ¶¶ 16-17.

a. Exposure Analysis

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

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

Wershba v. Apple Computer, Inc., 91 Cal. App. 4th 224, 250 (2001) (citation omitted). Here, Plaintiff contends that Plaintiff’s claims are based on Defendant’s common, class-wide policies and procedures, and that liability could be determined on a class-wide basis without dependence on individual

1 assessments of liability. Kaur Decl. ¶ 16. Although the amount of Defendant’s potential exposure – if
2 proven – is substantial, the legitimate and serious risks of succeeding at class certification and trial
3 compelled a serious consideration of the benefit of a settlement. Kaur Decl. ¶ 16.

4 Plaintiff’s minimum wage and overtime claims were premised on the theory that Defendant failed
5 to compensate Plaintiff and Class Members for time spent loading their computers before being able to
6 clock in and waiting for their computers to shut down after clocking out. Plaintiff calculated that the
7 minimum wage and overtime claims were worth up to \$168,217.52, assuming Plaintiff and Class
8 Members worked 0.1 hours per day off-the-clock. However, Defendant argued that time spent powering
9 up and shutting down computers was not compensable because it was not integral and indispensable to
10 Plaintiff and Class Members’ ability to work. *See Cadena v. Customer Connexx LLC*, 51 F.4th 831 (9th
11 Cir. 2022). Kaur Decl. ¶ 18.

12 Plaintiff’s theory of liability for meal break violations was based on the violations shown in
13 Defendant’s timekeeping records without a corresponding meal period penalty paid. Based on these
14 records, Plaintiff estimated \$35,579.80 in damages for meal period violations. However, Defendant
15 argued it maintained compliant meal period policies and Plaintiff and Class Members could choose to
16 waive meal periods voluntarily. Kaur Decl. ¶ 19.

17 Rest Break Claim: Plaintiff’s rest break claim was based on Defendant’s alleged unlawful rest
18 break policy which required Plaintiff and Class Members to remain on-premises during rest breaks.
19 Plaintiff calculated that the damages could reach up to \$1.6 million assuming a 100% violation rate for
20 all shifts over 3.5 hours. However, Defendant argued that this policy was not enforced and that many
21 Class Members actually did leave the facility during their rest breaks. As a result, this claim would have
22 relied on Class Member testimony and Defendant surely would have obtained opposing declarations
23 confirming its defenses. *See, e.g., Ordonez v. Radio Shack, Inc.*, 2013 WL 210223, *11 (C.D. Cal. Jan.
24 17, 2013) (“Because of the competing testimony before the Court, plaintiff’s evidence that defendants
25 may have an illegal, written rest break policy is insufficient for this Court to find that common issues
26 predominate.”). As such, this claim was discounted significantly to account for these substantial risks.
27 Kaur Decl. ¶ 20.

1 Plaintiff's Counsel also considered the arguable presence of various penalties, and weighed the
2 potential recoveries against probable defenses. Specifically, Defendant could argue that Plaintiff could
3 not prove the "willful" prong needed to obtain waiting time penalties under Lab. Code § 203. Additionally,
4 Defendant could argue that Plaintiffs could not show that Class Members suffered an "injury" as a result
5 of wage statement violations, as required by Cal. Lab. Code § 226. Although the Class arguably could
6 have seen a payout of approximately \$3.3 million for waiting time penalties and \$148,600.00 for wage
7 statement penalties, Plaintiff would not recover any of these derivative penalties if she failed to prove the
8 underlying claims. Kaur Decl. ¶ 21.

9 The PAGA claim presented even higher hurdles. Although Plaintiff's Counsel found Defendant's
10 exposure could potentially reach approximately \$148,600.00 under Lab. Code § 2699(f), assuming the
11 initial penalty rate of \$100 for each pay period, Plaintiff would have to prove a violation in every pay
12 period. Most importantly, the Court would have discretion to reduce the PAGA award based on whether
13 the amount of the award would be "unjust, arbitrary and oppressive, or confiscatory." Lab. Code §
14 2699(e)(2). In theory, the Court could reduce the award by 99% if it so wished. Given the severe
15 financial issues described below, Plaintiffs were doubtful they could recover any PAGA penalties,
16 especially if a large class judgment was entered for the same violations. Accordingly, Plaintiff could
17 not place a high value on the PAGA penalties, and therefore allocated \$20,000 of the Gross Settlement
18 Amount to settle these claims. Kaur Decl. ¶ 22.

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

20 Plaintiff seeks an Incentive Award of up to \$10,000 to Plaintiff Stacie Horton, for accepting the
21 responsibilities of representing the interests of the Class and assuming risks and potential costs that were
22 not borne by any other Class Members. *See* Settlement Agreement, § 3.06(d). A named plaintiff is
23 eligible for payment that reasonably compensates him or her for undertaking and fulfilling a fiduciary
24 duty to represent absent class members. *See Cellphone Termination Fee Cases, supra*, 186 Cal. App.
25 4th at 1393; *Bell v. Farmers Ins. Exch.*, 115 Cal. App. 4th 715, 726 (2004).

26 Here, Plaintiff had the option to pursue her wage and hour claims individually, but instead chose
27 to pursue this class action, delaying individual recovery until approval of a class action settlement.
28 Throughout the case, Plaintiff assisted counsel in gathering the evidence necessary to prosecute the class

1 claims, maintained regular contact with counsel, was available throughout settlement discussions,
2 communicated with attorneys throughout the settlement discussions to answer critical questions, and
3 reviewed the Settlement to make sure it was fair to the Class. Kaur Decl. ¶ 24. No action would likely
4 have been taken by Class Members individually, and no compensation would have been recovered for
5 them, but for Plaintiff's services on behalf of the Class. *Id.*

6 By actively pursuing this action, Plaintiff furthered the California public policy goal of enforcing
7 the State's wage and hour laws. *See Sav-On Drug Stores, Inc., supra*, 34 Cal. 4th at 340. The requested
8 Incentive Award for Plaintiff's service as the class representative is reasonable and should be
9 preliminarily approved.

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

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

18 Plaintiff seeks appointment of Aegis Law Firm, PC as Class Counsel. The attorneys performed
19 significant work and expended litigation costs in prosecuting the matter with no guarantee of any
20 payment. Kaur Decl. ¶ 39. Plaintiff's attorneys had to forego compensable hourly work on other cases so
21 as to devote the necessary time and resources to these contingency class actions and risked recovering
22 nothing for this substantial effort. Kaur Decl. ¶ 39. Plaintiff's Counsel seeks preliminary approval for
23 \$150,000.00 in attorneys' fees, which is up to one-third of the Gross Settlement Amount, and up to
24 \$10,000 in reimbursement of litigation costs. Given the work performed in this matter, the extensive
25 information exchange, and substantial recovery obtained on behalf of Plaintiff and the Class, Plaintiff's
26 Counsel achieved a settlement through efficient and diligent work. *See generally*, Kaur Decl. At final
27 approval, Plaintiff's Counsel will fully brief the merits of its request for the award of attorneys' fees
28 and litigation costs. Kaur Decl. ¶ 40.

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Dated: April 21, 2023

By: Namrata Kaur
Namrata Kaur
Attorneys for Plaintiff