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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

ERNESTO JAVIER OROZCO, individually,
and on behalf of all others similarly situated,

Plaintiff,

v.

SOLID PROPERTY SERVICES, INC., a
California corporation; and DOES 1 through
10, inclusive,

Defendants.

Case No.: 37-2021-00024361-CU-OE-CTL

*[Assigned for All Purposes to the Honorable
Michael T. Smyth, Dept. 67]*

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

Preliminary Approval Hearing:

Date: June 17, 2027

Time: 9:00 a.m.

Dept.: 67

Action Filed: June 2, 2021

FAC Filed: February 7, 2023

Trial Date: Not Set

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

2 **PLEASE TAKE NOTICE** that on June 17, 2027, at 9:00 a.m., or as soon thereafter as
3 the matter may be heard in Department 67 of the Superior Court of California, County of San
4 Diego, located at 330 W Broadway, San Diego, CA 92101. Plaintiff Ernesto Javier Orozco
5 (“Plaintiff”) will and hereby does move this Court for an Order:

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

13 Pursuant to Code of Civil Procedure § 382 and California Rules of Court 3.769, *et seq.*,
14 this Motion is made on the grounds that the proposed Settlement satisfies all criteria for
15 preliminary approval and falls well within the range of reasonableness. The Settlement was
16 reached through informed, arm’s length bargaining between experienced attorneys with the
17 assistance of an experienced neutral, and Plaintiff and Plaintiff’s Counsel will fairly and
adequately represent the Class.

18 This Motion is based on this Notice of Motion, the accompanying Memorandum of
19 Points and Authorities (“MPA”), the Declaration of Benjamin H. Haber, the Declaration of
20 Ernesto Javier Orozco, and on all records and documents on file, together with such oral and
21 documentary evidence that may be presented at the hearing on this matter.

22
23 Respectfully submitted,

24 Dated: September 30, 2026

WILSHIRE LAW FIRM, PLC

25 By: 

26 Benjamin H. Haber
27 Talar DerOhannessian
28 Samantha Costa
Trenten N. Bilodeaux
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to Code of Civil Procedure § 382 and California Rules of Court 3.769, *et seq.*, Plaintiff seeks 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 Solid Property Services, Inc. (“Defendant”). The proposed Class is defined as all individuals who have been employed by Defendant in California as a non-exempt, hourly-paid employee, including current and former employees (“Class Members”) during the period from June 2, 2017, through the date on which the Court issues an order granting preliminary approval of this Settlement, inclusive (“Class Period”). The main terms of the Settlement are as follows:

1. A Gross Settlement Amount of \$400,000.00, from which the Net Settlement Amount will be distributed to approximately 1,225 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 one-third (1/3) of the Gross Settlement Amount (currently \$133,333.33) and up to \$40,000.00 in reimbursement of litigation costs to Plaintiff’s Counsel;
3. An Enhancement Award of up to \$10,000.00 to Plaintiff;
4. Administrator Costs of up to \$20,000.00 (Plaintiff seeks \$12,990.00 pursuant to Apex’s will-not-exceed bid); and
5. Allocation of \$20,000.00 to PAGA penalties, seventy-five percent (75%) of which (\$15,000.00) will be paid to the Labor and Workforce Development Agency (“LWDA”), and twenty-five percent (25%) of which (\$5,000.00) will be paid to all individuals who have been employed by Defendant in California as hourly-paid or non-exempt employees (“Aggrieved Employees”) at any point during the period from June 2, 2020, through the date on which the Court issues an order granting preliminary approval of this Settlement, inclusive (“PAGA Period”), including

1 current and former employees.

2 The Settlement meets all criteria for preliminary approval and falls within the range of
3 reasonableness given the risks and expenses of further litigation. The Settlement was reached
4 through informed, arm's length bargaining between experienced attorneys with the assistance of
5 an experienced neutral. As such, Plaintiff requests that the Court grant preliminary approval of the
6 Settlement, conditionally certify the Class for settlement purposes only, appoint Plaintiff as the
7 Class Representative, appoint Plaintiff's Counsel as Class Counsel, appoint Apex Class Action
8 LLC ("Apex") as the Administrator, authorize the Administrator to administer notice of the
9 Settlement to the Class, and set a final approval hearing date.

10 **II. PROCEDURAL HISTORY**

11 On June 2, 2021, Plaintiff filed this putative class action against Defendant alleging: (1)
12 failure to pay minimum and straight time wages; (2) failure to pay overtime wages; (3) failure to
13 provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to timely pay final
14 wages at termination; (6) failure to provide accurate itemized wage statements; (7) failure to
15 indemnify employees for expenditures; and (8) unfair business practices ("Class Action").
16 Declaration of Benjamin H. Haber in Support of Plaintiff's Motion for Preliminary Approval of
17 Class Action and PAGA Settlement ("Haber Decl.") at ¶ 3.

18 On June 2, 2021, Plaintiff provided written notice to the LWDA and Defendant of the
19 specific provisions of the Labor Code alleged to have been violated, including the facts and theories
20 in support. Haber Decl. at ¶ 4, Exhibit 1. The LWDA did not notify Plaintiff that it intended to
21 investigate within 65 days of this written notice. *Id.* On October 15, 2021, Plaintiff propounded
22 formal written discovery, including Form Interrogatories—General, Form Interrogatories—
23 Employment, Special Interrogatories, Requests for Production of Documents, and Requests for
24 Admission. *Id.* at ¶ 5. Defendant served responses on January 7, 2022, and the Parties engaged in
25 extensive meet and confer efforts, culminating in a comprehensive meet and confer letter sent to
26 Defendant on February 17, 2022. *Id.* at ¶¶ 6-7. On July 1, 2022, Plaintiff filed a Motion for Leave
27 to File a First Amended Complaint to add a claim for civil penalties under PAGA, which Defendant
28 opposed. *Id.* at ¶¶ 8-10. On January 27, 2023, the Court granted Plaintiff's Motion, and on February

7, 2023, Plaintiff filed his First Amended Complaint adding a cause of action for civil penalties under PAGA. *Id.* at ¶ 11. Thereafter, the Parties engaged in extensive meet and confer efforts to agree on a mediator. *Id.*

On October 31, 2025, the Parties participated in a private full-day mediation with David Phillips, Esq. *Id.* at ¶ 12. The mediator made a proposal, which was accepted by the Parties. *Id.* The Parties negotiated the terms of the Settlement over the next several months, which was finalized on June 15, 2026. *Id.* at ¶ 14, Exhibit 2. On September 30, 2026, Plaintiff submitted a copy of the Settlement Agreement to the LWDA. *Id.* at ¶ 15, 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 for a Gross Settlement Amount of \$400,000.00. Settlement Agreement at § 3.1. Subject to Court approval, the following payments will be deducted from the Gross Settlement Amount: (1) an Enhancement Award of up to \$10,000.00 to Plaintiff; (2) attorneys' fees of up to one-third (1/3) of the Gross Settlement Amount (currently \$133,333.33) and reimbursement of litigation costs of up to \$40,000.00 to Plaintiff's Counsel; (3) costs of settlement administration of up to \$20,000.00 to Apex (Plaintiff seeks \$12,990.00 pursuant to Apex's will-not-exceed bid); (4) Individual Class Payments to Class Members; and (5) PAGA Penalties in the amount of \$20,000.00, which will be allocated 75% to the LWDA (\$15,000.00) and 25% to Aggrieved Employees (\$5,000.00). *Id.* at § 3.2 *et seq.* After all requested deductions are made, the remaining Net Settlement Amount is currently estimated to be \$183,676.67. Haber Decl. at ¶ 28.

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 interest and penalties. *Id.* at § 3.2.4.1. Defendant will separately pay employer payroll taxes owed on the wage portions of the individual class payments separate from the Gross Settlement Amount. *Id.* at § 3.1.

Individual PAGA Payments to Aggrieved Employees will be calculated based on the number of PAGA Pay Periods worked by each Aggrieved Employee during the PAGA Period. *Id.*

1 at § 3.2.5.1. For tax purposes, the individual PAGA payments will be allocated 100% to penalties.
2 *Id.*

3 Any deductions not approved by the Court will be retained by the Settlement Administrator
4 in the Net Settlement Amount. *Id.* at §§ 3.2.1, 3.2.2, 3.2.3, 3.2.5. Funds from any uncashed checks
5 will be transmitted by the Administrator to the California Controller's Unclaimed Property Fund
6 in the name of the Class Member. *Id.* at § 4.4.3. None of the Gross Settlement Amount will revert
7 to Defendant. *Id.* at § 3.1.

8 **B. Proposed Settlement Administration**

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

19 If a Class Notice is returned as undeliverable, the Administrator will re-mail the Class
20 Notice within five (5) calendar days to the forwarding address provided by the U.S. Postal Service.
21 Settlement Agreement at § 7.4.3. If no forwarding address is provided, the Administrator will
22 conduct a Class Member Address Search and re-mail the Class Notice to the most current address
23 obtained. *Id.* The deadline to opt-out of the Settlement or to submit an objection or dispute will be
24 extended by fourteen (14) days for all Class Members whose Class Notice was remailed. *Id.* at §
25 7.4.4.

26 **C. Proposed Release**

27 Effective on the date when Defendant fully funds the Gross Settlement Amount and all
28 employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff,

Class Members, and Class Counsel will release claims against all Released Parties as follows:

Released Class Claims:

Upon Defendant's payment in full of the GSA and the employer's taxes for the portion of the Settlement allocated to settlement of wage claims, the claims waived, released, and discharged by Class Members (other than those who submit timely and valid requests for exclusion) as to the Released Parties are all claims arising during the Class Period which were asserted against Defendant in the operative complaint filed in the Action or which reasonably could have been asserted against Defendant based on the factual allegations stated the operative complaint filed in the Action.

Settlement Agreement at § 5.2.

Released PAGA Claims:

Upon Defendant's payment in full of the GSA and the employer's taxes for the portion of the Settlement allocated to settlement of wage claims, the claims waived, released, and discharged by Aggrieved Employees and the State of California as to the Released Parties are all claims under PAGA arising during the PAGA Period (a) which were asserted against Defendant in Plaintiffs PAGA Notice preceding the Action and/or the operative complaint filed in the Action or (b) which reasonably could have been asserted against Defendant based on the factual allegations stated in Plaintiffs PAGA Notice preceding the Action and/or the operative complaint filed in the Action.

Settlement Agreement at § 5.3.

Only Plaintiff 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

1 “Ascertainability” is determined by examining the class definition and the size of the class
2 and may also involve examining the means available to identify class members. *Noel v. Thrifty*
3 *Payless, Inc.*, 7 Cal.5th 955, 980-981, 985-986 (2019). As the settlement eliminates the need for
4 trial, “the case management issues inherent in the ascertainable class determination need not be
5 confronted.” *Global Minerals*, 113 Cal.App.4th at 859. Further, under California law, there is no
6 minimum number of class members for maintenance of a class action. *Hendershot v. Ready to Roll*
7 *Transp., Inc.*, 228 Cal.App.4th 1213, 1222 (2014). Class sizes as small as 10 have been permitted.
8 *Rose v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981), disapproved on other grounds by *Noel*,
9 7 Cal.5th at 986.

10 The Class here consists of all individuals who have been employed by Defendant in
11 California as a non-exempt, hourly-paid employee, including current and former employees,
12 during the Class Period. See Settlement Agreement at § 1.5, 1.12. The Class is also readily
13 ascertainable from Defendant’s business records, because all Class Members are or were
14 employees of Defendant. *Id.* Defendant’s records show there are approximately 1,225 Class
15 Members, making joinder of all Class Members impracticable. Haber Decl. at ¶ 17.

16 2. A Well-Defined Community of Interest Exists

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

20 a. Common Questions Predominate

21 In determining whether common issues “predominate,” courts consider both plaintiff’s
22 legal theories and defendant’s affirmative defenses. *Duran v. U.S. Bank Nat’l Ass’n*, 59 Cal.4th 1,
23 28-29 (2014). The “predominate common questions” factor does not require that all class members
24 have identical claims. *Ayala v. Antelope Valley Newspapers, Inc.*, 59 Cal.4th 522, 530 (2014).
25 Rather, the focus is on whether issues shared by the class members are sufficiently uniform to
26 permit class-wide assessment, and whether individual variations in proof on those issues are
27 manageable. *Id.*

28 Plaintiff has alleged that Defendant maintained common employment policies and/or

practices that unlawfully deprived Class Members of wages, meal periods, rest periods, reimbursements for business expenses, accurate wage statements, and timely payment of wages upon separation of employment. Haber Decl. at ¶ 18. These allegations present common factual and legal questions of, *inter alia*, whether Defendant applied the same scheduling, timekeeping, pay, meal period, rest period, and reimbursement policies to all Class Members, whether these policies and practices resulted in Labor Code violations, whether Defendant's conduct was intentional, and whether Class Members are entitled to damages and/or penalties. *Id.* These common questions could be resolved using Class Members' time records, payroll records, testimony from Defendant's designated representative(s), and Class Members' testimony. *Id.* Therefore, the Court can and should exercise its discretion to grant conditional class certification for settlement purposes.

b. Plaintiff is Typical of the Class

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

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

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

Certification requires adequacy of both the proposed class representative and of the

1 proposed class counsel. Cal. Code Civ. Proc. § 382. “Only a conflict that goes to the very subject
2 matter of the litigation will defeat a party’s claim of representative status.” *Richmond v. Dart*
3 *Industries*, 29 Cal.3d 462, 470 (1981). Only conflicts that are “irreconcilable” can defeat adequacy.
4 *Nat’l Solar Equip. Owners’ Ass’n v. Grumman Corp.*, 235 Cal.App.3d 1273, 1286 (1991). The
5 proposed representative Plaintiff and proposed Class Counsel present no such conflict.

6 Plaintiff’s interests are coextensive with Class Members’ interests. Declaration of Ernesto
7 Javier Orozco in Support of Plaintiff’s MPA (“Orozco Decl.”) at ¶ 6. Plaintiff has demonstrated an
8 ability to advocate for the interests of Class Members by initiating this lawsuit, providing
9 information to his attorneys, meeting with his attorneys regarding the claims, making himself
10 available the day of mediation to answer questions, and reviewing the proposed Settlement. *Id.* at
11 ¶ 11.

12 Likewise, Wilshire Law Firm has expended considerable time and effort on this case and
13 will continue to do so through final approval. *See generally*, Haber Decl. Wilshire Law Firm has
14 no actual or potential conflicts of interest with Class Members or the proposed Administrator, and
15 is not aware of any pending matter or action against Defendant that may be extinguished or
16 adversely affected by this Settlement. *Id.* at ¶¶ 39-40. Therefore, Plaintiff should be appointed
17 Class Representative, and his counsel should be appointed Class Counsel.

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

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

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

2 The moving party must demonstrate that “the settlement is fair, adequate and reasonable.”
3 *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 126 (2008). “In determining whether a
4 class settlement is fair, adequate, and reasonable, the trial court should consider relevant factors,
5 such as the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further
6 litigation, the risk of maintaining class action status through trial, the amount offered in settlement,
7 the extent of discovery completed and the stage of the proceedings, the experience and views of
8 counsel, the presence of a governmental participant, and the reaction of the class members to the
9 proposed settlement.” *Wershba*, 91 Cal.App.4th at 244-245 (internal quotations and citations
10 omitted).

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

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

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

20 Courts have recognized that the involvement of a respected mediator provides a high degree
21 of assurance that the settlement is the result of arm’s length bargaining. *See Chavez v. Netflix, Inc.*,
22 162 Cal.App.4th 43, 52-53 (2008). The Settlement in this matter was the product of a full-day
23 mediation session with a respected mediator. Haber Decl. at ¶ 12. The negotiations were
24 adversarial, conducted at arm’s length, and tempered by the efforts of both sides to serve the
25 interests of their clients. *Id.* The mediator made a proposal, which was accepted by the Parties. *Id.*

26 b. Sufficient Investigation and Discovery Have Been Conducted

27 Prior to attending mediation, Plaintiff’s Counsel thoroughly investigated the claims,
28 applicable law, and potential defenses. Haber Decl. at ¶ 16. Plaintiff’s Counsel assessed the value

1 of the class claims using the data and documents that Defendant produced in informal discovery,
2 including class data providing the number of Class Members, the number of workweeks in the
3 Class Period, and the number of pay periods in the PAGA Period, Plaintiff's personnel
4 file/documents concerning Plaintiff, Defendant's employee handbook(s), Defendant's written
5 wage-and-hour policies, job descriptions, and a random sampling of time and payroll records. *Id.*
6 Plaintiff's Counsel engaged an expert consultant to quantify the potential exposure using the time
7 and payroll records, and then assessed the risks associated with each claim meriting reductions in
8 the likely success at class certification and likely recovery at trial. *Id.* Prior to the mediation, the
9 Parties exchanged extensive documents and data, and Defendant provided Plaintiff with numerous
10 financial documents, which Plaintiff thoroughly reviewed with the assistance of a forensic
11 accountant. *Id.* at ¶ 13.

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

13 Plaintiff is represented by Wilshire Law Firm, PLC. Haber Decl. at ¶ 29. Plaintiff's Counsel
14 has extensive experience litigating wage and hour class actions on behalf of employees. *See id.* at
15 ¶¶ 29-38. Plaintiff's Counsel has been involved as counsel in numerous class actions that have
16 resulted in millions of dollars in recovery. *See id.*

17 **2. The Settlement is Reasonable Given the Strengths of Plaintiff's Claims**
18 **and the Risks and Expense of Further Litigation**

19 A settlement does not have to provide 100% of the damages sought to be considered fair
20 and reasonable. *See Rebney v. Wells Fargo Bank*, 220 Cal.App.3d 1117, 1139 (1991). Although
21 the exposure Plaintiff's Counsel calculated is substantial, the various risks at succeeding at class
22 certification and through trial affected the valuation of the claims for settlement purposes. Haber
23 Decl. at ¶ 19.

24 Minimum and Overtime Wages: Plaintiff's unpaid minimum and overtime wage claims
25 were based on the allegation that Defendant required Class Members to perform work duties
26 while off the clock, without compensation. Haber Decl. at ¶ 20. For example, Plaintiff alleged
27 that Defendant required him and other Class Members to respond to communications regarding
28 daily duties before shifts began, and continue working after clocking out to complete the

1 assigned daily tasks. *Id.* These pre- and post-shift activities were in addition to Plaintiff's
2 allegation that Class Members were forced to work through meal and rest periods due to the
3 significant quantity of daily assigned tasks. *Id.* For purposes of calculating Defendant's liability
4 based on a best-case scenario for Plaintiff and the Class, Plaintiff's Counsel assumed that all unpaid
5 worktime should have been paid at the overtime rate of pay and conservatively estimated that
6 Defendant is liable for one (1) hour of unpaid worktime per workweek. *Id.* This results in potential
7 exposure for this claim of approximately \$339,593.76 (15,592 workweeks x \$14.52 average hourly
8 rate of pay x 1 hour/workweek x 1.5 overtime rate). Because this claim would have relied heavily
9 on Class Member testimony and would not be evidenced in Defendant's time and payroll records,
10 the risk of succeeding at class certification and trial was substantial. Accordingly, Plaintiff's
11 Counsel applied a risk discount based on a 30% chance of succeeding at class certification and a
12 20% chance of succeeding at trial on the merits, yielding a realistic damage estimate of
13 approximately \$20,375.63 (\$339,593.76 x 30% x 20%). *Id.*

14 Meal Periods: Plaintiff's meal period claim was based on the allegation that Defendant
15 failed to provide Class Members with legally compliant meal periods or pay meal period premiums
16 in lieu thereof. Haber Decl. at ¶ 21. For example, Plaintiff alleged that Defendant required him and
17 other Class Members to work through meal periods due to heavy work loads, understaffing, and
18 supervisor instructions. *Id.* Additionally, Plaintiff's Counsel's expert consultant determined there
19 was an approximately 20% meal period violation rate (for shifts over 5 hours) from the sampling
20 of Defendant's time and payroll records, where meal periods were short, late, or missed. *Id.*
21 Therefore, potential liability for the meal period claim is approximately \$509,701.37 (175,517
22 shifts over 5 hours x \$14.52 average hourly rate x 20% violation rate). *Id.* After taking into account
23 the difficulty of certifying and proving meal period claims, Plaintiff's Counsel discounted this
24 figure based on a 30% chance of succeeding at class certification and a 20% chance of succeeding
25 at trial, yielding a realistic damage estimate of approximately \$30,582.08 (\$509,701.37 x 30% x
26 20%). *Id.*

27 Rest Periods: Plaintiff's rest period claim was based on the allegation that Defendant failed
28 to provide Class Members with legally compliant rest periods or pay rest period premiums in lieu

thereof. Haber Decl. at ¶ 22. For example, Plaintiff alleged that Defendant required him and other Class Members to miss rest periods daily to meet work demands within the scheduled shift times. *Id.* Plaintiff further alleged the Class Members were required to take rest periods on-site if they were provided pursuant to company policy in place until 2023. *Id.* Based on Plaintiff's allegations and Plaintiff's and other Class Members' experience working for Defendant, Plaintiff's Counsel applied a 50% violation rate to all qualifying shifts during the Class Period. Therefore, Defendant's potential liability for the rest period claim is approximately \$1,274,253.42 (175,517 shifts of 3.5 hours or longer x \$14.52 average hourly rate x 50% violation rate). However, Plaintiff's Counsel discounted this figure to account for the difficulty of certifying and proving rest period claims, particularly because rest periods do not have to be recorded, and to account for the possibility of Class Members voluntarily choosing to forego a rest period. *Id.* Because this claim would have relied exclusively on Class Member testimony, Plaintiff's Counsel discounted this claim based on a 20% chance of succeeding at class certification and a 20% chance of succeeding at trial, yielding a realistic damage estimate of approximately \$50,970.14 (\$1,274,253.42 x 20% x 20%). *Id.*

Reimbursements: Plaintiff's reimbursement claim was based on the allegation that Defendant failed to indemnify Class Members for expenses incurred as a direct result of performing their job duties for Defendant, such as mandatory purchase of company time cards, use of personal cell phones, purchase of company T-shirts, and use of personal vehicles to complete work-related duties. Haber Decl. at ¶ 23. For purposes of calculating Defendant's liability based on a best-case scenario for Plaintiff and the Class, Plaintiff's Counsel estimated that Defendant was liable to each Class Member for \$10.00 per workweek in unreimbursed expenses, for a total amount of approximately \$155,920.00 (\$10.00 x 15,592 workweeks). *Id.* However, Defendant argued that these expenses were not required by Defendant, and that it could not have known that these expenses were being incurred. *Id.* Accordingly, Plaintiff's Counsel discounted this claim based on a 20% chance of succeeding at class certification and a 20% chance of succeeding at trial, yielding a realistic damage estimate of approximately \$6,236.80 (\$155,920.00 x 20% x 20%). *Id.*

In sum, Plaintiff's Counsel estimated that Plaintiff's maximum recovery for the off-the-clock claim, meal period violations, and rest period violations (i.e., the wage claims) is

1 approximately \$2,123,548.55. Haber Decl. at ¶ 24. However, after factoring in the risk and
2 uncertainty of prevailing at certification and trial, Plaintiff's Counsel estimates that Plaintiff's
3 realistic estimated recovery for these non-penalty wage claims is approximately \$101,927.85. *Id.*

4 Derivative Penalties: Plaintiff alleged that as a result of Defendant's failure to pay all wages
5 owed, Defendant owed waiting time penalties and wage statement penalties. Haber Decl. at ¶ 25.
6 With respect to Plaintiff's derivative claims for statutory penalties, Plaintiff's Counsel estimated
7 that Defendant's maximum potential liability is approximately \$3,909,369.60. *Id.* Defendant's
8 maximum potential liability for waiting time penalties is approximately \$1,749,369.60 (502
9 employees x \$14.52 average hourly rate of pay x 8.00 hours/day x 30 days) based on approximately
10 502 formerly employed Class Members during the 3-year statute of limitations period and an
11 average shift length of 8.0 hours. *Id.* Defendant's maximum potential liability for inaccurate wage
12 statements is approximately \$2,160,000.00 (540 employees x \$4,000.00 statutory maximum) based
13 on approximately 540 Class Members who worked during the 1-year statute of limitations period
14 and approximately 23,900 pay periods in that statutory timeframe. *Id.* In light of the foregoing,
15 Plaintiff's Counsel believes that it would be unrealistic to expect the Court to award the full
16 \$3,909,369.60 in statutory penalties given Defendant's defenses, the contested nature of Plaintiff's
17 claims, the challenges of establishing willfulness as applicable, and the discretionary nature of
18 penalties. *Id.* Considering that the underlying wage claims are realistically estimated to be
19 approximately \$101,927.85, such a disproportionate award would also raise due process concerns.
20 *Id.* As such, Plaintiff's counsel discounted these figures to account for the risk and uncertainty of
21 obtaining class certification and prevailing at trial, resulting in a realistic evaluation of
22 approximately \$69,974.78 for waiting time penalty claims (\$1,749,369.60 x 20% x 20%), and
23 approximately \$86,400.00 for wage statement penalty claims (\$2,160,000.00 x 20% x 20%), or
24 approximately \$156,374.78 total for statutory penalties. *Id.*

25 PAGA: For the PAGA claim, Plaintiff's Counsel determined that Defendant's potential
26 exposure could potentially reach \$2,390,000.00, assuming the initial \$100 penalty would apply for
27 each of the 23,900 pay periods in the PAGA Period. Haber Decl. at ¶ 26. However, even assuming
28 success on the merits of each claim, PAGA gives the Court discretion to reduce penalties for a

1 variety of reasons, including where to do otherwise would result in an award that is unjust, arbitrary
2 and oppressive, or confiscatory. *Id.* As such, Plaintiff's counsel discounted this figure to account
3 for the risk and uncertainty of prevailing at trial, resulting in a realistic evaluation of approximately
4 \$239,000.00 for PAGA penalties ($\$2,390,000.00 \times 10\%$). *Id.* The settlement allocates \$20,000.00
5 of the Gross Settlement Amount to PAGA, therefore the PAGA allocation amounts to 5% of the
6 Gross Settlement Amount and approximately 8% of the realistic maximum damages for PAGA
7 penalties ($\$20,000.00 / \$239,000.00$). *Id.*

8 Using these estimated figures, Plaintiff's Counsel predicted that the realistic maximum
9 recovery for all claims, including penalties, would be approximately \$503,539.43. Haber Decl. at
10 ¶ 27. This means that the gross settlement amount represents approximately 79% of the realistic
11 maximum recovery ($\$400,000.00 / \$503,539.43$). *Id.* Considering the risk and uncertainty of
12 prevailing at class certification and at trial, this is an excellent result for the Class. *Id.* Indeed,
13 because of the proposed Settlement, Class Members will receive timely, guaranteed relief and will
14 avoid the risk of an unfavorable judgment. *Id.*

15 Based on the figures in the Settlement Agreement, the Net Settlement Amount available for
16 class settlement payments is currently estimated to be \$183,676.67 for approximately 1,225 Class
17 Members. Haber Decl. at ¶ 28. As a result, each Settlement Class Member would be eligible to
18 receive an average net benefit of approximately \$149.94. *Id.* Based on the estimated Net Settlement
19 Amount available for individual class payments and there being approximately 15,592 workweeks
20 in the Class Period, the estimated weekly valuation for Individual Class Payments is \$11.78
21 ($\$183,676.67 / 15,592$ workweeks). *Id.*

22 C. The Requested Service Payment is Reasonable

23 Plaintiff seeks an Enhancement Award of up to \$10,000.00 for accepting the
24 responsibilities of representing the interests of the Class and potential costs that were not borne by
25 any other Class Member. Settlement Agreement at § 3.2.1. A named plaintiff is eligible for
26 payment that reasonably compensates the plaintiff for undertaking and fulfilling a fiduciary duty
27 to represent absent class members. *See Cellphone Termination Fee Cases*, 186 Cal.App.4th 1380,
28 1393 (2010); *Bell v. Farmers Ins. Exch.*, 115 Cal.App.4th 715, 726 (2004).

1 Throughout this case, Plaintiff assisted counsel in providing information necessary to
2 prosecute the claims, meeting with counsel regarding the claims, maintaining regular contact with
3 counsel, making himself available the day of mediation to answer questions, and reviewing the
4 Settlement to ensure it was fair to the Class. Orozco Decl. at ¶ 11. No action would likely have
5 been taken by Class Members individually and no compensation would have been recovered for
6 them, but for Plaintiff's services on behalf of the Class. By actively pursuing this action, Plaintiff
7 furthered the California public policy goal of enforcing the State's wage-and-hour laws. *See Sav-*
8 *On*, 34 Cal.4th at 340. The requested Class Representative Service Payment is reasonable and
9 should be preliminarily approved. Plaintiff has provided a declaration regarding his work
10 performed to date and will provide additional information as requested or required by the Court at
11 final approval.

12 **D. The Requested Attorneys' Fees and Costs Are Reasonable**

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

19 Plaintiff seeks appointment of Wilshire Law Firm, PLC as Class Counsel. The attorneys
20 performed significant work and expended litigation costs in prosecuting this matter with no
21 guarantee of payment. Haber Decl. at ¶ 29. Plaintiff's Counsel seeks preliminary approval for up
22 to one-third (1/3) of the Gross Settlement Amount in attorneys' fees, currently estimated to be
23 \$133,333.33, and up to \$40,000.00 in reimbursement of litigation costs. Given the work performed
24 in this matter, the extensive information exchange, and the substantial recovery obtained on behalf
25 of the Class, Plaintiff's Counsel achieved a settlement through efficient and diligent work. *See*
26 *generally*, Haber Decl. At final approval, Plaintiff's Counsel will fully brief the merits of its request
27 for the award of attorneys' fees and litigation costs.

28 **E. The Administration Costs Are Reasonable**

1 The Parties have agreed upon using Apex to administer this Settlement. Settlement
2 Agreement at §§ 1.2, 7.1. Plaintiff's Counsel sought bids from two (2) administrators, and the
3 Parties selected the lowest-cost bid, which was from Apex. Haber Decl. at ¶ 41. Plaintiff seeks
4 preliminary approval of \$12,990.00 for Apex to administer this Settlement pursuant to Apex's will-
5 not-exceed bid. See *id.*, Exhibit 4. The services covered by this payment are extensive and
6 necessary to carry out the Settlement administration.

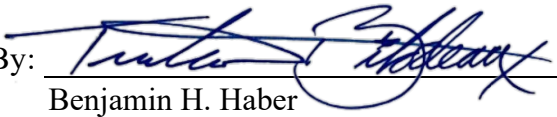
7 **V. CONCLUSION**

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

13
14
15 Dated: September 30, 2026

Respectfully submitted,

WILSHIRE LAW FIRM, PLC

16
17 By: 

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