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SUPERIOR COURT SAN JOAQUIN
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STEPHANIE BOHRER, CLERK
BY _____ DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN JOAQUIN

MARY MOYSES, individually, and on behalf of other members of the general public similarly situated, and CINDI GARCIA, individually, and on behalf of other members of the general public similarly situated,

Plaintiffs,

v.

PELTON-SHEPHERD INDUSTRIES, INC., a Nevada corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No. STK-CV-UOE-2025-0001410
Consolidated with Case No: STK-CV-UOE-2025-0004802

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

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT

PRELIMINARY APPROVAL HEARING:
Date: October 16, 2026
October 20, 2026
October 22, 2026
~~October 28, 2026~~
October 29, 2026
Time: 9:00 a.m.
Dept.: 10C

Action Filed: April 3, 2025

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on _____, at 9:00 a.m./p.m., or as soon thereafter as the matter may be heard in Department 10C of the above-entitled Court, located at 180 E Weber Ave., 2nd Floor, Stockton, CA 95202, Plaintiffs Mary Moyses and Cindi Garcia (collectively, the "Plaintiffs") will and hereby does move this Court for an Order:

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

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

This Motion is based on this Notice of Motion, the accompanying Memorandum of Points and Authorities, the Declaration of Benjamin H. Haber, the Declaration of Mary Moyses, Declaration of Cindi Garcia and on all records and documents on file, together with such oral and documentary evidence that may be presented at the hearing on this matter.

Respectfully submitted,

Dated: September 21, 2026

WILSHIRE LAW FIRM

By: _____

Benjamin H. Haber
Talar DerOhannessian
Kareen Shatikian
Trenten N. Bilodeaux
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 a class action settlement of wage and hour claims, including representative claims brought under the Private Attorneys' General Act of 2004 ("PAGA"), against Defendant Pelton-Shepherd Industries, Inc. ("Defendant"). The proposed Class is defined all persons who were employed by Defendant in California as an hourly-paid or non-exempt employees at any point during the Class Period of January 29, 2021, through either (a) the date that the Court grants Preliminary Approval, or (b) at Defendant's election, an earlier date, but no earlier than February 19, 2026, including current and former employees ("Class Period"). The main terms of the Settlement are as follows:

1. A Gross Settlement Amount of $563,710.00, which will be distributed to approximately 220 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 of the Gross Settlement Amount (currently $186,024.30) and up to $30,000.00 in reimbursement of litigation costs to Plaintiffs' Counsel;
3. Class representative service payments of up to $10,000.00 to each Plaintiff ($20,000.00 total);
4. Costs of settlement administration of up to $7,500.00; and
5. Allocation of $25,000.00 to PAGA penalties, sixty-five percent (65%) of which ($16,250.00) will be paid to the Labor and Workforce Development Agency ("LWDA"), and thirty-five percent (35%) of which ($8,750.00) will be paid all persons who have been employed by Defendant in California as an hourly-paid or non-exempt employees at any point during the PAGA Period of January 29, 2024 through the same date on which the Class Period ends, as described in the definition of Class Period, above including current and former employees ("Aggrieved Employees").

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

II. PROCEDURAL HISTORY

On January 29, 2025, Plaintiffs filed this action as a putative class action against Defendant alleging: (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 indemnify employees for expenditures; (6) failure to provide accurate itemized wage statements; (7) failure to timely pay wages upon separation of employment; (8) failure to timely pay wages during employment; and (9) unfair business practices. Declaration of Benjamin H. Haber in Support of Motion for Preliminary Approval of Class Action and PAGA Settlement ("Haber Decl.") at ¶ 3.

On January 28, 2025, Plaintiffs provided written notice to the LWDA and Defendant of their intention to file a PAGA claim. Haber Decl. at ¶ 4, Exhibit 1. The LWDA did not notify Plaintiffs that it intended to investigate within 65 days of this written notice. *Id.* Therefore, on April 3, 2026, Plaintiffs filed a separate action alleging a claim under PAGA Case No. STK-CV-UOE-2025-0004802 (the "PAGA Action"). *Id.*

The Parties subsequently participated in a private mediation with Todd Smith, Esq. on February 19, 2026. *Id.* at ¶ 5. The mediator made a proposal, which was accepted by both parties. *Id.* The parties negotiated the terms of the Settlement over the next several months, which was finalized on June 10, 2026. *Id.* at ¶ 6, Exhibit 2 ("Settlement Agreement"). On September 21, 2026, Plaintiffs submitted a copy of the Settlement Agreement to the LWDA. *Id.* at ¶ 7, Exhibit 3.

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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 $563,710.00. Settlement Agreement at § 1.23. Subject to Court approval, the following payments will be deducted from the Gross Settlement Amount: (1) class representative service payments of up to $10,000.00 to each Plaintiff ($20,000.00 total); (2) attorneys' fees of up to one-third of the Gross Settlement Amount (currently $186,024.30) and reimbursement of litigation costs of up to $30,000.00 to Plaintiffs' Counsel; (3) costs of settlement administration of up to $7,500.00 to Apex; (4) individual class payments to Class Members; and (5) PAGA penalties in the amount of $25,000.00, which will be allocated 65% to the LWDA ($16,250.00) and 35% to Aggrieved Employees ($8,750.00). *Id.* at § 3.2. After all requested deductions are made, the remaining Net Settlement Amount is currently estimated to be $295,185.70.

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 any and all employer payroll taxes owed on the wage positions 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 pay periods worked by each Aggrieved Employee during the PAGA Period. *Id.* at § 3.2.5.1. For tax purposes, the individual PAGA payments will be allocated 100% to penalties. *Id.*

Any deductions not approved by the Court will be retained by the Settlement Administrator in the Net Settlement Amount. *Id.* at § 3.2. Funds from any uncashed checks will be transmitted by the Settlement Administrator to the California Controller's Unclaimed Property Fund in the name of the Class Member. *Id.* at § 4.4.3. None of the Gross Settlement Amount will revert to Defendant. *Id.* at § 3.1.

B. Proposed Settlement Administration

The parties' proposed Class Notice complies with the requirements of California Rules of

Court, Rule 3.766(d). *See* Exhibit A to Settlement Agreement. It provides information regarding the nature of this lawsuit, a summary of the settlement terms, the formula used for calculating individual class and PAGA payments and instructions to dispute the calculations, instructions on how to opt-out of or object to the Settlement, the date, time, and location of the final approval hearing, and the amounts sought for the class representative service payment, attorneys' fees and litigation costs, and settlement administration costs. *See generally, id.* The Class Notice also notifies Class Members that they do not need to submit a claim in order to participate in the Settlement and receive a payment. *See id.* The Settlement Administrator will mail Class Members the Class Notice by first-class mail. At least eight days after informing Class Counsel and Defense Counsel of the information set forth in section 7.4.1, but no later than 14 days after informing Class Counsel and Defense Counsel of the information set forth in section 7.4.1, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice with Spanish translation substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database. Settlement Agreement at § 7.4.2.

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

C. Proposed Release

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

Plaintiffs' Release.

Plaintiffs, and Plaintiffs' respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors and assigns generally, agree to a general release of all known and unknown claims against the Released Parties and waiver of Civil Code section 1542. Plaintiffs discharge Released Parties from all claims, transactions, or occurrences, including all claims that were, or reasonably could have been, alleged, based on the facts contained in the Actions; and any other claims, debts, liabilities, demands, damages, obligations, actions and causes of action, of any nature whatsoever, whether known or unknown, or suspected or unsuspected, arising out of or in connection with their employment with Defendant, the separation of such employment, or any other act, omission or event occurring between the Parties at any time prior to the date the Class Representatives respectively execute this Agreement. This General Release includes, without limitation, (1) all claims for violation of any federal, state or local statute, ordinance or regulation relating to employment benefits, leaves of absence, or discrimination, harassment, retaliation, or whistleblowing in employment, specifically including, without limitation, the California Fair Employment and Housing Act, the California Family Rights Act, Title VII of the Civil Rights Act of 1964, the Family and Medical Leave Act, the Age Discrimination in Employment Act, the Older Workers Benefit Protection Act, the Genetic Information Non-discrimination Act, the Americans with Disabilities Act, and the Employee Retirement Income Security Act, the Consolidated Omnibus Budget Reconciliation Act, the Securities Act, the Immigration Reform and Control Act the Worker Adjustment and Retraining Notification Act of 1988, the California Worker Adjustment and Retraining Notification Act, the Uniformed Service Employment and Reemployment Rights Act, and any regulation of any administrative agency or governmental authority relating to employment benefits or discrimination or harassment or retaliation in employment; (2) all claims for failure to pay minimum or overtime wages, failure to timely pay wages, failure to provide accurate itemized wage statements, failure to maintain accurate records, failure to reimburse business expenses, failure to provide meal periods or rest breaks, failure to provide paid sick leave, failure to post notice of paydays and time and place of payment, and any claim for violations of the California Labor Code, California's Business and Professions Code § 17200 et seq., and the applicable California Industrial Welfare Commission Wage Order; (3) any non-statutory tort or contractual claim, including all claims for breach of oral, implied or written contract, breach of implied covenant of good faith and fair dealing, negligent or intentional infliction of emotional distress, and conversion; (4) all claims for wrongful termination of employment; (5) all claims for wages, penalties and/or benefits; and (6) all claims for attorneys' fees and costs ("Plaintiffs' Release"). Plaintiffs' Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiffs acknowledge that Plaintiffs may discover facts or law different from, or in addition to, the facts or law that Plaintiffs now know or believe to be true but agrees, nonetheless, that Plaintiffs' Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiffs' discovery of them. Settlement Agreement at § 5.1.

Plaintiff's Waiver of Rights Under California Civil Code Section 1542.

For purposes of Plaintiffs' Release, Plaintiffs expressly waive and relinquish the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads: A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or Released Party. Settlement Agreement at § 5.1.1.

Released Class Claims:
All Participating Class Members release the Released Parties from any and all claims, damages, and penalties that were or could have been alleged based on the facts alleged in the Actions and any PAGA Notices that Plaintiffs submitted in connection with the Actions during the Class Period, including, without limitation, claims for: (1) Failure to Pay All Minimum Wages (Labor Code sections 1194, 1194.2, 1197), (2) Failure to Pay All Overtime Wages (Labor Code sections 204, 510, 558, 1194, 1198), (3) Failure to Provide Meal Periods and Pay Missed Meal Period Premiums (Labor Code sections 226.7, 512, 558, 1198), (4) Failure to Provide Rest Periods and Pay Missed Rest Period Premiums (Labor Code sections 226.7, 516, 668, 1198), (5) Untimely Payment of Wages (including Failure to Pay Wages Timely During Employment and Failure to Pay All Wages Earned and Unpaid at Separation) (Labor Code sections 201, 202, 203, 204, 210, 216, 218), (6) Failure to Furnish Accurate Itemized Wage Statements (Labor Code section 226), (7) Waiting Time Penalties (Labor Code sections 201, 202, 203), (8) Failure to Reimburse Business Expenses (Labor Code section 2802), (9) Failure to Maintain Accurate Employment Records (Labor Code section 1174), (10) Unfair Competition (Business and Professions Code section 17200-17210), (11) Civil Penalties Under the Private Attorneys General Act (Labor Code section 2698, et seq.) ("Released Class Claims"). Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, un-employment insurance, disability, social security, workers' compensation, or claims based on facts outside of the Operative Class Complaint or outside the Class Period. Settlement Agreement at § 5.2.

Released PAGA Claims:
All PAGA Members and the LWDA release Released Parties from, and are forever barred from pursuing such against Released Parties for, the PAGA claims that were alleged or could have been alleged based on the facts alleged in the Actions or any PAGA Notices that Plaintiffs submitted in connection with the Actions during the PAGA Period, including, without limitation penalties predicated on the underlying alleged violations of the Released Class Claims or for alleged violations of the following Labor Code sections: 201, 202, 203, 204, 210, 226, 226.3, 226.7, 256, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2084, and California Industrial Welfare Commission Wage Orders Wage Order 4-2001. Settlement Agreement at § 5.3.

Only Plaintiffs will agree to a general release and a waiver of Civil Code § 1542. *Id.* at § 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 minimum number of class members for maintenance of a class action. *Hendershot v. Ready to Roll Transp., Inc.*, 228 Cal.App.4th 1213, 1222 (2014). Class sizes as small as 10 have been permitted. *Rose v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981), disapproved on other grounds by *Noel*, 7 Cal.5th at 986.

The Class here consists of all persons who were employed by Defendant in California as an hourly- paid or non-exempt employees at any point during the Class Period, including current and former employees during the Class Period from January 29, 2021, through either (a) the date that the Court grants Preliminary Approval, or (b) at Defendant's election, an earlier date, but no earlier than February 19, 2026, including current and former employees. *See* Settlement Agreement at § 1.5, 1.13. The Class is also readily ascertainable from Defendant's business records, because all Class Members are or were employees of Defendant. *Id.* Defendant's records show there are approximately 220 Class Members, making joinder of all Class Members impracticable. Haber

Decl. at ¶ 9.

2. A Well-Defined Community of Interest Exists

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

a. Common Questions Predominate

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

Plaintiffs have alleged that Defendant maintained common employment policies and/or practices that unlawfully deprived Class Members of wages, meal period, rest periods, reimbursements for business expenses, accurate wage statements, and timely payment of wages upon separation of employment. Haber Decl. at ¶ 10. 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 intention, 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. Plaintiffs are 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. *Medrazo v. Honda of North Hollywood*, 166 Cal.App.4th 89, 99 (2008).

Plaintiffs have alleged that they 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 ¶ 10. Through informal discovery, including the production of thousands of documents by Defendant, Plaintiffs confirmed that these challenged policies and practices applied to Plaintiffs as well as Class Members. *See id.* at ¶ 8. Therefore, Plaintiffs' claims and Class Members' claims arise from the same challenged employment policies and practices and are based on the same legal theories.

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

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

Plaintiffs' interests are coextensive with Class Members' interests. Declaration of Mary Moyses in Support of Motion for Preliminary Approval ("Moyses Decl.") at ¶ 6. and Declaration of Cindi Garcia in Support of Motion for Preliminary Approval ("Garcia Decl.") at ¶ 6. Plaintiffs have demonstrated an ability to advocate for the interests of Class Members by initiating this lawsuit, gathering documents and information, being available on the day of mediation to answer questions, meeting with their attorneys to understand the claims and theories of liability at issue, assisting their attorneys in preparation for mediation, and reviewing the proposed Settlement. *Id.*

at ¶ 7.

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

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

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

B. The Settlement Meets the Standards for Preliminary Approval

The moving party must demonstrate that "the settlement is fair, adequate and reasonable." *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 126 (2008). "In determining whether a class settlement is fair, adequate, and reasonable, the trial court should consider relevant factors, 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 ¶ 5. 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. *Id.* at ¶ 8. Plaintiffs' Counsel assessed the value to the class claims using the documents and data 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 files, employment handbook and 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. *Id.* at ¶ 1. Plaintiffs' Counsel has extensive experience litigating wage and hour class actions on behalf of employees. *See id.* at ¶¶ 21-28. Plaintiffs' Counsel have 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 ¶ 12.

Minimum and Overtime Wages: Plaintiffs allege that Defendant failed to pay for all hours worked, including minimum, straight time, and overtime wages, by requiring Class Members to work off-the-clock, without compensation. Haber Decl. at ¶ 12. For example, Plaintiffs alleged that Defendant required them and other Class Members to strictly clock in and out at the scheduled shift times, yet prepare work materials and engage in "pass downs" before shifts and complete outstanding tasks after clocking out. This included having work-related conversations about tasks before and after shifts started. *Id.* For purposes of calculating Defendant's liability based on a best-case scenario for Plaintiffs and the Class, Plaintiffs' Counsel estimates that Defendant's maximum potential exposure by assuming that all unpaid work time should have been paid at the overtime rate, and Plaintiffs' Counsel assumed that Defendant is liable for three (3) hours of unpaid worktime per workweek. This results in potential exposure for this claim of approximately $1,488,677.58 (16,106 workweeks x $20.54 average hourly rate of pay x 3 hours/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, the risk of succeeding at class certification and trial was substantial. *Id.* Accordingly, Plaintiffs' Counsel applied a risk discount based on a 40% chance of succeeding at class certification and a 40% chance of succeeding at trial on the merits, yielding a realistic damage estimate of approximately $238,188.41 ($1,488,677.58 x 40% x 40%). *Id.*

Meal Periods: Plaintiffs' meal period claim was based on the allegation that Defendant failed to provide Class Members with legally compliant meal periods or pay meal period premiums in lieu thereof. *Id.* at ¶13. For example, Plaintiffs alleged that Defendant required themselves and other Class Members to work through meal periods and take late meal periods due to the broken bell system and supervisors' failure to timely relieve employees of their duties. *Id.* Further, when Class Members were provided meal periods, they were regularly interrupted by supervisors asking work-related questions and instructing employees to return to work timely, without opportunity to

make up the meal period time. *Id.* Additionally, Plaintiffs' Counsel's expert consultant determined there was a 13.2% meal period violation rate from the sampling of Defendant's time and payroll records, where meal periods were short, late, or missed. *Id.* Therefore, potential liability for the meal period claim is approximately $189,480.51 (69,886 shifts over 5 hours x $20.54 average hourly rate x 13.2% violation rate). *Id.* After taking into account the difficulty of certifying and proving meal period claims, as well as Defendant's contention that the claim lacks merit and that a 13.2% violation rate is unrealistic, Plaintiffs' Counsel discounted this figure based on a 50% chance of succeeding at class certification and a 40% chance of succeeding at trial, yielding a realistic damage estimate of approximately $37,896.10 ($189,480.51 x 50% x 40%). *Id.*

Rest Periods: Plaintiffs' rest period claim was based on the allegation that Defendant failed to provide Class Members with legally compliant rest periods or pay rest period premiums in lieu thereof. *Id.*at ¶14. For example, Plaintiffs alleged that Defendant required themselves and other Class Members to miss or take shortened rest periods due to company pressure to hit production goals and tend to their machines. *Id.* Where rest periods were provided, Defendant's policy and practice was to require on-premises and on-duty rest periods. Based on Plaintiffs' allegations and Plaintiffs' and other Class Members' experience working for Defendant, Plaintiffs' Counsel applied a 100% violation rate to all qualifying shifts during the Class Period. *Id.* Therefore, Defendant's potential liability for the rest period claim is approximately $1,476,887.62 (71,903 shifts of 3.5 hours or longer x $20.54 average hourly rate x 100% violation rate). *Id.* However, Plaintiffs' 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, Plaintiffs' Counsel discounted this claim based on a 30% chance of succeeding at class certification and a 40% chance of succeeding at trial, yielding a realistic damage estimate of approximately $177,226.52 ($1,476,887.62 x 30% x 40%). *Id.*

Reimbursements: Plaintiffs' reimbursement claim was based on the allegation that Defendant expected employees to pay out-of-pocket for necessary employment-related expenses,

including, without limitation, use of personal cell phones. Haber Decl. at ¶ 15. However, Defendant did not reimburse employees for these expenses. *Id.* For purposes of calculating Defendant's liability based on a best-case scenario for Plaintiffs and the Class, Plaintiffs' Counsel estimated that Defendant was liable to each Class Member for $12.50 per workweek in unreimbursed expenses, for a total amount of approximately $201,325.00 ($12.50 x 16,106 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, Plaintiffs' Counsel discounted this claim based on a 30% chance of succeeding at class certification and a 20% chance of succeeding at trial, yielding a realistic damage estimate of approximately $12,079.50 ($201,325.00 x 30% x 20%). *Id.*

In sum, Plaintiffs' Counsel estimated that Plaintiffs' maximum recovery for the off-the-clock claim, meal period violations, and rest period violations (i.e., the wage claims) is approximately $3,155,045.71. *Id.* at ¶16. However, after factoring in the risk and uncertainty of prevailing at certification and trial, Plaintiffs' Counsel estimates that Plaintiffs' realistic estimated recovery for these non-penalty wage claims is approximately $453,311.03. *Id.*

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. *Id.* at ¶17. With respect to Plaintiffs' derivative claims for statutory penalties, Plaintiffs' Counsel estimated that Defendant's maximum potential liability is approximately $1,111,214.08. *Id.* Defendant's maximum potential liability for waiting time penalties is approximately $615,214.08 (128 employees x $20.54 average hourly rate of pay x 7.8 hours/day x 30 days) based on approximately 128 formerly employed Class Members during the 3-year statute of limitations period and an average shift length of 7.8 hours. *Id.* Defendant's maximum potential liability for inaccurate wage statements is approximately $496,000.00 (124 employees x $4,000.00 statutory maximum) based on approximately 124 Class Members who worked during the 1-year statute of limitations period and that statutory maximum penalties. *Id.* In light of the foregoing, Plaintiffs' Counsel believes that it would be unrealistic to expect the Court to award the full $1,111,214.08 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. Considering that the underlying wage claims are realistically estimated to be approximately $453,311.03, such a disproportionate award would also raise due process concerns. *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 $36,912.84 for waiting time penalty claims ($615,214.08 x 30% x 20%), and approximately $29,760.00 for wage statement penalty claims ($496,000.00 x 30% x 20%), or approximately $66,672.84 total for statutory penalties. *Id.*

PAGA: For the PAGA claim, Plaintiffs' Counsel determined that Defendant's potential exposure could potentially reach $606,200.00, assuming the initial $100 penalty would apply for each of the 6,062 pay periods in the PAGA Period. *Id.* at ¶18. 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 $60,620.00 for PAGA penalties ($606,200.00 x 10%). *Id.* The settlement allocates $25,000.00 of the Gross Settlement Amount to PAGA, therefore the PAGA allocation amounts to 4.4% of the Gross Settlement Amount and approximately 41% of the realistic maximum damages for PAGA penalties ($25,000.00 / $60,620.00). *Id.*

Using these estimated figures, Plaintiffs' Counsel predicted that the realistic maximum recovery for all claims, including penalties, would be approximately $ 592,683.37. *Id.* at ¶ 19. This means that the realistic maximum recovery represents approximately 95% of the realistic maximum recovery ($563,710.00 / $592,683.37). *Id.* Considering the risk and uncertainty of prevailing at class certification and at trial, this is an excellent result for the Class. *Id.* Indeed, because of the proposed Settlement, Class Members will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment. *Id.*

Based on the figures in the Settlement Agreement, the Net Settlement Amount available for class settlement payments is currently estimated to be $295,185.70 for approximately 220 Class

Members. *Id.* at ¶ 20. As a result, each Settlement Class Member would be eligible to receive an average net benefit of approximately $1,341.75. *Id.* Based on the estimated Net Settlement Amount available for individual class payments and there being approximately 16,106 workweeks in the Class Period, the estimated weekly valuation for Individual Class Payments is $18.43 ($295,185.70/ 16,106 workweeks). *Id.*

C. The Requested Service Payments are Reasonable

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

Throughout this case, Plaintiffs assisted counsel in gathering evidence necessary to prosecute the claims, maintained regular contact with counsel, was available on the day of mediation to answer questions, and reviewed the Settlement to ensure it was fair to the Class. Moyses Decl. at ¶ 11. and Garcia 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 payments are 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 as Class Counsel. The attorneys performed significant work and expended litigation costs in prosecuting this matter with no guarantee of payment. Haber Decl. at ¶ 21. Plaintiffs' Counsel seeks preliminary approval for $186,024.30 in attorneys' fees, which is up to one-third of the Gross Settlement Amount, 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.

V. CONCLUSION

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

Respectfully submitted,

Dated: September 21, 2026

WILSHIRE LAW FIRM

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