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

CHRISTIAN PENA, TOM SWANSON,
KEITH ANTHONY TERRY, and
ALEJANDRO MARTINEZ individually,
and on behalf of all others similarly
situated,

Plaintiffs,

v.

SUPER STORES INDUSTRIES, an
unknown entity, and DOES 1 through 10,
inclusive,

Defendants.

FILED
SUPERIOR COURT SAN JOAQUIN

2026 SEP 30 A 8:57

STEPHANIE BOHRER, CLERK

Case No.: STK-CV-UOE-2021-0010117

[Assigned for All Purposes to the Honorable Jayne
Lee, Dept. 10C]

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

Preliminary Approval Hearing:

Date: October 21, 2026

Time: 9:00 a.m.

Dept.: 10C

Action Filed: October 27, 2021

By Fax

1 Arby Aiwazian (SBN 269827)
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1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on October 21, 2026, at 9:00 a.m., or as soon thereafter
3 as the matter may be heard in Department 10C of the Superior Court of California, County of
4 San Joaquin, located at 180 E Weber Ave., 2nd Floor Stockton, CA 95202, Plaintiffs Christian
5 Pena, Tom Swanson, Keith Anthony Terry and Alejandro Martinez (collectively, the
6 "Plaintiffs") will and hereby does move this Court for an Order:

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

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

21 This Motion is based on this Notice of Motion, the accompanying Memorandum of
22 Points and Authorities, the Declaration of Benjamin H. Haber, the Declaration of Ryan Slinger,
23 the Declarations of Christian Pena, Tom Swanson, Keith Anthony Terry, and Alejandro
24 Martinez, and on all records and documents on file, together with such oral and documentary
25 evidence that may be presented at the hearing on this matter.

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28 *[Signature on the following page]*

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Dated: September 29, 2026

Respectfully submitted,

WILSHIRE LAW FIRM, PLC

By: 
Benjamin H. Haber
Giancarlo Recinos
Daniel J. Kramer
Attorneys for Plaintiffs

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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 the Class Settlement as set forth in the Class and Representative PAGA Action Settlement Agreement (“Settlement Agreement”).¹ The proposed Class is defined as all individuals who have worked for Defendant in California as an hourly-paid or non-exempt employee (“Class Members”) at any time during the period from May 2, 2017, through and including April 3, 2025. (“Class Period”). The main terms of the Settlement are as follows:

1. A Gross Settlement Amount of \$2,075,000.00;
2. Attorneys’ fees of up to 35% of the Gross Settlement Amount (currently \$726,250.00) and up to \$60,000.00 in reimbursement of litigation costs to Plaintiffs’ Counsel;
3. Service Awards of up to \$15,000.00 to each Plaintiff (\$60,000.00 total);
4. Costs of settlement administration of up to \$21,000.00.00; and
5. Allocation of \$200,000.00 to PAGA penalties, seventy-five percent (75%) of which (\$150,000.00) will be paid to the Labor and Workforce Development Agency (“LWDA”), and twenty-five percent (25%) of which (\$50,000.00) will be paid to all individuals who have worked for Defendant in California as an hourly-paid or non-exempt employee (“PAGA Members”) at any time during the period from from October 1, 2020, through and including April 3, 2025 (“PAGA Period”); and
6. The remaining Net Settlement Amount will be distributed to approximately 2,100 Class Members on a pro rata basis according to the Class Workweek worked by each Class Member during the Class Period provided that the Class Members do not validly opt out of the Class.

¹ The Class and Representative PAGA Action Settlement Agreement attached to the Declaration of Benjamin H. Haber in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action and PAGA Settlement as **Exhibit 2**. All capitalized terms or phrases used in this Motion that are not defined herein shall have the same meaning as in the Settlement Agreement.

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

11 II. PROCEDURAL HISTORY

12 On October 28, 2021, Plaintiffs Christian Pena, Tom Swanson, Keith Anthony Terry ("Pena
13 Plaintiffs") filed this putative class action against Defendant Super Store Industries ("Defendant")
14 alleging: (1) failure to pay minimum and straight time wages; (2) failure to pay overtime wages;
15 (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to
16 timely pay final wages at termination; (6) failure to provide and maintain accurate and compliant
17 wage records; and (7) unfair business practices. Declaration of Benjamin H. Haber in Support of
18 Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement ("MPA").
19 ("Haber Decl.") at ¶ 3.

20 On October 28, 2021, and amended on July 23, 2026, Pena Plaintiffs provided written
21 notice to the LWDA and Defendant the specific provisions of the Labor Code alleged to have been
22 violated, including the facts and theories in support. Haber Decl. at ¶ 4, Exhibit 1. The LWDA did
23 not notify Plaintiffs that it intended to investigate within 65 days of this written notice. *Id.*
24 Therefore, on January 7, 2022, Plaintiffs filed a First Amended Complaint in this Class Action
25 adding a cause of action for civil penalties under PAGA ("Pena Action"). *Id.*

26 On October 1, 2021, Plaintiff Alejandro Martinez ("Martinez Plaintiff") provided written
27 notice to the LWDA and Defendant the specific provisions of the Labor Code alleged to have been
28 violated, including the facts and theories in support. Haber Decl. at ¶ 5. On December 7, 2021,

1 Martinez Plaintiff filed a Complaint alleging a cause of action against Defendant for civil penalties
2 under the Private Attorneys General Act ("PAGA"). ("Martinez PAGA Action") *Id.* On July 9,
3 2024, the Martinez Plaintiff initiated the Martinez Class Action ("Martinez Class Action") against
4 Defendant by filing a class action complaint for Damages, thereby asserting causes of action for
5 (1) violation of California Labor Code §§ 510 and 1198 (unpaid overtime); (2) violation of
6 California Labor Code §§ 226.7 and 512(a) (unpaid meal period premiums); (3) violation of
7 California Labor Code § 226.7 (unpaid rest period premiums); (4) violation of California Labor
8 Code §§ 1194, 1197, and 1197.1 (unpaid minimum wages); (5) violation of the California Labor
9 Code §§ 201 and 202 (final wages not timely paid); (6) violation of California Labor Code § 204
10 (wages not timely paid during employment); (7) violation of California Labor Code § 226(a) (non-
11 compliant wage statements); (8) violation of California Labor Code § 1174(d) (failure to keep
12 requisite payroll records); (9) violation of California Labor Code §§ 2800 and 2802 (unreimbursed
13 business expenses); (10) violation of California Business and Professions Code §§ 17200, et seq
14 ("Martinez Class Action"). *Id.*

15 On June 13, 2023, and August 23, 2023, the Parties participated in private mediations with
16 Lisa Klerman. *Id.* at ¶ 7. The mediator made a proposal, which was accepted by the Parties. *Id.* The
17 Parties negotiated the terms of the Settlement, which was finalized on September 21, 2026 and
18 fully executed on September 29, 2026. *Id.* at ¶ 8, Exhibit 2 ("Settlement Agreement"). Plaintiffs
19 submitted a copy of the Settlement Agreement to the LWDA. *Id.* at ¶ 8, Exhibit 3.

20 For settlement purposes only, on September 29, 2026, the Pena Plaintiffs and Martinez
21 Plaintiff filed an amended complaint to incorporate all claims asserted in the Pena Action, Martinez
22 PAGA Action and Martinez Class Action as well as add additional claims that were incorporated
23 as part of the Settlement. *Id.* at ¶ 6.

24 While Defendant denies liability for the allegations in the Second Amended Complaint, the
25 Plaintiffs and Defendant decided to resolve these claims in order to preserve court and party
26 resources.

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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 the related PAGA Action for a Gross Settlement Amount of \$2,075,000.00. Settlement Agreement at § III.A. Subject to Court approval, the following payments will be deducted from the Gross Settlement Amount: (1) Service Awards of up to \$15,000.00 to each Plaintiff (\$60,000.00 total); (2) attorneys' fees of up to 35% of the Gross Settlement Amount (currently \$726,250.00) as Class Counsel Fees Payment and reimbursement of litigation costs of up to \$60,000.00 to Plaintiffs' Counsel as Class Counsel Litigation Expenses Payment; (3) Settlement Administration Expenses to the Settlement Administrator of up to \$21,000.00 to ILYM; (4) Individual Class Payments to Participating Class Members; and (5) PAGA Payment in the amount of \$200,000.00, which will be allocated 75% to the LWDA (\$150,000.00) and 25% to PAGA Members (\$50,000.00) as their Individual PAGA Payments. *Id.* at § III.B. *et seq.* After all requested deductions are made, the remaining Net Settlement Amount is currently estimated to be \$1,007,750.00.

Individual Class Payments will be calculated based on the number of Class Workweeks worked by each Participating Class Member during the Class Period. *Id.* at § III.B.5.b. For tax purposes, the Individual Class Payments will be allocated 20% to wages and 80% to non-wage damages, penalties and interest. *Id.* at § III.B.6. 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 § III.A.

Individual PAGA Payments to PAGA Members will be calculated based on the number of PAGA Pay Periods worked by each PAGA Member during the PAGA Period. *Id.* at § III.B.3. For tax purposes, the Individual PAGA payments will be allocated 100% to penalties. *Id.*

Any portions of the requested Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, PAGA Payment, Service Awards and/or Settlement Administration Expenses not approved by the Court will be retained by the Settlement Administrator in the Net Settlement Amount. *Id.* at §§ III.B.1, III.B.2, III.B.3, III.B.4. Funds from any uncashed checks will be transmitted by the Settlement Administrator to a court-approved *cy pres* beneficiary consistent

1 with California Code of Civil Procedure section 384, and the Parties propose the Sacramento Food
2 Bank & Family Services to be the *cy pres* beneficiary. *Id.* at § D.13. None of the Gross Settlement
3 Amount will revert to Defendant. *Id.* at § III.A.

4 **B. Proposed Settlement Administration**

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

15 If a Class Notice is returned as undeliverable, the Settlement Administrator will re-mail the
16 Class Notice within five (5) calendar days to the forwarding address provided by the U.S. Postal
17 Service. Settlement Agreement at § III.D.3.c. If no forwarding address is provided, the Settlement
18 Administrator will conduct a Class Member Address Search and re-mail the Class Notice to the
19 most current address obtained. *Id.* The deadline to opt-out of the Settlement or to submit an
20 objection or dispute will be extended by fifteen (15) days for all Class Members whose Class
21 Notice was remailed. *Id.* at § I.WW.

22 **C. Proposed Release**

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

26 Released Class Claims by Participating Class Members:

27 Upon the Effective Date and Defendant's full funding of the Gross Settlement Amount and
28 all employer payroll taxes owed on the Wage Portion of the Individual Class Payments,
Plaintiffs, all Participating Class Members and all persons purporting to act on the

1 Participating Class Members' behalf or purporting to assert a claim under or through them,
2 shall be deemed to have fully, finally, and forever released, settled, compromised,
3 relinquished and discharged any and all of the Released Parties of and from any and all
4 disputes, claims and/or causes of action for damages, penalties, liquidated damages,
5 punitive damages, interest, attorneys' fees, costs, restitution, injunctive relief, declaratory
6 relief, equitable relief or any other forms of relief pled or which could have been pled
7 arising from the facts and/or allegations contained in the operative complaints in the Pena
8 Action and the Martinez Class Action, any amendments thereto, and/or the Amended
9 Consolidated Complaint, that arose at any time during the Class Period, including, but not
10 limited to, the following:

- 11 a. Any claims for failure to properly pay all wages owed (including improper
12 payment of minimum, regular, and overtime wages), untimely payments of
13 wages both during and upon termination of employment, including wages
14 for vested vacation, non-compliant meal periods, non-compliant rest
15 periods, non-compliant payment of meal and rest break premiums, non-
16 compliant itemized wage statements, non-compliant payment of sick leave,
17 non-compliant workplace temperatures, non-compliant seventh day of rest,
18 improper payment of reporting time pay, non-compliant maintenance of
19 payroll records, improper wage theft prevention act notice, failure to
20 reimburse for necessary business expenses, and claims for interest, penalties
21 (including but not limited to waiting time penalties), or premiums in
22 connection therewith, as well as any claims under the California Labor Code
23 and California Industrial Welfare Commission Wage Orders, pled or which
24 could have been pled under the facts and/or allegations contained in the
25 operative complaints in the Pena Action and the Martinez Class Action, any
26 amendments thereto, and/or the Amended Consolidated Complaint;
- 27 b. Any claims under California Labor Code sections 201, 202, 203, 204, 210,
28 221, 226, 226.3, 226.7, 227.3, 246, 510, 512, 516, 551, 552, 558, 1174,
1174.5, 1182, 1182.11-1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5,
1199, 2699, 2800, 2802, 2810.5, 6300, et seq.; California Business and
Professions Code section 17200, et seq.; applicable Industrial Welfare
Commission Wage Orders; and/or corresponding California Code of
Regulations;
- c. Any claims for injunctive relief, declaratory relief, restitution, fraudulent
business practices, attorney's fees, costs, punitive damages, or any other
relief pled or which could have been pled under the facts and/or allegations
contained in the operative complaints in the Pena Action and the Martinez
Class Action, any amendments thereto, and/or the Amended Consolidated
Complaint; and
- d. Any and all other claims under California common law, the California Labor
Code, and/or California Industrial Welfare Commission Wage Orders pled
or which could have been pled under the facts and/or allegations contained
in the operative complaints in the Pena Action and the Martinez Class
Action, any amendments thereto, and/or the Amended Consolidated
Complaint.
- e. The release set forth in this Section III.E.1 (including subsections III.E.1.a
through III.E.1.d) shall be collectively referred to as the "Released Class
Claims." All Class Members are bound by the settlement and release of the

Released Class Claims regardless of whether they cash their check representing their Individual Class Payment.

Settlement Agreement at § III.E.1.

Released PAGA Claims by PAGA Members:

Upon the Effective Date and Defendant's full funding of the Gross Settlement Amount, the State of California, Plaintiffs, all PAGA Members and all persons purporting to act on the PAGA Members' behalf or purporting to assert a claim under or through them shall be deemed to have fully, finally, and forever released, settled, compromised, relinquished and discharged any and all of the Released Parties of and from any and all PAGA claims pled or which could have been pled arising from the facts and/or allegations contained in the operative complaints in the *Pena* Action and the *Martinez* PAGA Action, any amendments thereto, the PAGA Letters, the Amended Consolidated Complaint and/or the Amended PAGA Letter that arose at any time during the PAGA Period, including, but not limited to, to the following:

- a. Any claims for civil penalties under PAGA for failure to pay wages (including improper payment of minimum, regular, and overtime wages), untimely payments of wages both during and upon termination of employment, including wages for vested vacation, non-compliant meal periods, non-compliant rest periods, non-compliant payment of meal and rest break premiums, non-compliant itemized wage statements, non-compliant payment of sick leave, non-compliant workplace temperatures, non-compliant seventh day of rest, improper wage theft prevention act notice, improper payment of reporting time pay, non-compliant maintenance of payroll records, failure to reimburse for necessary business expenses, and claims for interest, as well as any PAGA claims premised on the California Labor Code and/or California Industrial Welfare Commission Wage Orders, pled or which could have been pled arising from the facts and/or allegations contained in the operative complaints in the *Pena* Action and the *Martinez* PAGA Action, any amendments thereto, the PAGA Letters, the Amended Consolidated Complaint and/or the Amended PAGA Letter;
- b. Any claims for civil penalties under PAGA premised on California Labor Code sections 201, 202, 203, 204, 210, 221, 226, 226.3, 226.7, 227.3, 246, 510, 512, 516, 551, 552, 558, 1174, 1174.5, 1182, 1182.11-1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2699, 2800, 2802, 2810.5, 6300, *et seq.*; applicable Industrial Welfare Commission Wage Orders; and/or corresponding California Code of Regulations; and
- c. Any claims for attorney's fees, costs or other relief stemming from this Section III.E.2 (including subsections III.E.2.a through III.E.2.b).

The release set forth in this Section III.E.2 (including subsections III.E.2.a through III.E.2.c) shall be collectively referred to as the "Released PAGA Claims." All PAGA Members are bound by the settlement and release of the Released PAGA Claims regardless of whether they cash their check representing their Individual PAGA Payment.

1
2 Settlement Agreement at § III.E.2.

3 Only Plaintiffs will agree to a general release and a waiver of Civil Code § 1542. Settlement
4 Agreement at § III.E.3.

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

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

8 Class certification is appropriate when there is: (1) an ascertainable and sufficiently
9 numerous class; (2) a well-defined community of interest among class members; and (3) substantial
10 benefits from certification that render proceeding as a class superior to the alternatives. *Brinker*
11 *Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1021 (2012). Although courts still need to
12 review and consider each element for certification, a lesser standard can be used to provisionally
13 certify a settlement class. *Global Minerals & Metals Corp. v. Superior Court*, 113 Cal.App.4th
14 836, 859 (2003).

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

16 “Ascertainability” is determined by examining the class definition and the size of the class
17 and may also involve examining the means available to identify class members. *Noel v. Thrifty*
18 *Payless, Inc.*, 7 Cal.5th 955, 980-981, 985-986 (2019). As the settlement eliminates the need for
19 trial, “the case management issues inherent in the ascertainable class determination need not be
20 confronted.” *Global Minerals*, 113 Cal.App.4th at 859. Further, under California law, there is no
21 minimum number of class members for maintenance of a class action. *Hendershot v. Ready to Roll*
22 *Transp., Inc.*, 228 Cal.App.4th 1213, 1222 (2014). Class sizes as small as 10 have been permitted.
23 *Rose v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981), disapproved on other grounds by *Noel*,
24 7 Cal.5th at 986.

25 The Class here consists of all individuals who have worked for Defendant in California as
26 an hourly-paid or non-exempt employee at any time during the Class Period. See Settlement
27 Agreement at § I.C., I.J. The Class is also readily ascertainable from Defendant’s business records,
28 because all Class Members are or were employees of Defendant. *Id.* Defendant’s records show

1 there are approximately 2,220 Class Members, making joinder of all Class Members impracticable.
2 Haber Decl. at ¶ 11.

3 **2. *A Well-Defined Community of Interest Exists***

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

7 ***a. Common Questions Predominate***

8 In determining whether common issues “predominate,” courts consider both plaintiff’s
9 legal theories and defendant’s affirmative defenses. *Duran v. U.S. Bank Nat’l Ass’n*, 59 Cal.4th 1,
10 28-29 (2014). The “predominate common questions” factor does not require that all class members
11 have identical claims. *Ayala v. Antelope Valley Newspapers, Inc.*, 59 Cal.4th 522, 530 (2014).
12 Rather, the focus is on whether issues shared by the class members are sufficiently uniform to
13 permit class-wide assessment, and whether individual variations in proof on those issues are
14 manageable. *Id.*

15 Plaintiffs have alleged that Defendant maintained common employment policies and/or
16 practices that unlawfully deprived Class Members of wages, meal periods, rest periods,
17 reimbursements for business expenses, accurate wage statements, and timely payment of wages
18 upon separation of employment. Haber Decl. at ¶ 12. Plaintiffs contend these allegations present
19 common factual and legal questions of, *inter alia*, whether Defendant applied the same scheduling,
20 timekeeping, pay, meal period, rest period, and reimbursement policies to all Class Members,
21 whether these policies and practices resulted in Labor Code violations, whether Defendant’s
22 conduct was intentional, and whether Class Members are entitled to damages and/or penalties. *Id.*
23 These common questions could be resolved using Class Members’ time records, payroll records,
24 testimony from Defendant’s designated representative(s), and Class Members’ testimony. *Id.*
25 Therefore, the Court can and should exercise its discretion to grant conditional class certification
26 for settlement purposes.

27 ***b. Plaintiffs are Typical of the Class***

28 Typicality does not require that the representative plaintiff’s claims and those of the class

1 members be identical or perfectly aligned. *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224,
2 228 (2001), disapproved on other grounds by *Hernandez v. Restoration Hardware, Inc.*, 4 Cal.5th
3 260 (2018). Typicality does not require that a plaintiff's claims be identical to those of other class
4 members, only that their claims and the defenses applicable to them are sufficiently similar to those
5 of other class members that a named plaintiff is able to adequately represent the class and focus on
6 common issues. *Medraza v. Honda of North Hollywood*, 166 Cal.App.4th 89, 99 (2008).

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

14 c. Plaintiffs and Plaintiffs' Counsel Will Adequately Represent the
15 Class

16 Certification requires adequacy of both the proposed class representative and of the
17 proposed class counsel. Cal. Code Civ. Proc. § 382. "Only a conflict that goes to the very subject
18 matter of the litigation will defeat a party's claim of representative status." *Richmond v. Dart*
19 *Industries*, 29 Cal.3d 462, 470 (1981). Only conflicts that are "irreconcilable" can defeat adequacy.
20 *Nat'l Solar Equip. Owners' Ass'n v. Grumman Corp.*, 235 Cal.App.3d 1273, 1286 (1991). The
21 proposed representative Plaintiffs and proposed Class Counsel present no such conflict.

22 Plaintiffs' interests are coextensive with Class Members' interests. Declarations of
23 Christian Pena, Tom Swanson, Keith Anthony Terry and Alejandro Martinez in Support of
24 Plaintiffs' MPA ("Pena Decl.", "Swanson Decl.", "Terry Decl." "Martinez Decl.," respectively),
25 Pena Decl., Swanson Decl., Terry Decl., and Martinez Decl. at ¶ 6. Plaintiffs have demonstrated
26 an ability to advocate for the interests of Class Members by initiating this lawsuit, providing
27 information to their attorneys, meeting with their attorneys regarding the claims, making
28 themselves available the day of mediation to answer questions, and reviewing the proposed

1 Settlement. Pena Decl., Swanson Decl. Terry Decl., and Martinez Decl. at ¶ 11.

2 Likewise, Wilshire Law Firm, PLC and Lawyers for Justice, PC have expended
3 considerable time and effort on this case and will continue to do so through final approval. *See*
4 *generally*, Haber Decl. and Slinger Decl. Therefore, Plaintiffs should be appointed Class
5 Representatives, and their counsel should be appointed Class Counsel.

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

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

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

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

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

28 A settlement is entitled to “a presumption of fairness . . . where: (1) the settlement is reached

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

7 *a. The Settlement is the Result of Arm's Length Negotiation*

8 Courts have recognized that the involvement of a respected mediator provides a high degree
9 of assurance that the settlement is the result of arm's length bargaining. *See Chavez v. Netflix, Inc.*,
10 162 Cal.App.4th 43, 52-53 (2008). The Settlement in this matter was the product of two full-day
11 mediation sessions with a respected mediator. Haber Decl. at ¶ 7. The negotiations were
12 adversarial, conducted at arm's length, and tempered by the efforts of both sides to serve the
13 interests of their clients. *Id.*

14 *b. Sufficient Investigation and Discovery Have Been Conducted*

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

22 *c. Plaintiffs' Counsel is Experienced in Similar Litigation*

23 Plaintiffs are represented by Wilshire Law Firm, PLC and Lawyers for Justice PC. Haber
24 Decl. at ¶ 1. Plaintiffs' Counsel has extensive experience litigating wage and hour class actions on
25 behalf of employees. *See id.* at ¶¶ 22-31. Plaintiffs' Counsel has been involved as counsel in
26 numerous class actions that have resulted in millions of dollars in recovery. *See id.*

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

1 A settlement does not have to provide 100% of the damages sought to be considered fair
2 and reasonable. *See Rebney v. Wells Fargo Bank*, 220 Cal.App.3d 1117, 1139 (1991). Although
3 the exposure Plaintiffs' Counsel calculated is substantial, the various risks at succeeding at class
4 certification and through trial affected the valuation of the claims for settlement purposes, and
5 taking into account Defendant's defenses and affirmative defenses, including that many Class
6 Members executed enforceable arbitration agreements with class action waivers and that
7 Defendant maintained and enforced legally compliant policies. Haber Decl. at ¶ 13.

8 Minimum and Overtime Wages: Plaintiffs' unpaid minimum and overtime wage claims
9 were based on the allegation that Defendant required Class Members to perform work duties
10 while off the clock, without compensation, and incorrect regular rate of pay. Haber Decl. at ¶
11 14. For example, Plaintiffs alleged that Defendant required them and other Class Members to
12 perform work-related tasks while clocked out. *Id.* For purposes of calculating Defendant's
13 liability based on a best-case scenario for Plaintiffs and the Class, Plaintiffs' Counsel assumed that
14 all unpaid worktime should have been paid at the overtime rate of pay and conservatively estimated
15 that Defendant is liable for one (1) hour of unpaid worktime per workweek. *Id.* This results in
16 potential exposure for this claim of approximately \$7,658,511.05 (205,957 workweeks x \$24.79
17 average hourly rate of pay x 1 hours/workweek x 1.5 overtime rate). *Id.* Because this claim would
18 have relied heavily on Class Member testimony and would not be evidenced in Defendant's time
19 and payroll records, the risk of not succeeding at class certification and trial was substantial. *Id.*
20 Accordingly, Plaintiffs' Counsel applied a risk discount based on a 25% chance of succeeding at
21 class certification and a 25% chance of succeeding at trial on the merits, yielding a realistic damage
22 estimate of approximately \$478,656.94 (\$7,658,511.05 x 25% x 25%). *Id.*

23 Meal Periods: Plaintiffs' meal period claim was based on the allegation that Defendant
24 failed to provide Class Members with legally compliant meal periods or properly pay meal period
25 premiums in lieu thereof. Haber Decl. at ¶ 15. For example, Plaintiffs alleged that Defendant
26 required them and other Class Members to take shortened or late meal periods. *Id.* In some
27 instances, Plaintiffs believe Defendant required Plaintiffs and other class members to forego their
28 meal periods. *Id.* Additionally, Plaintiffs' Counsel's expert consultant determined there was a

1 21.1% meal period violation rate from the sampling of Defendant's time and payroll records, where
2 meal periods were short, late, or missed after premiums are considered. *Id.* Therefore, potential
3 liability for the meal period claim is approximately \$3,527,927.79 (674,467 shifts over 5 hours x
4 \$24.79 average hourly rate x 21.1% violation rate). *Id.* However, Defendant contends that it
5 maintained legally compliant meal break policies, did not preclude class members from taking their
6 legally entitled meal breaks and that many Class Members are bound by arbitration agreements
7 with class action waivers. *Id.* After taking into account the difficulty of certifying and proving meal
8 period claims, as well as Defendant's contention that the claim lacks merit and that a 21.1%
9 violation rate is unrealistic, Plaintiffs' Counsel applied a risk discount based on a 50% chance of
10 succeeding at class certification and a 40% chance of succeeding at trial on the merits, yielding a
11 realistic damage estimate of approximately \$705,585.56. *Id.*

12 Rest Periods: Plaintiffs' rest period claim was based on the allegation that Defendant failed
13 to provide Class Members with legally compliant rest periods or properly pay rest period premiums
14 in lieu thereof. Haber Decl. at ¶ 16. For example, Plaintiffs alleged that Defendant required them
15 and other Class Members to work through their rest periods. *Id.* Based on Plaintiffs' allegations
16 and Plaintiffs' and other Class Members' experience working for Defendant, Plaintiffs' Counsel
17 applied a 40% violation rate to all qualifying shifts during the Class Period. Therefore, Defendant's
18 potential liability for the rest period claim is approximately \$4,466,389.51 (720,676 shifts of 3.5
19 hours or longer x \$24.79 average hourly rate x 25% violation rate). However, Plaintiffs' Counsel
20 discounted this figure to account for the difficulty of certifying and proving rest period claims,
21 particularly because rest periods do not have to be recorded, and to account for the possibility of
22 Class Members voluntarily choosing to forego a rest period and that many Class Members are
23 bound by arbitration agreements with class action waivers. *Id.* Because this claim would have
24 relied exclusively on Class Member testimony, Plaintiffs' Counsel applied a risk discount based
25 on a 50% chance of succeeding at class certification and a 40% chance of succeeding at trial on
26 the merits yielding a realistic damage estimate of approximately \$893,277.90. *Id.*

27 Reimbursements: Plaintiffs' reimbursement claim was based on the allegation that
28 Defendant failed to indemnify Class Members for expenses incurred as a direct result of performing

1 their job duties for Defendant, such as necessary work-attire such as gloves and boots. Haber Decl.
2 at ¶ 17. For purposes of calculating Defendant's liability based on a best-case scenario for Plaintiffs
3 and the Class, Plaintiffs' Counsel estimated that Defendant was liable to each Class Member for
4 \$6.25 per workweek in unreimbursed expenses, for a total amount of approximately \$1,287,231.25
5 (\$6.25 x 205,957 workweeks). *Id.* However, Defendant argued that the alleged expenses did not
6 occur or were not reasonable and/or necessary, and that it could not have known that these expenses
7 were being incurred. *Id.* Defendant also argued that many Class Members are bound by arbitration
8 agreements with class action waivers. *Id.* Accordingly, Plaintiffs' Counsel applied a risk discount
9 based on a 50% chance of succeeding at class certification and a 40% chance of succeeding at trial
10 on the merits yielding a realistic damage estimate of approximately \$257,446.25. *Id.*

11 In sum, Plaintiffs' Counsel estimated that Plaintiffs' maximum recovery for the off-the-
12 clock claim, meal period violations, and rest period violations (i.e., the wage claims) is
13 approximately \$15,652,828.35. Haber Decl. at ¶ 18. However, after factoring in the risk and
14 uncertainty of prevailing at certification and trial, Plaintiffs' Counsel estimates that Plaintiffs'
15 realistic, estimated recovery for these non-penalty wage claims is approximately \$2,077,520.40.
16 *Id.*

17 Derivative Penalties: Plaintiffs alleged that as a result of Defendant's failure to pay all
18 wages owed, Defendant owed waiting time penalties and wage statement penalties. Haber Decl. at
19 ¶ 19. With respect to Plaintiffs' derivative claims for statutory penalties, Plaintiffs' Counsel
20 estimated that Defendant's maximum potential liability is approximately \$8,878,733.68. *Id.*
21 Defendant's maximum potential liability for waiting time penalties is approximately
22 \$4,296,801.12 ([628 employees x \$24.79 average hourly rate of pay x 8.00 hours/day x 30 days] +
23 (628 employees x \$24.79 average hourly rate of pay x 0.8 hours of overtime/day x 1.5 overtime
24 rate x 30 days]) based on approximately 628 formerly employed Class Members during the 3-year
25 statute of limitations period up to the date of the filing of the complaint and an average shift length
26 of 8.8 hours. *Id.* Defendant's maximum potential liability for inaccurate wage statements is
27 approximately \$4,768,750.00 ([1,337 employees x 1 initial violation/employee x \$50 for an initial
28 violation] + [(48,356 pay periods – 1,337 initial violations) x \$100 for each subsequent violation])

1 *Id.* In light of the foregoing, Plaintiffs' Counsel believes that it would be unrealistic to expect the
2 Court to award the full \$8,878,733.68 in statutory penalties given Defendant's defenses, the
3 contested nature of Plaintiffs' claims, the challenges of establishing willfulness as applicable, and
4 the discretionary nature of penalties. *Id.* Considering that the underlying wage claims are
5 realistically estimated to be approximately \$2,334,966.65, such a disproportionate award would
6 also raise due process concerns. *Id.* As such, Plaintiffs' counsel discounted these figures to account
7 for the risk and uncertainty of obtaining class certification and prevailing at trial, resulting in a
8 realistic evaluation of approximately \$42,968.01 for waiting time penalty claims (\$4,296,801.12 x
9 10% x 10%), and approximately \$190,750.00 for wage statement penalty claims (\$4,768,750.00 x
10 20% x 20%), or approximately \$233,718.01 total for statutory penalties. *Id.*

11 PAGA: For the PAGA claim, Plaintiffs' Counsel determined that Defendant's potential
12 exposure could potentially reach \$4,192,800.00, assuming the initial \$100 penalty would apply for
13 each of the 41,928 pay periods in the PAGA Period. Haber Decl. at ¶ 20. However, even assuming
14 success on the merits of each claim, PAGA gives the Court discretion to reduce penalties for a
15 variety of reasons, including where to do otherwise would result in an award that is unjust, arbitrary
16 and oppressive, or confiscatory. *Id.* As such, Plaintiffs' counsel discounted this figure to account
17 for the risk and uncertainty of prevailing at trial, resulting in a realistic evaluation of approximately
18 \$419,280.00 for PAGA penalties (\$4,192,800 x 10%). *Id.* The settlement allocates \$200,000.00 of
19 the Gross Settlement Amount to PAGA, therefore the PAGA allocation amounts to 9.6% of the
20 Gross Settlement Amount and approximately 48% of the realistic maximum damages for PAGA
21 penalties (\$200,000.00 / \$419,280.00). *Id.*

22 Using these estimated figures, Plaintiffs' Counsel predicted that the realistic maximum
23 recovery for all claims, including penalties, would be approximately \$2,987,964.66. Haber Decl.
24 at ¶ 21. This means that the gross settlement amount approximately 69% of the realistic damages
25 figure (\$2,075,000.00/\$2,987,964.66). *Id.* Considering the risk and uncertainty of prevailing at
26 class certification and at trial, this is an excellent result for the Class. *Id.* Indeed, because of the
27 proposed Settlement, Class Members will receive timely, guaranteed relief and will avoid the risk
28 of an unfavorable judgment. *Id.*

1 Based on the figures in the Settlement Agreement, the Net Settlement Amount available for
2 class settlement payments is currently estimated to be \$1,007,750.00 for approximately 2,220 Class
3 Members. Haber Decl. at ¶ 22. As a result, each Settlement Class Member would be eligible to
4 receive an average net benefit of approximately \$508.96. *Id.* Based on the estimated Net Settlement
5 Amount available for individual class payments and there being approximately 209,597
6 workweeks in the Class Period, the estimated weekly valuation for Individual Class Payments is
7 \$4.89 (\$1,007,750.00 / 209,597 workweeks). *Id.*

8 **C. The Requested Service Awards are Reasonable**

9 Plaintiffs seek Service Awards of up to \$15,000.00 each (\$60,000.00 total) for accepting
10 the responsibilities of representing the interests of the Class and potential costs that were not borne
11 by any other Class Member. Settlement Agreement at § III.B.1. A named plaintiff is eligible for
12 payment that reasonably compensates the plaintiff for undertaking and fulfilling a fiduciary duty
13 to represent absent class members. *See Cellphone Termination Fee Cases*, 186 Cal.App.4th 1380,
14 1393 (2010); *Bell v. Farmers Ins. Exch.*, 115 Cal.App.4th 715, 726 (2004).

15 Throughout this case, Plaintiffs assisted counsel in providing information necessary to
16 prosecute the claims, meeting with counsel regarding the claims, maintaining regular contact with
17 counsel, making themselves available the day of mediation to answer questions, and reviewing the
18 Settlement to ensure it was fair to the Class. Pena Decl., Swanson Decl., Terry Decl., and Martinez
19 Decl. at ¶ 11. No action would likely have been taken by Class Members individually and no
20 compensation would have been recovered for them, but for Plaintiffs' services on behalf of the
21 Class. By actively pursuing this action, Plaintiffs furthered the California public policy goal of
22 enforcing the State's wage-and-hour laws. *See Sav-On*, 34 Cal.4th at 340. The requested Service
23 Awards are reasonable and should be preliminarily approved. Plaintiffs have provided declarations
24 regarding their work performed to date and will provide additional information as requested or
25 required by the Court at final approval.

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

27 The purpose of an attorneys' fee award in class action litigation is to reward counsel who
28 invested in a case despite the risk of non-payment and achieved a substantial positive result for the

1 class. California courts routinely award attorneys' fees equaling one-third or more of the potential
2 value of the common fund. *See Chavez*, 162 Cal.App.4th at 66, fn. 11 ("Empirical studies show
3 that, regardless of whether the percentage method or the lodestar method is used, fee awards in
4 class actions average around one-third of the recovery.").

5 Plaintiffs seek appointment of Wilshire Law Firm, PLC and Lawyers *for* Justice, PC as
6 Class Counsel. The attorneys performed significant work and expended litigation costs in
7 prosecuting this matter with no guarantee of payment. Haber Decl. at ¶ 20. Plaintiffs' Counsel
8 seeks preliminary approval for up to 35% of the Gross Settlement Amount in attorneys' fees,
9 currently estimated to be \$726,250.00, and up to \$60,000.00 in reimbursement of litigation costs.
10 Given the work performed in this matter, the extensive information exchange, and the substantial
11 recovery obtained on behalf of the Class, Plaintiffs' Counsel achieved a settlement through
12 efficient and diligent work. *See generally*, Haber Decl. and Slinger Decl. At final approval,
13 Plaintiffs' Counsel will fully brief the merits of its request for the award of attorneys' fees and
14 litigation costs.

15 **E. The Settlement Administration Costs Are Reasonable**

16 The Parties have agreed upon using ILYM to administer this Settlement. Settlement
17 Agreement at § III.B.4. Plaintiffs seek preliminary approval of \$21,000.00 for ILYM to administer
18 this Settlement pursuant to ILYM's will-not-exceed bid. *See* Haber Decl. at ¶ 34, Exhibit 4. The
19 services covered by this payment are extensive and necessary to carry out the Settlement
20 administration.

21 **V. CONCLUSION**

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

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28 [Signature on the following page]

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Dated: September 29, 2026

Respectfully submitted,

WILSHIRE LAW FIRM, PLC

By: 

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