

John G. Yslas (SBN 187324)
john.yslas@wilshirelawfirm.com
Jeffrey C. Bils (SBN 301629)
jeffrey.bils@wilshirelawfirm.com
Aram Boyadjian (SBN 334009)
aram.boyadjian@wilshirelawfirm.com
Andrew Sandoval (SBN 346996)
andrew.sandoval@wilshirelawfirm.com
WILSHIRE LAW FIRM
3055 Wilshire Blvd., 12th Floor
Los Angeles, California 90010
Telephone: (213) 381-9988
Facsimile: (213) 381-9989

Attorneys for Plaintiff Rodolfo Ponce

Electronically FILED by
Superior Court of California,
County of Los Angeles
11/14/2024 10:05 AM
David W. Slayton,
Executive Officer/Clerk of Court,
By K. Valenzuela, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

RODOLFO PONCE, individually, on behalf of
all others similarly situated, and on behalf of the
State of California and other aggrieved persons

Plaintiff,

v.

YOUBAR, INC., a California corporation; and
DOES 1 through 10, inclusive,

Defendants.

Case No.: 22STCV37519

*Assigned for all purposes to:
Hon. Stuart M. Rice, Dept. 1*

**NOTICE OF MOTION AND MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION AND PAGA
SETTLEMENT**

Date: December 23, 2024
Time: 10:30 a.m.
Dept.: 1

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on December 23, 2024 at 10:30 a.m., or as soon thereafter as the matter may be heard in Department 1 of the above-entitled Court, located at 312 N. Spring St., Los Angeles, California 90012, Plaintiff Rodolfo Ponce (“Plaintiff”) will and hereby does move this Court for an Order:

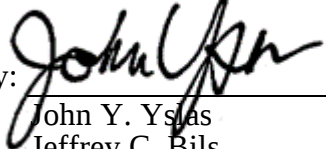
1. Granting preliminary approval of the proposed Class Action and PAGA Settlement Agreement (“Settlement”);
2. Conditionally certifying the proposed Class for settlement purposes only;
3. Appointing Plaintiff as the Class Representative;
4. Appointing Wilshire Law Firm, PLC as Class Counsel;
5. Appointing Phoenix Settlement Administrators, Inc. 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 Plaintiff and Plaintiff’s 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 John G. Yslas, the Declaration of Rodolfo Ponce, 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.

Dated: November 14, 2024

WILSHIRE LAW FIRM

By: 

John Y. Yslas
Jeffrey C. Bils
Aram Boyadjian
Andrew Sandoval
Attorneys for Plaintiff Rodolfo Ponce

TABLE OF CONTENTS

I. INTRODUCTION	1
II. PROCEDURAL HISTORY	2
III. SUMMARY OF THE SETTLEMENT TERMS	2
A. Terms of the Proposed Settlement.....	2
B. Proposed Settlement Administration	3
C. Proposed Release.....	4
IV. THE PROPOSED SETTLEMENT AGREEMENT MEETS ALL CRITERIA FOR PRELIMINARY APPROVAL	4
A. Provisional Certification of the Class is Appropriate.....	4
1. <i>The Proposed Class is Numerous and Ascertainable</i>	<i>5</i>
2. <i>A Well-Defined Community of Interest Exists.....</i>	<i>5</i>
3. <i>A Class Action is Superior to a Multitude of Individual Lawsuits.....</i>	<i>7</i>
B. The Settlement Meets the Standards for Preliminary Approval.....	8
2. <i>The Settlement is Reasonable Given the Strengths of Plaintiff's Claims and the Risks and Expense of Further Litigation.....</i>	<i>9</i>
C. The Requested Service Payment is Reasonable.....	11
D. The Requested Attorneys' Fees and Costs Are Reasonable.....	12
V. CONCLUSION.....	12

TABLE OF AUTHORITIES

Cases

<i>Ayala v. Antelope Valley Newspapers, Inc.</i> , 59 Cal.4th 522 (2014)	5
<i>Bell v. Farmers Ins. Exch.</i> , 115 Cal.App.4th 715 (2004)	11
<i>Brinker Restaurant Corp. v. Superior Court</i> , 53 Cal.4th 1004 (2012)	4, 5
<i>Cellphone Termination Fee Cases</i> , 186 Cal.App.4th 1380 (2010)	11
<i>Chavez v. Netflix, Inc.</i> , 162 Cal.App.4th 43 (2008)	8, 12
<i>Dean Witter Reynolds, Inc. v. Superior Court</i> , 211 Cal.App.3d 758 (1989)	7
<i>Dunk v. Ford Motor Co.</i> , 48 Cal.App.4th 1794 (1996)	8
<i>Duran v. U.S. Bank Nat'l Ass'n</i> , 59 Cal.4th 1 (2014)	5
<i>Global Minerals & Metals Corp. v. Superior Court</i> , 113 Cal.App.4th 836 (2003)	5
<i>Hendershot v. Ready to Roll Transp., Inc.</i> , 228 Cal.App.4th 1213 (2014)	5
<i>Hernandez v. Restoration Hardware, Inc.</i> , 4 Cal.5th 260 (2018)	6
<i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal.App.4th 116 (2008)	8
<i>Medraza v. Honda of North Hollywood</i> , 166 Cal.App.4th 89 (2008)	6
<i>Nat'l Solar Equip. Owners' Ass'n v. Grumman Corp.</i> , 235 Cal.App.3d 1273 (1991)	7
<i>Noel v. Thrifty Payless, Inc.</i> , 7 Cal.5th 955 (2019)	5
<i>Rebney v. Wells Fargo Bank</i> , 220 Cal.App.3d 1117 (1991)	9
<i>Richmond v. Dart Industries</i> , 29 Cal.3d 462 (1981)	7
<i>Rose v. City of Hayward</i> , 126 Cal.App.3d 926 (1981)	5
<i>Sav-On Drug Stores, Inc. v. Superior Court</i> , 34 Cal.4th 319 (2004)	7, 12
<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal.App.4th 224 (2001)	6, 8

Statutes

Cal. Code Civ. Proc. § 382	7
----------------------------------	---

I. INTRODUCTION

Pursuant to California Rules of Court, Rule 3.769(d) and (e), Plaintiff seeks 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 Monte Youbar, Inc. ("Defendant"). The proposed Class is defined as persons employed by Defendant in California and classified as an hourly-paid and/or non-exempt employee who worked for Defendant ("Class Members") during the Class Period June 5, 2018 to July 31, 2024 ("Class Period"). The main terms of the Settlement are as follows:

1. A Gross Settlement Amount of \$425,000.00, which will be distributed to approximately 430 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 \$141,666.67) and up to \$20,000.00 in reimbursement of litigation costs to Plaintiff's Counsel;
3. A class representative service payment of up to \$10,000.00 to Plaintiff;
4. Costs of settlement administration of up to \$8,000.00; and
5. Allocation of \$20,000.00 to PAGA penalties, seventy-five percent (75%) of which (\$15,000.00) will be paid to the Labor and Workforce Development Agency ("LWDA"), and twenty-five percent (25%) of which (\$5,000.00) will be paid to Class Members who worked for Defendant during the PAGA Period of January 6, 2022 to July 31, 2024 ("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, Plaintiff requests that the Court grant preliminary approval of the Settlement, conditionally certify the Class for settlement purposes only, appoint Plaintiff as the Class Representative, appoint Plaintiff's Counsel as Class Counsel, appoint Phoenix Settlement

Administrators, Inc. 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 November 30, 2022, Plaintiff 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 timely pay final wages at termination; (6) failure to provide accurate itemized wage statements; (7) failure to indemnify employees for expenditures; and (8) unfair business practices. Declaration of John G. Yslas in Support of Motion for Preliminary Approval of Class Action and PAGA Settlement (“Yslas Decl.”) at ¶ 3.

On January 6, 2023, Plaintiff provided written notice to the LWDA and Defendant of his intention to file a PAGA claim. Yslas Decl. at ¶ 4, Exhibit 2. The LWDA did not notify Plaintiff that it intended to investigate within 65 days of this written notice. *Id.* at ¶ 5. Therefore, on March 13, 2023, Plaintiff filed an amended complaint adding a claim under PAGA. *Id.*

The Parties subsequently participated in a private mediation with mediator Steve Cerveris on May 14, 2024. *Id.* at ¶ 6. 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 in October 2024. *Id.* at ¶ 7, Exhibit 1 (“Settlement Agreement”). On November 14, 2024, Plaintiff submitted a copy of the Settlement Agreement to the LWDA. *Id.* at ¶ 8, Exhibit 3.

III. SUMMARY OF THE SETTLEMENT TERMS

A. Terms of the Proposed Settlement

The parties have agreed to settle the claims alleged in this case and the related PAGA Action for a Gross Settlement Amount of \$425,000.00. Settlement Agreement at § 3.1. Subject to Court approval, the following payments will be deducted from the Gross Settlement Amount: (1) a class representative service payment of up to \$10,000.00 to Plaintiff; (2) attorneys’ fees of up to one-third of the Gross Settlement Amount (currently \$141,666.67) and reimbursement of litigation costs of up to \$20,000.00 to Plaintiff’s Counsel; (3) costs of settlement administration of up to \$8,000.00 to Phoenix Settlement Administrators, Inc.; (4) individual class payments to Class

Members; and (5) PAGA penalties in the amount of \$20,000, which will be allocated 75% to the LWDA (\$15,000) and 25% to Aggrieved Employees (\$5,000). *Id.* at § 3.2. After all requested deductions are made, the remaining Net Settlement Amount is currently estimated to be \$205,333.33.

Individual class payments will be calculated based on the number of workweeks worked by each Class Member during the Class Period. *Id.* at § 3.2.4. For tax purposes, the individual class payments will be allocated 20% to wages and 80% to penalties and interest. *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 tendered by the Settlement Administrator to the State Controller Unclaimed Property Fund in the name of the Class Member for whom the funds are designated. *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 in English and in Spanish. Settlement Agreement at § 7.4.2.

1 If a Class Notice is returned as undeliverable, the Settlement Administrator will re-mail the
2 Class Notice within 3 business days to the forwarding address provided by the U.S. Postal Service.
3 *Id.* at § 7.4.3. If no forwarding address is provided, the Settlement Administrator will conduct a
4 Class Member Address Search and re-mail the Class Notice to the most current address obtained.
5 *Id.* The deadline to opt-out of the Settlement or to submit an objection or dispute will be extended
6 by 14 days for all Class Members whose Class Notice was remailed. *Id.* at §7.4.4.

7 **C. Proposed Release**

8 Class Members, on behalf of themselves and their respective former and present
9 representatives, agents, attorneys heirs, administrators, successors, and assign, will release
10 Defendant and each of its former and present directors, officers, shareholders, owners, attorneys,
11 insurers, predecessors, successors, and assigns from all claims that were alleged or reasonably
12 could have been alleged, based on the class Period facts stated in the Operative Complaint.
13 Settlement Agreement at § 5.2.

14 Aggrieved Employees are deemed to release, on behalf of themselves and their respective
15 former and present representatives, agents, attorneys, heirs, administrators, successors and assigns,
16 Defendant and each of its former and present directors, officers, shareholders, owners, attorneys,
17 insurers, predecessors, successors, and assigns from all claims for PAGA penalties that were
18 alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the
19 Operative Complaint and the PAGA Notice. *Id.* at § 5.3. Only Plaintiff will agree to a general
20 release and a waiver of Civil Code § 1542. *Id.* at § 5.1.

21 **IV. THE PROPOSED SETTLEMENT AGREEMENT MEETS ALL CRITERIA FOR** 22 **PRELIMINARY APPROVAL**

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

24 Class certification is appropriate when there is: (1) an ascertainable and sufficiently
25 numerous class; (2) a well-defined community of interest among class members; and (3) substantial
26 benefits from certification that render proceeding as a class superior to the alternatives. *Brinker*
27 *Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1021 (2012). Although courts still need to
28 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 employed by Defendant in California and classified as an hourly-paid and/or non-exempt employee who worked for Defendant during the Class Period. See Settlement Agreement at §§ 1.5. 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 430 Class Members, making joinder of all Class Members impracticable. Yslas Decl. at ¶ 10.

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

1 permit class-wide assessment, and whether individual variations in proof on those issues are
2 manageable. *Id.*

3 Plaintiff has alleged that Defendant maintained common employment policies and/or
4 practices that unlawfully deprived Class Members of wages, meal period, rest periods,
5 reimbursements for business expenses, accurate wage statements, and timely payment of wages
6 upon separation of employment. Yslas Decl. at ¶ 11. These allegations present common factual
7 and legal questions of, *inter alia*, whether Defendant applied the same scheduling, timekeeping,
8 pay, meal period, rest period, and reimbursement policies to all Class Members, whether these
9 policies and practices resulted in Labor Code violations, whether Defendant's conduct was
10 intention, and whether Class Members are entitled to damages and/or penalties. *Id.* These common
11 questions could be resolved using Class Members' time records, payroll records, testimony from
12 Defendant's designated representative(s), and Class Members' testimony. *Id.* Therefore, the Court
13 can and should exercise its discretion to grant conditional class certification for settlement
14 purposes.

15 *b. Plaintiff is Typical of the Class*

16 Typicality does not require that the representative plaintiff's claims and those of the class
17 members be identical or perfectly aligned. *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224,
18 228 (2001), disapproved on other grounds by *Hernandez v. Restoration Hardware, Inc.*, 4 Cal.5th
19 260, 269-280 (2018). Typicality does not require that a plaintiff's claims be identical to those of
20 other class members, only that their claims and the defenses applicable to them are sufficiently
21 similar to those of other class members that a named plaintiff is able to adequately represent the
22 class and focus on common issues. *Medraza v. Honda of North Hollywood*, 166 Cal.App.4th 89,
23 99 (2008).

24 Plaintiff has alleged that he and Class Members were employed by the same Defendant and
25 injured by Defendant's common wage and hour policies and practices, including Defendant's
26 scheduling, timekeeping, pay, meal period, rest period, and reimbursement policies. *See* Yslas
27 Decl. at ¶ 11. Through informal discovery, including a 10% sampling of time and payroll records
28 and Defendant's handbook in effect during the Class Period, Plaintiff confirmed that these

1 challenged policies and practices applied to Plaintiff as well as Class Members. *See id.* at ¶ 9.
2 Therefore, Plaintiff's claims and Class Members' claims arise from the same challenged
3 employment policies and practices and are based on the same legal theories.

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

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

11 Plaintiff's interests are coextensive with Class Members' interests. Declaration of Rodolfo
12 Ponce in Support of Motion for Preliminary Approval ("Ponce Decl.") at ¶ 6. Plaintiff has
13 demonstrated an ability to advocate for the interests of Class Members by initiating this lawsuit,
14 gathering documents and information, being available on the day of mediation to answer questions,
15 meeting with his attorneys to understand the claims and theories of liability at issue, assisting his
16 attorneys in preparation for mediation, and reviewing the proposed Settlement. *Id.* at ¶ 7.

17 Likewise, Wilshire Law Firm has expended considerable time and effort on this case and
18 will continue to do so through final approval. *See generally*, Yslas Decl. Therefore, Plaintiff should
19 be appointed Class Representative, and her counsel should be appointed Class Counsel.

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

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

1 potential recovery. Yslas Decl. at ¶ 10. Therefore, a class action is the superior method for seeking
2 relief.

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

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

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

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

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

22 Courts have recognized that the involvement of a respected mediator provides a high degree
23 of assurance that the settlement is the result of arm’s length bargaining. *See Chavez v. Netflix, Inc.*,
24 162 Cal.App.4th 43, 52-53 (2008). The Settlement in this matter was the product of a full-day
25 mediation session with a respected mediator. Yslas Decl. at ¶ 6. The negotiations were adversarial,
26 conducted at arm’s length, and tempered by the efforts of both sides to serve the interests of their
27 clients. *Id.*

28 ///

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

2 Prior to attending mediation, Plaintiff's Counsel thoroughly investigated the claims,
3 applicable law, and potential defenses. *Id.* at ¶ 9. Plaintiff's Counsel assessed the value to the class
4 claims using the documents and data Defendant produced in informal discovery, including
5 Plaintiff's personnel file, the employment handbook in effect during the Class Period, and a 10%
6 sampling of time and payroll records. *Id.*

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

8 Plaintiff is represented by Wilshire Law Firm. *Id.* at ¶ 1. Plaintiff's Counsel has extensive
9 experience litigating wage and hour class actions on behalf of employees. *See id.* at ¶¶ 21-29.
10 Plaintiff's Counsel have been involved as counsel in numerous class actions that have resulted in
11 millions of dollars in recovery. *See id.*

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

14 A settlement does not have to provide 100% of the damages sought to be considered fair
15 and reasonable. *See Rebney v. Wells Fargo Bank*, 220 Cal.App.3d 1117, 1139 (1991). Although
16 the exposure Plaintiff's Counsel calculated is substantial, the various risks at succeeding at class
17 certification and through trial affected the valuation of the claims for settlement purposes. Yslas
18 Decl. at ¶ 12.

19 Minimum and Overtime Wages: Plaintiff's unpaid minimum and overtime wage claims
20 were based on the allegation that Defendant required Class Members to perform work duties after
21 clocking out. *Id.* at ¶ 13. Based on Plaintiff's estimate that he worked a total of 1 hour off-the-
22 clock each week, Plaintiff's Counsel assumed each Class Member worked 1-hour off-the-clock per
23 week in calculating potential exposure to be approximately \$850,000.00 for these claims. *Id.*
24 However, Defendant argued that any off-the-clock time was undocumented and unknown to
25 Defendant, and that Defendant was therefore not obligated to pay for this time. *Id.* Because this
26 claim would have relied heavily on Class Member testimony and would not be evidenced in
27 Defendant's time and payroll records, the risk of succeeding at class certification was substantial.
28

1 *Id.* Accordingly, Plaintiff's Counsel applied a 90% risk discount to this claim to reach a settlement
2 value of approximately \$80,000.00 (or 20% of the Gross Settlement Amount). *Id.*

3 Meal Periods: Plaintiff's meal period claim was based on the allegation that Defendant
4 failed to maintain a policy and practice of paying meal period premiums when its time records
5 showed Class Members' meal periods were late, short, or missed. *Id.* at ¶ 14. Plaintiff's Counsel
6 found a violation rate of 12.3% in Defendant's time and payroll records and calculated potential
7 exposure on this claim to be approximately \$330,000.00. *Id.* However, Defendant argued that Class
8 Members would testify that they voluntarily took short, missed, or late meal periods. *Id.*
9 Accordingly, Plaintiff's Counsel applied a 20% risk discount to reach a settlement value of
10 approximately \$265,000.00 (or 65% of the Gross Settlement Amount). *Id.*

11 Rest Breaks: Plaintiff's rest period claim was based on the allegation that Defendant
12 required Class Members to record their rest periods but failed to pay rest period premiums when
13 its time records showed Class Members' rest periods were short or missed. *Id.* at ¶ 15. Plaintiff's
14 Counsel found a violation rate of 17.8% in Defendant's time and payroll records and calculated a
15 potential exposure of approximately \$500,000.00 for this claim. *Id.* However, Defendant argued
16 that Class Members would testify that they received all of their rest periods despite the time
17 records. *Id.* Because it is not clear whether the same burden-shifting that applies to meal period
18 claims applies to rest period claims under California law, Plaintiff's Counsel applied a 88% risk
19 discount to this claim to reach a settlement value of approximately \$60,000.00 (or 15% of the Gross
20 Settlement Amount). *Id.*

21 Reimbursements: Plaintiff's reimbursement claim was based on the allegation that
22 Defendant required Class Members to use their personal cell phones to communicate about work.
23 *Id.* at ¶ 16. Based on Plaintiff's estimate that he incurred \$30 in unreimbursed expenses per month,
24 Plaintiff's Counsel assumed each Class Member incurred \$30 in unreimbursed expenses per month
25 in calculating potential exposure to be approximately \$250,000.00 for this claim. *Id.* However,
26 Defendant argued that these expenses were not required by Defendant, and that it could not have
27 known that these expenses were being incurred. *Id.* Accordingly, Plaintiff's Counsel could not
28 attribute any value to this claim in terms of settlement value. *Id.*

1 Derivative Penalties: Plaintiff alleged that as a result of Defendant's alleged failure to pay
2 all wages and meal and rest period premiums owed, Defendant owed waiting time penalties and
3 wage statement penalties. *Id.* at ¶ 17. However, Defendant argued that it had good faith defenses
4 that made the imposition of these penalties unwarranted. *Id.* Moreover, Plaintiff could not recover
5 these penalties if she failed to prove the underlying claims. *Id.* Although Plaintiff's Counsel
6 calculated that potential exposure for the waiting time penalty claim was approximately \$675,00.00
7 and approximately \$700,000.00 for the wage statement penalty claim, Plaintiff's Counsel could
8 not attribute any value to these claim in terms of settlement value. *Id.*

9 PAGA: For the PAGA claim, Plaintiff's Counsel determined that Defendant's potential
10 exposure could potentially reach \$564,700.00, assuming the initial \$100 penalty would apply for
11 each of the 5,647 pay periods in the PAGA Period at mediation. *Id.* at ¶ 18. However, even
12 assuming success on the merits of each claim, PAGA gives the Court discretion to reduce penalties
13 for a variety of reasons, including where to do otherwise would result in an award that is unjust,
14 arbitrary and oppressive, or confiscatory. *Id.* Therefore, the settlement allocates \$20,000.00 of the
15 Gross Settlement Amount to PAGA, which amounts to approximately \$100 per Aggrieved
16 Employee. *Id.*

17 **C. The Requested Service Payment is Reasonable**

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

24 Throughout this case, Plaintiff assisted counsel in gathering evidence necessary to
25 prosecute the claims, maintained regular contact with counsel, was available on the day of
26 mediation to answer questions, and reviewed the Settlement to ensure it was fair to the Class. Ponce
27 Decl. at ¶ 7. No action would likely have been taken by Class Members individually and no
28 compensation would have been recovered for them, but for Plaintiff's services on behalf of the

1 Class. By actively pursuing this action, Plaintiff furthered the California public policy goal of
2 enforcing the State’s wage and hour laws. *See Sav-On*, 34 Cal.4th at 340. The requested class
3 representative service payment is reasonable and should be preliminarily approved. Plaintiff has
4 provided a declaration regarding her work performed to date and will provide additional
5 information as requested or required by the Court at final approval.

6 **D. The Requested Attorneys’ Fees and Costs Are Reasonable**

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

13 Plaintiff seeks appointment of Wilshire Law Firm as Class Counsel. The attorneys
14 performed significant work and expended litigation costs in prosecuting this matter with no
15 guarantee of payment. Yslas Decl. at ¶ 19. Plaintiff’s Counsel seeks preliminary approval for
16 \$141,666.67 in attorneys’ fees, which is up to one-third of the Gross Settlement Amount, and up
17 to \$20,000.00 in reimbursement of litigation costs. Given the work performed in this matter, the
18 extensive information exchange, and the substantial recovery obtained on behalf of the Class,
19 Plaintiff’s Counsel achieved a settlement through efficient and diligent work. *See generally*, Yslas
20 Decl. At final approval, Plaintiff’s Counsel will fully brief the merits of its request for the award
21 of attorneys’ fees and litigation costs.

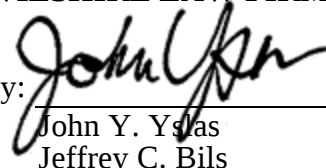
22 **V. CONCLUSION**

23 The Parties have negotiated a fair and reasonable settlement of the class claims in light of
24 the risks presented in this case. Plaintiff has presented the materials and information necessary to
25 demonstrate that the requirements for preliminary approval have been met, and therefore
26 respectfully requests that the Court preliminarily approve the Settlement and schedule a date for
27 the final approval hearing.
28

Dated: November 14, 2024

WILSHIRE LAW FIRM

By: _____



John Y. Yslas

Jeffrey C. Bils

Aram Boyadjian

Andrew Sandoval

Attorneys for Plaintiff Rodolfo Ponce