

Benjamin H. Haber (SBN 315664)
benjamin.haber@wilshirelawfirm.com
Daniel J. Kramer (SBN 314625)
daniel.kramer@wilshirelawfirm.com
Angela Leong (SBN 300813)
angela.leong@wilshirelawfirm.com
Trenten N. Bilodeaux (SBN 332692)
trenten.bilodeaux@wilshirelawfirm.com
WILSHIRE LAW FIRM, PLC
660 South Figueroa Street, Sky Lobby
Los Angeles, California 90017
Telephone: (213) 381-9988
Facsimile: (213) 381-9989

Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CRUZ**

ALEJANDRO OLIVARES, CESAR
VALENZUELA, JUAN GALVEZ
MARTINEZ, individually, on behalf of all
others similarly
situated, the State of California and other
aggrieved persons,

Plaintiffs,

v.

LINDE GAS & EQUIPMENT, INC., a
corporation; and DOES 1 through 10,
inclusive,

Defendant.

Case No.: 24CV01346

*[Assigned for All Purposes to the Honorable
Timothy Schmal, Dept. 10]*

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION AND PAGA
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

Preliminary Approval Hearing:

Date: December 22, 2026

Time: 8:30 a.m.

Dept.: 10

Complaint Filed: May 9, 2024

FAC Filed: May 21, 2025

Trial Date: Not set.

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on December 22, 2026, at 8:30 a.m., or as soon thereafter
3 as the matter may be heard in Department 10 of the Superior Court of California, County of
4 Santa Cruz, located at 701 Ocean Street, Santa Cruz, CA 95060, Plaintiffs Alejandro Olivares,
5 Cesar Valenzuela, and Juan Galvez Martinez ("Plaintiffs") will and hereby move this Court for
6 an Order:

- 7 1. Granting preliminary approval of the proposed Class Action and PAGA Settlement
8 Agreement ("Settlement Agreement");
9 2. Conditionally certifying the proposed Class for settlement purposes only;
10 3. Appointing Plaintiffs as the Class Representatives;
11 4. Appointing Wilshire Law Firm, PLC as Class Counsel;
12 5. Appointing Apex Class Action Administration as the Settlement Administrator; and
13 6. Setting a final approval hearing date.

14 Pursuant to California Rules of Court, Rule 3.769(d) and (e), this Motion is made on the
15 grounds that the proposed Settlement satisfies all criteria for preliminary approval and falls well
16 within the range of reasonableness. The Settlement was reached through informed, arm's length
17 bargaining between experienced attorneys with the assistance of an experienced neutral, and
18 Plaintiffs and Plaintiffs' Counsel will fairly and adequately represent the Class.

19 This Motion is based on this Notice of Motion, the accompanying Memorandum of
20 Points and Authorities, the Declaration of Benjamin H. Haber, the Declarations of Alejandro
21 Olivares, Cesar Valenzuela, and Juan Galvez Martinez, and on all records and documents on file,
22 together with such oral and documentary evidence that may be presented at the hearing on this
23 matter.

24 Respectfully submitted,

25 Dated: September 30, 2026

WILSHIRE LAW FIRM, PLC

26 By: 

27 Benjamin H. Haber
28 Daniel J. Kramer
Angela Leong
Trenten N. Bilodeaux
Attorneys for Plaintiffs

TABLE OF CONTENTS

I.	INTRODUCTION	4
II.	PROCEDURAL HISTORY	5
III.	SUMMARY OF THE SETTLEMENT TERMS	6
A.	Terms of the Proposed Settlement	6
B.	Proposed Settlement Administration.....	7
C.	Proposed Release	8
IV.	THE PROPOSED SETTLEMENT AGREEMENT MEETS ALL CRITERIA FOR PRELIMINARY APPROVAL	9
A.	Provisional Certification of the Class is Appropriate	9
1.	The Proposed Class is Numerous and Ascertainable.....	9
2.	A Well-Defined Community of Interest Exists.....	10
3.	A Class Action is Superior to a Multitude of Individual Lawsuits	12
B.	The Settlement Meets the Standards for Preliminary Approval	12
1.	The Settlement is Entitled to a Presumption of Fairness	13
2.	The Settlement is Reasonable Given the Strengths of Plaintiffs' Claims and the Risks and Expense of Further Litigation.....	14
C.	The Requested Service Payments are Reasonable	18
D.	The Requested Attorneys' Fees and Costs Are Reasonable	19
E.	The Administration Costs Are Reasonable	19
V.	CONCLUSION	20

TABLE OF AUTHORITIES

CASES

<i>Ayala v. Antelope Valley Newspapers, Inc.</i> , 59 Cal.4th 522 (2014)	10
<i>Bell v. Farmers Ins. Exch.</i> , 115 Cal.App.4th 715 (2004)	18
<i>Brinker Restaurant Corp. v. Superior Court</i> , 53 Cal.4th 1004 (2012)	9, 10
<i>Cellphone Termination Fee Cases</i> , 186 Cal.App.4th 1380 (2010).....	18
<i>Chavez v. Netflix, Inc.</i> , 162 Cal.App.4th 43 (2008).....	13, 19
<i>Dean Witter Reynolds, Inc. v. Superior Court</i> , 211 Cal.App.3d 758 (1989)	12
<i>Dunk v. Ford Motor Co.</i> , 48 Cal.App.4th 1794 (1996)	13
<i>Duran v. U.S. Bank Nat’l Ass’n</i> , 59 Cal.4th 1 (2014).....	10
<i>Global Minerals & Metals Corp. v. Superior Court</i> , 113 Cal.App.4th 836 (2003)	9
<i>Hendershot v. Ready to Roll Transp., Inc.</i> , 228 Cal.App.4th 1213 (2014)	10
<i>Hernandez v. Restoration Hardware, Inc.</i> , 4 Cal.5th 260 (2018).....	11
<i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal.App.4th 116 (2008).....	12
<i>Medrazo v. Honda of North Hollywood</i> , 166 Cal.App.4th 89 (2008).....	11
<i>Nat’l Solar Equip. Owners’ Ass’n v. Grumman Corp.</i> , 235 Cal.App.3d 1273 (1991).....	11
<i>Noel v. Thrifty Payless, Inc.</i> , 7 Cal.5th 955 (2019)	9, 10
<i>Rebney v. Wells Fargo Bank</i> , 220 Cal.App.3d 1117 (1991).....	14
<i>Richmond v. Dart Industries</i> , 29 Cal.3d 462 (1981).....	11
<i>Rose v. City of Hayward</i> , 126 Cal.App.3d 926 (1981)	10
<i>Sav-On Drug Stores, Inc. v. Superior Court</i> , 34 Cal.4th 319 (2004).....	12, 19
<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal.App.4th 224 (2001)	11, 13

STATUTES

Cal. Code Civ. Proc. § 382.....	11
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to California Rules of Court, Rule 3.769(d) and (e), Plaintiffs seek preliminary approval of a class action settlement of wage and hour claims, including representative claims brought under the Labor Code Private Attorneys General Act of 2004 (“PAGA”), against Defendant Linde Gas & Equipment, Inc. (“Defendant”). The proposed Class is defined as all persons employed by Defendant in California and classified as an hourly-paid or non-exempt employee who worked for Defendant (“Class Members”) during the period from August 1, 2019, to February 28, 2025 (“Class Period”). The main terms of the Settlement are as follows:

1. A Gross Settlement Amount of \$735,000.00, which will be distributed to approximately 1,094 Class Members on a pro rata basis according to the total workweeks worked by each Class Member during the Class Period;
2. Attorneys’ fees of up to 33 and 1/3% of the Gross Settlement Amount (currently \$245,000.00) and up to \$30,000.00 in reimbursement of litigation costs to Plaintiffs’ Counsel;
3. A Class Representative Service Payment of up to \$10,000.00 to each Plaintiff (\$30,000.00 total);
4. Costs of settlement administration of up to \$11,990.00; and
5. Allocation of \$50,000.00 to PAGA penalties, seventy-five percent (75%) of which (\$37,500.00) will be paid to the Labor and Workforce Development Agency (“LWDA”), and twenty-five percent (25%) of which (\$12,500.00) will be paid to a person employed by Defendant in California and classified as an hourly-paid or non-exempt employee who worked for Defendant (“Aggrieved Employees”) at any time during the period from March 8, 2023, through February 28, 2025 (“PAGA Period”).

The Settlement meets all criteria for preliminary approval and falls within the range of reasonableness given the risks and expenses of further litigation. The Settlement was reached through informed, arm’s length bargaining between experienced attorneys with the assistance of

1 an experienced neutral. As such, Plaintiffs request that the Court grant preliminary approval of the
2 Settlement, conditionally certify the Class for settlement purposes only, appoint Plaintiffs as the
3 Class Representatives, appoint Plaintiffs' Counsel as Class Counsel, appoint Apex Class Action
4 Administration ("Apex") as the Settlement Administrator, authorize the Settlement Administrator
5 to administer notice of the Settlement to the Class, and set a final approval hearing date.

6 **II. PROCEDURAL HISTORY**

7 On January 26, 2024, Plaintiff Olivares filed this putative class action against Defendant
8 alleging: (1) failure to pay minimum and straight time wages; (2) failure to pay overtime wages;
9 (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to
10 timely pay final wages at termination; (6) failure to provide accurate itemized wage statements;
11 (7) failure to indemnify employees for expenditures; and (8) unfair business practices ("Class
12 Action"). Declaration of Benjamin H. Haber in Support of Plaintiffs' Motion for Preliminary
13 Approval of Class Action and PAGA Settlement ("MPA") ("Haber Decl.") at ¶ 3.

14 On April 5, 2024, Defendant removed Plaintiff's Olivares action to the United States
15 District Court, Northern District of California, Case No. 3:24-cv-02079-VC ("Federal Action").
16 Haber Decl. at ¶ 4. On April 26, 2024, Plaintiff Olivares filed a First Amended Complaint against
17 Defendant removing causes of action for failure to pay overtime wages, failure to provide meal
18 periods, and failure to authorize and permit rest periods. On May 6, 2025, the Federal Action was
19 dismissed. *Id.*

20 On March 5, 2024, Plaintiff Olivares provided written notice to the LWDA and Defendant
21 of the specific provisions of the Labor Code alleged to have been violated, including the facts and
22 theories in support. Haber Decl. at ¶ 5. The LWDA did not notify Plaintiff that it intended to
23 investigate within 65 days of this written notice. *Id.* Therefore, on May 9, 2024, Plaintiff Olivares
24 filed a separate action in the Superior Court of California, County of Santa Cruz, for civil penalties
25 under PAGA, Case No. 24CV01346 (the "PAGA Action"). *Id.* at ¶ 5.

26 On May 21, 2025, Plaintiff Olivares filed a First Amended Complaint in the PAGA Action
27 ("PAGA FAC") adding named Plaintiffs Cesar Valenzuela and Juan Galvez Martinez and adding
28 claims for (1) failure to pay minimum and straight time wages; (2) failure to pay overtime wages;

(3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to timely pay wages at termination; (6) failure to provide accurate itemized wage statements; (7) pay all wages during employment; (8) failure to indemnify employees for expenditures; (9) failure to maintain required records; (10) failure to provide sick leave pay; (11) failure to provide reporting time pay; (12) failure to provide suitable seating; (13) unfair business practices; and (14) penalties under Labor Code Private Attorneys General Act of 2004 (the “Operative Complaint”). Haber Decl. at ¶ 6.

On October 31, 2024, the Parties participated in a private mediation with Lisa Klerman, Esq. *Id.* at ¶ 7. The mediator made a proposal, which was accepted by the Parties. *Id.* The Parties negotiated the terms of the Settlement, which was finalized on May 9, 2026. *Id.* at ¶ 8, Exhibit 2 (“Settlement Agreement”). On September 30, 2026, Plaintiffs submitted a copy of the Settlement Agreement to the LWDA. *Id.* at ¶ 9, Exhibit 3.

III. SUMMARY OF THE SETTLEMENT TERMS

A. Terms of the Proposed Settlement

The Parties have agreed to settle the claims alleged in this case and PAGA Action for a Gross Settlement Amount of \$735,000.00. Settlement Agreement at § 3.1. Subject to Court approval, the following payments will be deducted from the Gross Settlement Amount: (1) a Class Representative Service Payment of up to \$10,000.00 to each Plaintiff (\$30,000.00 total); (2) attorneys’ fees of up to 33 and 1/3% of the Gross Settlement Amount (currently \$245,000.00) and reimbursement of litigation costs of up to \$30,000.00 to Plaintiffs’ Counsel; (3) costs of settlement administration of up to \$11,990.00 to Apex; (4) Individual Class Payments to Class Members; and (5) PAGA Penalties in the amount of \$50,000.00, which will be allocated 75% to the LWDA (\$37,500.00) and 25% to Aggrieved Employees (\$12,500.00). *Id.* at § 3.2 *et seq.* After all requested deductions are made, the remaining Net Settlement Amount is currently estimated to be \$368,001.00.

Individual Class Payments will be calculated based on the number of Workweeks worked by each Class Member during the Class Period. *Id.* at § 3.2.4. For tax purposes, the Individual Class Payments will be allocated 20% to wages and 80% to penalties, interest, costs, and attorneys’

1 fees. *Id.* at § 3.2.4.1. Defendant will separately pay employer payroll taxes owed on the wage
2 positions of the individual class payments separate from the Gross Settlement Amount. *Id.* at § 3.1.

3 Individual PAGA Payments to Aggrieved Employees will be calculated based on the
4 number of PAGA Pay Periods worked by each Aggrieved Employee during the PAGA Period. *Id.*
5 at § 3.2.5.1. For tax purposes, the individual PAGA payments will be allocated 100% to penalties.
6 *Id.*

7 Any deductions not approved by the Court will be retained by the Settlement Administrator
8 in the Net Settlement Amount. *Id.* at §§ 3.2.1, 3.2.2, 3.2.3, 3.2.5. Funds from any uncashed checks
9 will be transmitted by the Settlement Administrator to the California Controller's Unclaimed
10 Property Fund in the name of the Class Member. *Id.* at § 4.5.2. None of the Gross Settlement
11 Amount will revert to Defendant. *Id.* at § 3.1.

12 **B. Proposed Settlement Administration**

13 The Parties' proposed Class Notice complies with the requirements of California Rules of
14 Court, Rule 3.766(d). *See* Exhibit A to Settlement Agreement. It provides information regarding
15 the nature of this lawsuit, a summary of the settlement terms, the formula used for calculating
16 individual class and PAGA payments and instructions to dispute the calculations, instructions on
17 how to opt-out of or object to the Settlement, the date, time, and location of the final approval
18 hearing, and the amounts sought for the class representative service payments, attorneys' fees and
19 litigation costs, and settlement administration costs. *See generally, id.* The Class Notice also
20 notifies Class Members that they do not need to submit a claim in order to participate in the
21 Settlement and receive a payment. *See id.* The Settlement Administrator will mail Class Members
22 the Class Notice by first-class mail in English and in Spanish. Settlement Agreement at § 7.4.2.

23 If a Class Notice is returned as undeliverable, the Settlement Administrator will re-mail the
24 Class Notice within three (3) business days to the forwarding address provided by the U.S. Postal
25 Service. Settlement Agreement at § 7.4.2. If no forwarding address is provided, the Settlement
26 Administrator will conduct a Class Member Address Search and re-mail the Class Notice to the
27 most current address obtained. *Id.* The deadline to opt-out of the Settlement or to submit an
28 objection or dispute will be extended by fourteen (14) days for all Class Members whose Class

1 Notice was remailed. *Id.* at §7.4.4.

2 **C. Proposed Release**

3 Effective on the date when Defendant fully funds the Gross Settlement Amount and all
4 employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiffs,
5 Class Members, and Class Counsel will release claims against all Released Parties as follows:

6 Release by Participating Class Members:

7 All Participating Class Members, on behalf of themselves and their respective former and
8 present representatives, agents, attorneys, heirs, administrators, successors, and assigns,
9 release Released Parties from any and all claims asserted or that could have been asserted
10 based on the facts pled in the operative complaints, including but not limited to, all claims,
11 rights, demands, liabilities, and causes of action, that were or could have been pleaded
12 based on the factual allegations set forth in the last operative Complaints in the Lawsuits,
13 including any and all amendments thereto to add class claims, and includes the PAGA
14 Letter submitted by Plaintiffs, and any other PAGA Letters submitted to the LWDA by
15 Class Counsel on behalf of any Class Member for: (1) failure to pay minimum and regular
16 rate wages, including paid sick leave; (2) failure to pay overtime compensation, including
17 alleged regular rate violations; (3) failure to provide meal periods; (4) failure to authorize
18 and permit rest breaks; (5) failure to timely pay final wages at termination; (6) failure to
19 provide accurate itemized wage statements; (7) failure to timely pay all wages during
20 employment; (8) failure to reimburse business expenses; (9) failure to maintain accurate
21 records of hours worked; (10) failure to maintain accurate records of meal breaks; (11)
22 failure to pay sick leave wages at the regular rate; (12) reporting time pay, (13) reasonable
23 seating, and (14) unfair business practices in violation of California Business and
24 Professions Code sections 17200, et seq., including incorporated or related claims based on
25 alleged violations of California Labor Code sections 201, 202, 203, 204, 210, 218, 218.15,
26 218.6, 221, 226, 226.3, 226.7, 227.3, 233, 234, 245 - 248.5, 510, 512, 551, 552, 558, 558.1,
27 1174, 1174.5, 1193.6, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800, 2802 et seq., 2810.5,
28 California Code of Regulations section 11070(14) and California Industrial Welfare
Commission (“IWC”) Wage Order 7 - 2001 section 7, IWC Wage Order 9 – 2001,
California Code of Civil Procedure section 1021.5.

21 Settlement Agreement at § 5.2.

22 Released by Aggrieved Employees:

23 In light of the binding nature of a PAGA judgment on non-party employees pursuant to
24 applicable California law, including *Arias v. Superior Ct. (Dairy)*, 46 Cal. 4th 969 (2009),
25 Plaintiffs, Aggrieved Employees, and State of California (through Plaintiffs as agents and
26 proxies of the Labor and Workforce Development Agency), with respect to Aggrieved
27 Employees, on behalf of themselves and their respective former and present spouses,
28 representatives, agents, attorneys, heirs, administrators, successors, and assigns, shall be
deemed to have fully, finally, and forever released, settled, compromised, relinquished, and
discharged any and all claims for civil penalties under the PAGA, against the Released Parties
for work performed during the PAGA Period and based on or arising out of the violations of

the Labor Code sections alleged in Plaintiffs' PAGA Letters and the Lawsuits, or which could have been alleged under the same or similar facts plead in Plaintiffs' PAGA Letters or the Lawsuits, including any and all amendments thereto, including without limitation, civil penalties for: (1) failure to pay minimum and regular rate wages, including paid sick leave; (2) failure to pay overtime compensation, including alleged regular rate violations; (3) failure to provide meal periods; (4) failure to authorize and permit rest breaks; (5) failure to timely pay final wages at termination; (6) failure to provide accurate itemized wage statements; (7) failure to timely pay all wages during employment; (8) failure to reimburse business expenses; (9) failure to maintain accurate records of hours worked; (10) failure to maintain accurate records of meal breaks; (11) failure to pay sick leave wages at the regular rate; (12) reporting time pay, (13) reasonable seating, including incorporated or related claims based on alleged violations of California Labor Code sections 201, 202, 203, 204, 210, 218, 218.15, 218.6, 221, 226, 226.3, 226.7, 227.3, 233, 234, 245-248.5, 510, 512, 551, 552, 558, 558.1, 1174, 1174.5, 1193.6, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802 et seq., 2810.5.

Settlement Agreement at § 5.3.

Only Plaintiffs will agree to a general release and a waiver of Civil Code § 1542. Settlement Agreement at §§ 5.1, 5.1.1.

IV. THE PROPOSED SETTLEMENT AGREEMENT MEETS ALL CRITERIA FOR PRELIMINARY APPROVAL

A. Provisional Certification of the Class is Appropriate

Class certification is appropriate when there is: (1) an ascertainable and sufficiently numerous class; (2) a well-defined community of interest among class members; and (3) substantial benefits from certification that render proceeding as a class superior to the alternatives. *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1021 (2012). Although courts still need to review and consider each element for certification, a lesser standard can be used to provisionally certify a settlement class. *Global Minerals & Metals Corp. v. Superior Court*, 113 Cal.App.4th 836, 859 (2003).

1. The Proposed Class is Numerous and Ascertainable

"Ascertainability" is determined by examining the class definition and the size of the class and may also involve examining the means available to identify class members. *Noel v. Thrifty Payless, Inc.*, 7 Cal.5th 955, 980-981, 985-986 (2019). As the settlement eliminates the need for trial, "the case management issues inherent in the ascertainable class determination need not be confronted." *Global Minerals*, 113 Cal.App.4th at 859. Further, under California law, there is no

1 minimum number of class members for maintenance of a class action. *Hendershot v. Ready to Roll*
2 *Transp., Inc.*, 228 Cal.App.4th 1213, 1222 (2014). Class sizes as small as 10 have been permitted.
3 *Rose v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981), disapproved on other grounds by *Noel*,
4 7 Cal.5th at 986.

5 The Class here consists of all persons employed by Defendant in California and classified
6 as an hourly-paid or non-exempt employee who worked for Defendant during the Class Period.
7 See Settlement Agreement at § 1.5, 1.12. The Class is also readily ascertainable from Defendant's
8 business records, because all Class Members are or were employees of Defendant. *Id.* Defendant's
9 records show there are approximately 1,094 Class Members, making joinder of all Class Members
10 impracticable. Haber Decl. at ¶ 11.

11 2. A Well-Defined Community of Interest Exists

12 The community of interest requirement embodies three factors: (1) predominant common
13 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and
14 (3) class representatives who can adequately represent the class. *Brinker*, 53 Cal.4th at 1021.

15 a. Common Questions Predominate

16 In determining whether common issues “predominate,” courts consider both plaintiff's
17 legal theories and defendant's affirmative defenses. *Duran v. U.S. Bank Nat'l Ass'n*, 59 Cal.4th 1,
18 28-29 (2014). The “predominate common questions” factor does not require that all class members
19 have identical claims. *Ayala v. Antelope Valley Newspapers, Inc.*, 59 Cal.4th 522, 530 (2014).
20 Rather, the focus is on whether issues shared by the class members are sufficiently uniform to
21 permit class-wide assessment, and whether individual variations in proof on those issues are
22 manageable. *Id.*

23 Plaintiffs have alleged that Defendant maintained common employment policies and/or
24 practices that unlawfully deprived Class Members of wages, meal periods, rest periods,
25 reimbursements for business expenses, accurate wage statements, and timely payment of wages
26 upon separation of employment. Haber Decl. at ¶ 12. These allegations present common factual
27 and legal questions of, *inter alia*, whether Defendant applied the same scheduling, timekeeping,
28 pay, meal period, rest period, and reimbursement policies to all Class Members, whether these

1 policies and practices resulted in Labor Code violations, whether Defendant's conduct was
2 intentional, and whether Class Members are entitled to damages and/or penalties. *Id.* These
3 common questions could be resolved using Class Members' time records, payroll records,
4 testimony from Defendant's designated representative(s), and Class Members' testimony. *Id.*
5 Therefore, the Court can and should exercise its discretion to grant conditional class certification
6 for settlement purposes.

7 *b. Plaintiffs are Typical of the Class*

8 Typicality does not require that the representative plaintiff's claims and those of the class
9 members be identical or perfectly aligned. *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224,
10 228 (2001), disapproved on other grounds by *Hernandez v. Restoration Hardware, Inc.*, 4 Cal.5th
11 260 (2018). Typicality does not require that a plaintiff's claims be identical to those of other class
12 members, only that their claims and the defenses applicable to them are sufficiently similar to those
13 of other class members that a named plaintiff is able to adequately represent the class and focus on
14 common issues. *Medraza v. Honda of North Hollywood*, 166 Cal.App.4th 89, 99 (2008).

15 Plaintiffs have alleged that they and Class Members were employed by the same Defendant
16 and injured by Defendant's common wage and hour policies and practices, including Defendant's
17 scheduling, timekeeping, pay, meal period, rest period, and reimbursement policies. *See* Haber
18 Decl. at ¶ 12. Through informal discovery, Plaintiffs confirmed that these challenged policies and
19 practices applied to Plaintiffs and Class Members alike. *See id.* at ¶ 10. Therefore, Plaintiffs' claims
20 and Class Members' claims arise from the same challenged employment policies and practices and
21 are based on the same legal theories.

22 *c. Plaintiffs and Plaintiffs' Counsel Will Adequately Represent the*
23 *Class*

24 Certification requires adequacy of both the proposed class representative and of the
25 proposed class counsel. Cal. Code Civ. Proc. § 382. "Only a conflict that goes to the very subject
26 matter of the litigation will defeat a party's claim of representative status." *Richmond v. Dart*
27 *Industries*, 29 Cal.3d 462, 470 (1981). Only conflicts that are "irreconcilable" can defeat adequacy.
28 *Nat'l Solar Equip. Owners' Ass'n v. Grumman Corp.*, 235 Cal.App.3d 1273, 1286 (1991). The

1 proposed representative Plaintiffs and proposed Class Counsel present no such conflict.

2 Plaintiffs' interests are coextensive with Class Members' interests. Declaration of
3 Alejandro Olivares in Support of Plaintiffs' MPA, Declaration of Cesar Valenzuela in Support of
4 Plaintiffs' MPA, and Declaration of Juan Galvez Martinez in Support of Plaintiffs' MPA
5 ("Olivares Decl.") at ¶ 6., ("Valenzuela Decl.") at ¶ 6., ("Martinez Decl.") at ¶ 6. Plaintiffs have
6 demonstrated an ability to advocate for the interests of Class Members by initiating this lawsuit,
7 providing information to their attorneys, meeting with their attorneys regarding the claims, making
8 themselves available the day of mediation to answer questions, and reviewing the proposed
9 Settlement. *Id.* at ¶ 11.

10 Likewise, Wilshire Law Firm has expended considerable time and effort on this case and
11 will continue to do so through final approval. *See generally*, Haber Decl. Therefore, Plaintiffs
12 should be appointed Class Representatives, and their counsel should be appointed Class Counsel.

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

14 Courts have held that class treatment of wage and hour claims is clearly "superior to the
15 other available methods for the fair and efficient adjudication of the controversy." *Dean Witter*
16 *Reynolds, Inc. v. Superior Court*, 211 Cal.App.3d 758, 772-773 (1989). This is so because "[p]ublic
17 policy has long favored the 'full and prompt payment of wages due an employee.'" *Sav-On Drug*
18 *Stores, Inc. v. Superior Court*, 34 Cal.4th 319, 340 (2004). Here, a class action is superior to a
19 multitude of individual lawsuits. Given the size and amount of each Class Member's claim, Class
20 Members have little incentive to litigate their claims on an individual basis because the out-of-
21 pocket expenses and personal commitment necessary to litigate each claim likely outweigh any
22 potential recovery. Haber Decl. at ¶ 11. Therefore, a class action is the superior method for seeking
23 relief.

24 B. The Settlement Meets the Standards for Preliminary Approval

25 The moving party must demonstrate that "the settlement is fair, adequate and reasonable."
26 *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 126 (2008). "In determining whether a
27 class settlement is fair, adequate, and reasonable, the trial court should consider relevant factors,
28 such as the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further

litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.” *Wershba*, 91 Cal.App.4th at 244-245 (internal quotations and citations omitted).

1. The Settlement is Entitled to a Presumption of Fairness

A settlement is entitled to “a presumption of fairness . . . where: (1) the settlement is reached through arm’s length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996). The Settlement here satisfies the first three factors. Plaintiffs will analyze the fourth factor at final approval after Class Members have been notified of the Settlement and provided with an opportunity to object.

a. The Settlement is the Result of Arm’s Length Negotiation

Courts have recognized that the involvement of a respected mediator provides a high degree of assurance that the settlement is the result of arm’s length bargaining. *See Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 52-53 (2008). The Settlement in this matter was the product of a full-day mediation session with a respected mediator. Haber Decl. at ¶ 7. The negotiations were adversarial, conducted at arm’s length, and tempered by the efforts of both sides to serve the interests of their clients. *Id.*

b. Sufficient Investigation and Discovery Have Been Conducted

Prior to attending mediation, Plaintiffs’ Counsel thoroughly investigated the claims, applicable law, and potential defenses. Haber Decl. at ¶ 10. Plaintiff’s Counsel assessed the value to the class claims using the data and documents that Defendant produced in informal discovery, including class data providing the number of Class Members, the number of workweeks in the Class Period, and the number of pay periods in the PAGA Period, Plaintiffs’ personnel file/documents concerning Plaintiffs, Defendant’s employee handbook(s), Defendant’s written wage-and-hour policies, job descriptions, and a random sampling of time and payroll records. *Id.*

c. Plaintiffs' Counsel is Experienced in Similar Litigation

Plaintiffs are represented by Wilshire Law Firm, PLC. Haber Decl. at ¶ 1. Plaintiffs' Counsel has extensive experience litigating wage and hour class actions on behalf of employees. *See id.* at ¶¶ 22-32. Plaintiffs' Counsel has been involved as counsel in numerous class actions that have resulted in millions of dollars in recovery. *See id.*

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

A settlement does not have to provide 100% of the damages sought to be considered fair and reasonable. *See Rebney v. Wells Fargo Bank*, 220 Cal.App.3d 1117, 1139 (1991). Although the exposure Plaintiffs' Counsel calculated is substantial, the various risks at succeeding at class certification and through trial affected the valuation of the claims for settlement purposes. Haber Decl. at ¶ 13. For example, a number of the Class Members were drivers covered by the exemptions of the Federal Motor Carrier Safety Administration ("FMCSA"). *Id.*

Minimum and Overtime Wages: Plaintiffs' unpaid minimum and overtime wage claims were based on the allegation that Defendant required Class Members to perform work duties while off the clock, without compensation. Haber Decl. at ¶ 14. For example, Plaintiffs alleged that Defendant required them and other Class Members to perform pre-shift vehicle inspections, unlock and open the facilities, work through their meal and rest periods, perform post-shift unloading of trucks, clean the storage facility, and communicate with his supervisors regarding the next day's work via personal cell phone after hours, all without additional compensation. *Id.* For purposes of calculating Defendant's liability based on a best-case scenario for Plaintiffs and the Class, Plaintiffs' Counsel assumed that all unpaid worktime should have been paid at the overtime rate of pay and conservatively estimated that Defendant is liable for 4.7 hours of unpaid worktime per workweek (but only 1 hour of OT per week). *Id.* This results in potential exposure for this claim of approximately \$4,099,045.65 (104,902 workweeks x \$26.05 average hourly rate of pay x 1 hour/workweek x 1.5 overtime rate). *Id.* Because this claim would have relied heavily on Class Member testimony and would not be evidenced in Defendant's time and payroll records, and would have to take into account the potential that the Class Members are

1 subject to the FMCSA, the risk of succeeding at class certification and trial was substantial. *Id.*
2 Accordingly, Plaintiffs' Counsel applied a risk discount based on a 20% chance of succeeding
3 at class certification and a 20% chance of succeeding at trial on the merits, yielding a realistic
4 damage estimate of approximately \$163,961.83 ($\$4,099,045.65 \times 20\% \times 20\%$). *Id.*

5 Meal Periods: Plaintiffs' meal period claim was based on the allegation that Defendant
6 failed to provide Class Members with legally compliant meal periods or pay meal period premiums
7 in lieu thereof. Haber Decl. at ¶ 15. For example, Plaintiffs alleged that Defendant required them
8 and other Class Members to work through their meal periods due to chronic understaffing and
9 monitor their communication devices when meal periods were provided. *Id.* Additionally,
10 Plaintiffs' Counsel's expert consultant determined there was a 12.5% meal period violation rate
11 from the sampling of Defendant's time and payroll records, where meal periods were short, late,
12 or missed. *Id.* This also takes into account potentially waivable meal periods and meal premiums
13 paid. *Id.* Therefore, potential liability for the meal period claim is approximately \$1,719,143.70
14 ($527,952 \text{ shifts over } 5 \text{ hours} \times \$26.05 \text{ average hourly rate} \times 12.5\% \text{ violation rate}$). After taking into
15 account the difficulty of certifying and proving meal period claims, as well as Defendant's
16 contention that the claim lacks merit, that Class Members are potentially subject to FMCSA
17 preemption, and that a 12.5% violation rate is unrealistic, Plaintiffs' Counsel discounted this figure
18 based on a 40% chance of succeeding at class certification and a 30% chance of succeeding at trial,
19 yielding a realistic damage estimate of approximately \$206,297.24 ($\$1,719,143.70 \times 40\% \times 30\%$).
20 *Id.*

21 Rest Periods: Plaintiffs' rest period claim was based on the allegation that Defendant failed
22 to provide Class Members with legally compliant rest periods or pay rest period premiums in lieu
23 thereof. Haber Decl. at ¶ 16. For example, Plaintiffs alleged that Defendant required them and
24 other Class Members to completely forego all rest periods due to chronic understaffing and the
25 employer's pressure on drivers to meet delivery deadlines. *Id.* Based on Plaintiffs' allegations and
26 Plaintiffs' and other Class Members' experience working for Defendant, Plaintiffs' Counsel
27 applied a 50% violation rate to all qualifying shifts during the Class Period. Therefore, Defendant's
28 potential liability for the rest period claim is approximately \$7,035,675.18 ($540,167 \text{ shifts of } 3.5$

1 hours or longer x \$26.05 average hourly rate x 50% violation rate). However, Plaintiffs' Counsel
2 discounted this figure to account for the difficulty of certifying and proving rest period claims,
3 particularly because rest periods do not have to be recorded, and to account for the possibility of
4 Class Members voluntarily choosing to forego a rest period and Class Members potentially being
5 subject to FMCSA preemption. *Id.* Because this claim would have relied exclusively on Class
6 Member testimony, Plaintiffs' Counsel discounted this claim based on a 30% chance of succeeding
7 at class certification and a 20% chance of succeeding at trial, yielding a realistic damage estimate
8 of approximately \$422,140.51 ($\$7,035,675.18 \times 30\% \times 20\%$). *Id.*

9 Reimbursements: Plaintiffs' reimbursement claim was based on the allegation that
10 Defendant failed to indemnify Class Members for expenses incurred as a direct result of performing
11 their job duties for Defendant, such as mandatory use of personal cell phones for work purposes
12 such as communicating with supervisors, customers, and utilizing GPS for deliveries. Haber Decl.
13 at ¶ 17. For purposes of calculating Defendant's liability based on a best-case scenario for Plaintiffs
14 and the Class, Plaintiffs' Counsel estimated that Defendant was liable to each Class Member for
15 \$10 per workweek in unreimbursed expenses, for a total amount of approximately \$1,049,020.00
16 ($\$10 \times 104,902$ workweeks). *Id.* However, Defendant argued that these expenses were not required
17 by Defendant, and that it could not have known that these expenses were being incurred. *Id.*
18 Accordingly, Plaintiffs' Counsel discounted this claim based on a 30% chance of succeeding at
19 class certification and a 30% chance of succeeding at trial, yielding a realistic damage estimate of
20 approximately \$94,411.80 ($\$1,049,020.00 \times 30\% \times 30\%$). *Id.*

21 In sum, Plaintiffs' Counsel estimated that Plaintiffs' maximum recovery for the off-the-
22 clock claim, meal period violations, and rest period violations (i.e., the wage claims) is
23 approximately \$13,902,884.53. Haber Decl. at ¶ 18. However, after factoring in the risk and
24 uncertainty of prevailing at certification and trial, Plaintiffs' Counsel estimates that Plaintiffs'
25 realistic estimated recovery for these non-penalty wage claims is approximately \$886,811.38. *Id.*
26 Further, given a high number of the Class Members are drivers likely subject to FMCSA, further
27 reduction by 50% is reasonable. *Id.* Specifically, the FMCSA exempts covered employees from
28 the typical overtime, meal period, and rest period requirements. Taking into account the issues

noted above, including the FMCSA exemption, the realistic damage estimate is \$443,405.69. *Id.*

1. Derivative Penalties: Plaintiffs alleged that as a result of Defendant's failure to pay all wages owed, Defendant owed waiting time penalties and wage statement penalties. Haber Decl. at ¶ 19. With respect to Plaintiffs' derivative claims for statutory penalties, Plaintiffs' Counsel estimated that Defendant's maximum potential liability is approximately \$5,396,195.95. *Id.* Defendant's maximum potential liability for waiting time penalties is approximately \$2,908,195.95 ([398 employees x \$26.05 average hourly rate of pay x 8.0 hours/day x 30 days) + [398 employees x \$26.05 average hourly rate of pay x 1.5 overtime rate x 0.9 overtime hours/day x 30 days]) based on approximately 398 formerly employed Class Members during the 3-year statute of limitations period and an average shift length of 8.9 hours. *Id.* Defendant's maximum potential liability for inaccurate wage statements is approximately \$2,488,000.00 (622 employees x \$4,000.00 statutory maximum) based on approximately 622 Class Members who worked during the 1-year statute of limitations period and approximately 31,923 pay periods in that statutory timeframe. *Id.* In light of the foregoing, Plaintiffs' Counsel believes that it would be unrealistic to expect the Court to award the full \$5,396,195.95 in statutory penalties given Defendant's defenses, the contested nature of Plaintiffs' claims, the challenges of establishing willfulness as applicable, and the discretionary nature of penalties. *Id.* As such, Plaintiffs' counsel discounted these figures to account for the risk and uncertainty of obtaining class certification and prevailing at trial, resulting in a realistic evaluation of approximately \$174,491.76 for waiting time penalty claims (\$2,908,195.95 x 30% x 20%), \$149,280.00 for wage statement penalty claims (\$2,488,000.00 x 30% x 20%), or approximately \$323,771.76 total for statutory penalties. *Id.*

PAGA: For the PAGA claim, Plaintiffs' Counsel determined that Defendant's potential exposure could potentially reach \$3,192,300.00, assuming the initial \$100 penalty would apply for each of the 31,923 pay periods in the PAGA Period. Haber Decl. at ¶ 20. However, even assuming success on the merits of each claim, PAGA gives the Court discretion to reduce penalties for a variety of reasons, including where to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory. *Id.* As such, Plaintiffs' counsel discounted this figure to account for the risk and uncertainty of prevailing at trial, resulting in a realistic evaluation of approximately

1 \$319,230.00 for PAGA penalties (\$3,192,300.00 x 10%). *Id.* The settlement allocates \$50,000.00
2 of the Gross Settlement Amount to PAGA, therefore the PAGA allocation amounts to 6.8% of the
3 Gross Settlement Amount (\$50,000 / \$735,000) and approximately 16% of the realistic maximum
4 damages for PAGA penalties (\$50,000/ \$319,230). *Id.*

5 Using these estimated figures, Plaintiff's Counsel predicted that the realistic maximum
6 recovery for all claims, including penalties, would be approximately \$1,086,407.45. Haber Decl.
7 at ¶ 21. This means that the gross settlement amount represents approximately 67.6% of the
8 realistic maximum recovery (\$735,000.00 / \$1,086,407.45). *Id.* Considering the risk and
9 uncertainty of prevailing at class certification and at trial, this is an excellent result for the Class.
10 *Id.* Indeed, because of the proposed Settlement, Class Members will receive timely, guaranteed
11 relief and will avoid the risk of an unfavorable judgment. *Id.*

12 Based on the figures in the Settlement Agreement, the Net Settlement Amount available for
13 class settlement payments is currently estimated to be \$368,001.00 for approximately 1,094 Class
14 Members. Haber Decl. at ¶ 22. As a result, each Settlement Class Member would be eligible to
15 receive an average net benefit of approximately \$336.38. *Id.* Based on the estimated Net Settlement
16 Amount available for individual class payments and there being approximately 104,902
17 workweeks in the Class Period, the estimated weekly valuation for Individual Class Payments is
18 \$3.51 (\$368,001.00 / 104,902 workweeks). *Id.*

19 **C. The Requested Service Payments are Reasonable**

20 Plaintiffs seek Class Representative Service Payments of up to \$10,000.00 each
21 (\$30,000.00 total) for accepting the responsibilities of representing the interests of the Class and
22 potential costs that were not borne by any other Class Member. Settlement Agreement at § 3.2.1.
23 A named plaintiff is eligible for payment that reasonably compensates the plaintiff for undertaking
24 and fulfilling a fiduciary duty to represent absent class members. *See Cellphone Termination Fee*
25 *Cases*, 186 Cal.App.4th 1380, 1393 (2010); *Bell v. Farmers Ins. Exch.*, 115 Cal.App.4th 715, 726
26 (2004).

27 Throughout this case, Plaintiffs assisted counsel in providing information necessary to
28 prosecute the claims, meeting with counsel regarding the claims, maintaining regular contact with

counsel, making themselves available the day of mediation to answer questions, and reviewing the Settlement to ensure it was fair to the Class. (“Olivares Decl.”) at ¶ 11., (“Valenzuela Decl.”) at ¶ 11., (“Martinez Decl.”) at ¶ 11. No action would likely have been taken by Class Members individually and no compensation would have been recovered for them, but for Plaintiffs’ services on behalf of the Class. By actively pursuing this action, Plaintiffs furthered the California public policy goal of enforcing the State’s wage-and-hour laws. *See Sav-On*, 34 Cal.4th at 340. The requested Class Representative Service Payment is reasonable and should be preliminarily approved. Plaintiffs have provided declarations regarding their work performed to date and will provide additional information as requested or required by the Court at final approval.

D. The Requested Attorneys’ Fees and Costs Are Reasonable

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

Plaintiffs seek appointment of Wilshire Law Firm, PLC as Class Counsel. The attorneys performed significant work and expended litigation costs in prosecuting this matter with no guarantee of payment. Haber Decl. at ¶ 23. Plaintiffs’ Counsel seeks preliminary approval for up to 33 and 1/3% of the Gross Settlement Amount in attorneys’ fees, currently estimated to be \$245,000.00, and up to \$30,000.00 in reimbursement of litigation costs. Given the work performed in this matter, the extensive information exchange, and the substantial recovery obtained on behalf of the Class, Plaintiffs’ Counsel achieved a settlement through efficient and diligent work. *See generally*, Haber Decl. At final approval, Plaintiffs’ Counsel will fully brief the merits of its request for the award of attorneys’ fees and litigation costs.

E. The Administration Costs Are Reasonable

The Parties have agreed upon using Apex to administer this Settlement. Settlement Agreement at §§ 1.2, 7.1. Plaintiffs seek preliminary approval of \$11,990.00 for Apex to administer

1 this Settlement pursuant to Apex's will-not-exceed bid. *See* Haber Decl. at ¶ 35, Exhibit 4. The
2 services covered by this payment are extensive and necessary to carry out the Settlement
3 administration.

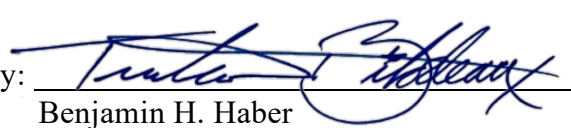
4 **V. CONCLUSION**

5 The Parties have negotiated a fair and reasonable settlement of the class claims in light of
6 the risks presented in this case. Plaintiffs have presented the materials and information necessary
7 to demonstrate that the requirements for preliminary approval have been met, and therefore
8 respectfully requests that the Court preliminarily approve the Settlement and schedule a date for
9 the final approval hearing.

10
11
12 Dated: September 30, 2026

Respectfully submitted,

WILSHIRE LAW FIRM, PLC

13
14 By: 

Benjamin H. Haber

Daniel J. Kramer

Angela Leong

Trenten N. Bilodeaux

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18 Attorneys for Plaintiffs
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