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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF NAPA**

MICHAEL PAUL SHERIDAN, individually,
on behalf of all others similarly situated, and
on behalf of the State of California and other
aggrieved persons,

Plaintiff,

v.

HEITZ CELLAR LLC, a California limited
liability company; LAWRENCE WINE
ESTATES LLC, a California limited liability
company; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 23CV000136

*[Assigned for all purposes to the Hon. Cynthia
P. Smith, Dept. A]*

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

PRELIMINARY APPROVAL HEARING

Date: October 29, 2026

Time: 9:30 a.m.

Dept: A

*[Filed concurrently with the Declarations of
Karen L. Wallace and Michael Paul Sheridan;
[Proposed] Order]*

Complaint filed: January 30, 2023

FAC filed: April 21, 2023

Trial date: None set

1 **TO THE HONORABLE COURT AND ALL PARTIES AND THEIR ATTORNEYS OF**
2 **RECORD:**

3 **PLEASE TAKE NOTICE** that on October 29, 2026, at 9:30 a.m., in Department A of the
4 Napa Superior Court, located at 825 Brown St., Napa, CA 94559, pursuant to Code of Civil
5 Procedure section 382 and California Rules of Court Rule 3.769, Plaintiff Michael Paul Sheridan
6 (“Plaintiff”) will and hereby does move the Court for an Order granting preliminary approval of
7 the proposed Class Action and PAGA Settlement Agreement and Class Notice (“Agreement”)
8 between Plaintiff and Defendants Heitz Cellar LLC and Lawrence Wine Estates LLC
9 (“Defendants”) (collectively, the “Parties”) to resolve the instant class and representative action.
10 Plaintiff further moves the Court for an Order:

- 11 1. Granting preliminary approval of the Settlement and the Agreement, a true and correct
12 copy of which is attached to the Declaration of Karen L Wallace as **Exhibit 1**;
- 13 2. Conditionally certifying, for settlement purposes only, a class of all persons who were
14 employed by Defendants in California as hourly-paid or non-exempt employees during
15 the Class Period from August 5, 2018, to August 4, 2025;
- 16 3. Approving the proposed Notice of Class Action Settlement and Hearing Date for Final
17 Court Approval (“Class Notice”) and the plan for its distribution. A true and correct
18 copy of the Class Notice is attached to the Agreement as **Exhibit A**;
- 19 4. Appointing Plaintiff as the Class Representative;
- 20 5. Appointing Plaintiff’s counsel, Benjamin H. Haber, Daniel J. Kramer, and Angela
21 Leong of Wilshire Law Firm, PLC (“WLF”) as Class Counsel;
- 22 6. Appointing Apex Class Action LLC as the Administrator; and
- 23 7. Scheduling a Final Approval Hearing.

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1 The motion will be based upon this notice, the attached memorandum of points and
2 authorities, the concurrently filed Declarations of Karen L. Wallace and Michael Paul Sheridan,
3 the records and files in the action, and any other further evidence or argument that the Court may
4 properly receive at or before the hearing.

5
6
7 Dated: September 28, 2026

Respectfully submitted,

WILSHIRE LAW FIRM, PLC

8 By: 

9 Benjamin H. Haber
10 Daniel J. Kramer
11 Angela Leong
12 Karen L. Wallace

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28 Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Pursuant to California Rules of Court, Rule 3.769(d) and (e), Plaintiff Michael Paul
4 Sheridan (“Plaintiff”) seeks preliminary approval of this proposed Settlement of wage and hour
5 claims, including representative claims under the Private Attorneys General Act (“PAGA”), Lab.
6 Code § 2698, *et seq.*, alleged against Defendants Heitz Cellar LLC and Lawrence Wine Estates
7 LLC (“Defendants”). The proposed Class Action and PAGA Settlement Agreement (“Agreement”)
8 resolves all claims alleged on behalf of a proposed Class of all persons who were employed by
9 Defendants in California as hourly paid or non-exempt employees during the Class Period, from
10 August 5, 2018, to August 4, 2025 (“Class Members”), including those employed by Defendants in
11 California at any time during the PAGA Period, from February 13, 2022, to August 30, 2025
12 (“Aggrieved Employees”).

13 The Settlement provides for a non-reversionary common fund (“Gross Settlement Amount”
14 or “GSA”) of \$350,000.00, from which the following payments will be deducted:

- 15 1. Class Counsel Fees of up to \$116,666.67 (one-third (1/3) of the GSA);
16 2. Class Counsel Litigation Expenses of up to \$35,000.00;
17 3. Class Representative Service of up to \$10,000.00;
18 4. Administration Expenses of up to \$4,490.00; and
19 5. PAGA Penalties of \$20,000.00 to settle PAGA claims, allocated 75% (\$15,000) to
20 the Labor and Workforce Development Agency (“LWDA”) and 25% (\$5,000) to
21 Aggrieved Employees.

22 After these payments have been deducted, the remainder of the GSA (the “Net Settlement
23 Amount”) is estimated to be \$163,843.33 and will be distributed to approximately 88 Class
24 Members on a pro rata basis according to the total Workweeks each worked during the Class
25 Period. Declaration of Karen L. Wallace in Support of Plaintiff’s Motion for Preliminary Approval
26 of Class Action and PAGA Settlement (“Motion”) (“Wallace Decl.”) ¶¶ 10-15.

27 The Settlement meets all criteria for preliminary approval and falls within the range of
28 reasonableness, given the risks and expense of further litigation. The Settlement was reached through

adversarial, arm's length negotiations with the assistance of an experienced mediator. Accordingly, Plaintiff requests that the Court grant preliminary approval of the Settlement, conditionally certify the Class for settlement, appoint Plaintiff as the Class Representative, appoint Plaintiff's counsel as Class Counsel, appoint Apex Class Action, LLC ("Apex") as the Administrator, authorize the Administrator to administer notice of the Settlement to the Class, and set a final approval hearing date.

II. PROCEDURAL HISTORY

Defendants operate six vineyards located throughout California's Napa Valley. Plaintiff worked for Defendants as a non-exempt employee during the Class Period. Wallace Decl. ¶ 3. On January 30, 2023, Plaintiff filed a putative class action complaint against Defendants alleging the following claims: 1) failure to pay minimum and straight time wages (Lab. Code §§ 204, 1194, 1194.2, and 1197); 2) failure to pay overtime wages (Lab. Code §§ 1194 and 1198); 3) failure to provide meal periods (Lab. Code §§ 226.7 and 512); 4) failure to authorize and permit rest periods (Lab. Code § 226.7); 5) failure to timely pay wages upon separation of employment (Lab. Code §§ 201-202); 6) failure to provide accurate itemized wage statements (Lab. Code § 226); 7) failure to indemnify employees for expenditures (Lab. Code § 2802); and 8) unfair business practices in violation of the Unfair Competition Law ("UCL"), Bus. & Prof. Code § 17200, *et seq.* (the "Action"). Wallace Decl. ¶ 4.

On February 13, 2023, Plaintiff provided written notice to Defendants and the LWDA of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories in support ("PAGA Notice"). *Id.* ¶ 5, Ex. 1. The LWDA did not notify Plaintiff that it intended to investigate within the statutory waiting period. Therefore, on April 21, 2023, Plaintiff filed a First Amended Complaint adding a PAGA cause of action seeking civil penalties for the violations alleged in the PAGA Notice ("Operative Complaint"). *Id.* ¶¶ 6, 7.

On July 1, 2025, the Parties participated in a full-day mediation with experienced class action mediator David Phillips, Esq. ("Mediator"). The Parties' settlement discussions were adversarial and conducted at arms' length, with each Party prepared to litigate their position through trial and appeal if a settlement had not been reached. The mediation was successful and

led to the proposed Agreement. *Id.* ¶ 8, Ex. 2. On September 28, 2026, Plaintiff submitted a copy of the Agreement to the LWDA. *Id.* ¶ 9, Ex. 3.

As discussed below, Class Counsel believe that the Settlement is fair, adequate, and reasonable and in the best interests of the Class in light of all known facts and circumstances, the risk of significant delay, the defenses that could be asserted by Defendants both to class certification and on the merits, trial risk, and appellate risk. *Id.* ¶¶ 38-50.

Class Counsel estimated that Defendants’ realistic exposure for off-the-clock work and meal period and rest period violations (“Wage Claims”), reimbursements, and statutory penalties is approximately \$272,051.34 (\$194,461.43 for the Wage Claims + \$7,633.13 for reimbursements + \$69,956.78 for penalties). Given the risk and uncertainty of further litigation, including the risk of an unfavorable judgment, this is an excellent result for Class Members, who will receive timely, guaranteed relief. *Id.* ¶¶ 44-49.

III. SUMMARY OF SETTLEMENT TERMS

A. Material Settlement Terms

The Parties have agreed to settle the claims alleged in the Action for a Gross Settlement Amount of \$350,000.00, with the employers’ share of any payroll taxes associated with Settlement payments made to Class Members to be paid separately by Defendant. Wallace Decl. ¶¶ 12, 13. Subject to Court approval, the following payments will be deducted therefrom by the Administrator: a) Class Counsel Fees up to one -third (1/3) of the GSA (currently \$116,666.67); b) Class Counsel Litigation Expenses up to \$35,000.; c) a Class Representative Service Payment of up to \$10,000.00; d) Administration Expenses up to \$4,490.00; and e) PAGA Penalties in the amount of \$20,000.00, allocated 75% (\$15,000.00) to the LWDA and 25% (\$5,000.00) to Aggrieved Employees. After all requested payments are deducted, the Net Settlement Amount is estimated to be \$163,843.33, which will be distributed as Individual Class Payments to all Class Members who do not timely submit a request for exclusion (“Participating Class Members”). Plaintiff and Class Members shall be responsible for any and all tax obligations, other than the employer’s share of any payroll taxes, associated with any Settlement payment they receive. *Id.* ¶¶ 14-16.

1 Class Members may exclude themselves from (opt out of) the class portions of the
2 Settlement or object to the Settlement by sending a signed, written request to the Administrator by
3 fax, email, or mail. *Id.* ¶ 17. Individual Class Payments to Participating Class Members will be
4 calculated based on the number of Workweeks each Participating Class Member worked during
5 the Class Period and allocated 20% to wages and 80% to penalties and interest for tax purposes.
6 *Id.* ¶ 18. Individual PAGA Payments to Aggrieved Employees shall be divided on a pro rata basis
7 based on the number of pay periods each Aggrieved Employee worked during the PAGA Period
8 and allocated 100% to penalties for tax purposes. *Id.* ¶ 19.

9 Any Settlement payment not approved by the Court, or the remainder of any payment
10 approved in an amount less than requested, will be retained by the Administrator in the Net
11 Settlement Amount, and funds from any uncashed checks will be transmitted by the
12 Administrator to Bay Area Legal Aid (“Cy Pres Recipient”). None of the Gross Settlement
13 Amount will revert to Defendant. *Id.* ¶¶ 20, 21.

14 **B. Proposed Releases**

15 After the Judgment is final and Defendants have fully funded the GSA and separately paid
16 all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff,
17 Participating Class Members, and Class Counsel will release claims against all Released Parties as
18 provided in the Agreement. *Id.* ¶ 22.

19 1. Released Parties

20 “Released Parties” means Defendants and each of its former and present directors, officers,
21 shareholders, owners, members, managers, insurers, predecessors, successors, assigns,
22 subsidiaries, its and their and affiliates. *Id.* ¶ 23.

23 2. Plaintiff’s Release

24 In addition to the claims released by all Participating Class Members and Aggrieved
25 Employees, *infra*, Plaintiff agrees to a waiver of Civil Code § 1542 related to any claims he may
26 have against any Released Party. *Id.* ¶ 24.

27 3. Participating Class Members Release

28 All Participating Class Members, on behalf of themselves and their respective former

1 and present representatives, agents, attorneys, heirs, administrators, successors, and assigns,
2 release Released Parties from (i) all claims that were alleged, or reasonably could have been
3 alleged, based on the facts stated in the Operative Complaint during the Class Period, including
4 but not limited to, State wage and hour claims for any and all violations of California's Labor
5 Code and the UCL based on Defendant's failure to pay for all hours worked. Except as set forth
6 in Section 6.3 of the Agreement, Participating Class Members do not release any other claims,
7 including claims for vested benefits, wrongful termination, violation of the Fair Employment
8 and Housing Act, unemployment insurance, disability, social security, workers' compensation,
9 or claims based on facts occurring outside the Class Period. *Id.* ¶ 25.

10 4. Released PAGA Claims

11 Plaintiff, acting in his representative capacity as the authorized proxy of the LWDA
12 pursuant to Labor Code section 2699, releases on behalf of the State of California all claims for
13 civil penalties for violations of the law allegedly experienced by the Aggrieved Employees
14 under PAGA that were alleged in, or arise from the facts and theories set forth in, the PAGA
15 Notice. All Aggrieved Employees are deemed to release, on behalf of themselves and their
16 respective former and present representatives, agents, attorneys, heirs, administrators,
17 successors, and assigns, the Released Parties from all claims for PAGA penalties that were
18 alleged, or reasonably could have been alleged, based on the facts stated in the Operative
19 Complaint and the PAGA Notice during the PAGA Period, including any and all claims
20 involving any alleged failure to pay minimum wages or overtime, failure to provide meal and
21 rest periods, failure to provide accurate wage statements, failure to pay all wages due at
22 separation, and failure to reimburse business expenses. *Id.* ¶ 26.

23 C. **Proposed Settlement Administration**

24 The Parties agreed to use Apex Class Action, LLC ("Apex") as the Administrator.
25 Apex's "not-to-exceed" bid was for \$4,490.00, which does not include the cost of translating to
26 Spanish the Notice of Class Action Settlement and Hearing Date for Final Court Approval
27 ("Class Notice"), as the Parties determined that no such translation was needed. Wallace Decl.
28 ¶¶ 8, Ex. 2 (Ex. A); 27, Ex. 4.

1 The proposed Class Notice complies with the requirements of California Rules of Court,
2 Rule 3.766(d). The Class Notice, which will be mailed to approximately 88 Class Members by
3 First-Class Mail, provides information regarding: the nature of this lawsuit; a summary of the
4 settlement terms, including the amounts requested for the Class Representative Service
5 Payment, Class Counsel Fees and Litigation Expenses, and Administration Expenses; the
6 formula used for calculating Individual Class and PAGA Payments; how to opt out of the
7 Settlement; how to object to the Settlement and/or dispute Workweek calculations; and the date,
8 time, and location of the final approval hearing. The Class Notice also advises Class Members
9 that they do not need to submit a claim in order to participate in the Settlement and receive a
10 payment. *Id.* ¶¶ 28, 29.

11 Subject to Court approval, the Administrator will re-mail within three (3) business days
12 any Class Notice returned as undeliverable to the forwarding address provided. If no forwarding
13 address is provided, the Administrator will conduct a Class Member Address Search and re-
14 mail the Class Notice to the most current address obtained. The deadline to opt out of the
15 Settlement or to submit an objection or dispute will be extended by fourteen (14) days after the
16 Response Deadline (45 days after the notice is mailed) for all Class Members whose Class
17 Notice was re-mailed. *Id.* ¶ 30. The Administrator shall transmit the funds represented by any
18 check uncashed and cancelled after the void date to the Cy Pres Recipient. *Id.* ¶ 31. No one at
19 WLF, including the law firm itself and anyone employed at the law firm, has any interest,
20 financial or otherwise, in the Administrator or the intended Cy Pres Recipient. *Id.* ¶ 32.

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

22 **A. Conditional Class Certification is Appropriate**

23 “The party advocating class treatment must demonstrate the existence of an ascertainable
24 and sufficiently numerous class, a well-defined community of interest, and substantial benefits
25 from certification that render proceeding as a class superior to the alternatives.” *Brinker Rest. Corp.*
26 *v. Superior Ct.* (2012) 53 Cal. 4th 1004, 1021 (citations omitted). A lesser standard is used for
27 settlement certification, although courts still need to review and consider the relevant factors. *Glob.*
28 *Mins. & Metals Corp. v. Superior Ct.* (2003) 113 Cal. App. 4th 836, 859 (“[N]o trial is anticipated

1 in a settlement class case, so the case management issues inherent in the ascertainable class
2 determination need not be confronted.”) (citations omitted).

3 1. The Proposed Class is Ascertainable and Numerous

4 “An ascertainable class is one defined in objective terms that make the eventual
5 identification of class members possible.” *Noel v. Thrifty Payless, Inc.* (2019) 7 Cal. 5th 955, 980.
6 In addition, “a class must be numerous in size such that it is impracticable to bring them all before
7 the court,” but there is no minimum requirement. *Hendershot v. Ready to Roll Transportation, Inc.*
8 (2014) 228 Cal. App. 4th 1213, 1222 (internal quotations and citations omitted).

9 Here, the Class consists of approximately 88 members identified by Defendants from their
10 business records based on the Parties’ definition. Wallace Decl. ¶¶ 33, 34. As Class Members are
11 readily ascertainable and joinder would be impracticable, these requirements are met.

12 2. A Well-Defined Community of Interest Exists

13 “[T]he community of interest requirement embodies three factors: (1) predominant
14 common questions of law or fact; (2) class representatives with claims or defenses typical of the
15 class; and (3) class representatives who can adequately represent the class.” *Ayala v. Antelope*
16 *Valley Newspapers, Inc.* (2014) 59 Cal. 4th 522, 530 (internal quotations and citations omitted).

17 a) *Common Questions Predominate*

18 In determining whether common issues “predominate,” courts consider both the
19 plaintiff’s legal theories and the defendant’s affirmative defenses. *Duran v. U.S. Bank Nat’l*
20 *Ass’n* (2014) 59 Cal.4th 1, 28-29. “Generally, if the defendant’s liability can be determined by
21 facts common to all members of the class, a class will be certified even if the members must
22 individually prove their damages.” *Cortina v. N. Am. Title Co.* (2026) 120 Cal. App. 5th 1030,
23 1075, *reh’g denied* (June 23, 2026), *review denied* (July 8, 2026) (internal quotations and
24 citation omitted). Moreover, predominance does not require that all class members have
25 identical claims; the focus is on whether issues shared by the class members are sufficiently
26 uniform to permit class-wide assessment. *Ayala*, 59 Cal.4th at 530.

27 Plaintiff alleged that Defendants maintained uniform policies and practices that unlawfully
28 deprived Class Members of wages, meal period, rest periods, reimbursement of business expenses,

1 accurate wage statements, and timely payment of wages, including upon separation of
2 employment. Wallace Decl. ¶ 35. These allegations present common factual and legal questions,
3 including: whether Defendants applied the same policies and practices to all Class Members,
4 including for compensation, scheduling, timekeeping, meal periods, rest periods, and
5 reimbursement; whether Defendants' policies and practices resulted in Labor Code violations;
6 whether Defendants' conduct was intentional; and whether Class Members are entitled to relief.
7 These questions can be resolved based on Plaintiff's common proof, including Class Members'
8 time and payroll records and testimony by Defendants and Class Members. Accordingly, the Court
9 can and should exercise its discretion to grant conditional class certification for purposes of
10 settlement. *Id.*

11 *b) Plaintiff's Claims are Typical of the Class*

12 "The test of typicality 'is whether other members have the same or similar injury [as the
13 named plaintiffs], whether the action is based on conduct which is not unique to the named
14 plaintiffs, and whether other class members have been injured by the same course of conduct.'"
15 *Martinez v. Joe's Crab Shack Holdings* (2014) 231 Cal. App. 4th 362, 375, *as modified on denial*
16 *of reh'g* (Dec. 3, 2014) (quoting *Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502).

17 Plaintiff alleged that he and other Class Members were employed by Defendants in
18 California during the Class Period and suffered the same injuries as a result of Defendants' uniform
19 wage and hour policies and practices, including with respect to compensation, scheduling,
20 timekeeping, meal periods, rest periods, and reimbursement. Through informal discovery, Plaintiff
21 confirmed that these challenged policies and practices applied to Plaintiff and Class Members
22 alike, subject to common proof. Wallace Decl. ¶¶ 33-37. Accordingly, Plaintiff's claims are aligned
23 with Class Members' claims, arising from the same alleged employment policies and practices and
24 based on the same legal theories.

25 *c) Plaintiff and Class Counsel Will Adequately Represent the Class*

26 Certification requires that both the named plaintiff and his or her counsel are adequate to
27 represent the proposed class. Cal. Code Civ. Proc. § 382. However, "[o]nly a conflict that goes to
28 the very subject matter of the litigation will defeat a party's claim of representative status."

1 *Richmond v. Dart Industries* (1981) 29 Cal.3d 462, 470. In other words, only conflicts that are
2 “irreconcilable” can defeat adequacy. *Nat’l Solar Equip. Owners’ Ass’n v. Grumman Corp.* (1991)
3 235 Cal.App.3d 1273, 1286. Here, Plaintiff, the proposed class representative, and Class Counsel
4 have no such conflict. *See* Declaration of Sheridan in Support of the MPA (“Sheridan Decl.”) ¶¶ 4,
5 17; Wallace Decl. ¶¶ 32, 67, 68.

6 Plaintiff’s interests are coextensive with Class Members’. Sheridan Decl. ¶¶ 4-6. Plaintiff
7 has demonstrated his advocacy for the interests of Class Members over his own by initiating this
8 lawsuit, communicating with Class Counsel regarding the claims, being available to answer
9 questions, including the day of mediation, and reviewing the proposed Settlement and other
10 relevant documents. *Id.* ¶¶ 8-10, 16.

11 Class Counsel have demonstrable experience and success with complex litigation like the
12 instant Action and have expended considerable time and effort on this case and will continue to do
13 so through final approval. Wallace Decl. ¶¶ 4-8, 33-49, 55-64. Accordingly, Plaintiff is adequate to
14 serve as Class Representative, and Class Counsel should be preliminarily approved as such.

15 3. A Class Action is the Superior Method for Efficient Adjudication

16 “Public policy has long favored the ‘full and prompt payment of wages due an employee.’”
17 *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 340. Even so, class treatment
18 must be “superior to the other available methods for the fair and efficient adjudication of the
19 controversy.” *Dean Witter Reynolds, Inc. v. Superior Court* (1989) 211 Cal.App.3d 758, 773.
20 Accordingly, section 382 of the Code of Civil Procedure provides in pertinent part: “[W]hen the
21 question is one of a common or general interest, of many persons, or when the parties are numerous,
22 and it is impracticable to bring them all before the court, one or more may sue or defend for the
23 benefit of all.” *Id.* at 773, fn. 5.

24 Here, a class action is superior to a multitude of individual lawsuits. Given the size and
25 amount of their respective potential claims, each Class Member has little incentive to litigate on
26 an individual basis because the out-of-pocket expenses and personal commitment necessary to
27 litigate each claim are likely to exceed any potential recovery. Wallace Decl. ¶ 34. A class action
28 is thus superior to other methods for the efficient adjudication of the claims at issue.

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

2 The moving party must demonstrate that “the settlement is fair, adequate and reasonable.”
3 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 126. In making that determination,
4 “the trial court should consider relevant factors, such as ‘the strength of plaintiffs’ case, the risk,
5 expense, complexity and likely duration of further litigation, the risk of maintaining class action
6 status through trial, the amount offered in settlement, the extent of discovery completed and the
7 stage of the proceedings, the experience and views of counsel, the presence of a governmental
8 participant, and the reaction of the class members to the proposed settlement.’” *Wershba v. Apple*
9 *Computer, Inc.* (2001) 91 Cal. App. 4th 224, 244–45, *disapproved of by Hernandez v. Restoration*
10 *Hardware, Inc.* (2018) 4 Cal. 5th 260 (quoting *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th
11 1794, 1801, *as modified* (Sept. 30, 1996)).

12 1. The Settlement is Entitled to a Presumption of Fairness

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

20 a) *The Settlement Is the Product of Arm’s-Length Negotiations*

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

26 On July 1, 2025, the Parties participated in private mediation with the Mediator, which led
27 to the Settlement and the Agreement. The Parties’ negotiations were adversarial and conducted at
28 arms’ length, with each Party prepared to litigate their position through trial and appeal if a

1 settlement had not been reached. Wallace Decl. ¶ 8.

2 b) *The Parties Conducted Sufficient Investigation*

3 Before the mediation, Class Counsel thoroughly investigated the claims and defenses at
4 issue, as well as the applicable law, and the Parties exchanged informal discovery regarding the
5 claims set forth in the Action, and Defendants' production included Class data, Plaintiff's personnel
6 file, Class Members' time and payroll records, and Defendant's written policies in effect during the
7 Class Period. Plaintiff also engaged a consultant to calculate Defendants' potential exposure,
8 including discounts based on the risks presented by class certification and trial. Wallace Decl. ¶
9 33. Plaintiff and Class Counsel were thus able to act intelligently and effectively in negotiating the
10 proposed Settlement.

11 c) *Class Counsel are Experienced in Complex Litigation*

12 Plaintiff is represented by Wilshire Law Firm, PLC ("WLF"). Class Counsel have extensive
13 experience litigating wage and hour class actions and representative actions on behalf of employees
14 and have been counsel in numerous class actions that have resulted in millions of dollars in
15 recovery. *Id.* ¶¶ 55-64.

16 2. The Settlement Is Fair, Adequate, and Reasonable

17 A settlement does not have to provide 100% of the damages sought to be considered fair
18 and reasonable. *See Rebney v. Wells Fargo Bank* (1991) 220 Cal.App.3d 1117, 1139. Although the
19 exposure Class Counsel calculated is substantial, the risks of successfully certifying a class and
20 prevailing at trial affected the valuation of the claims for settlement purposes. Wallace Decl. ¶ 38.

21 Minimum and Overtime Wages: Plaintiff alleged that Defendants required Class Members
22 to perform work duties while off the clock, without compensation, which resulted in unpaid
23 minimum and overtime wages. *Id.* ¶¶ 40, 41. For example, Plaintiff alleged that he and other Class
24 Members were required to perform tasks while they were supposed to be on breaks. Assuming one
25 (1) hour of unpaid work per workweek at the overtime rate of pay, Defendants' estimated
26 maximum exposure for this claim is \$264,716.78 (6,785 Workweeks × (\$26.01 hourly average rate
27 × 1.5 overtime rate) × 1 hour per week). However, the risk of failing to certify a class or prevail at
28 trial was substantial, given that this claim would not be evidenced in Defendants' time and payroll

1 records and thus would require Class Member testimony. Accordingly, Class Counsel discounted
2 this figure based on a 40% chance of certifying a class and a 40% chance of prevailing at trial on
3 the merits. Defendant's estimated realistic exposure is \$42,354.68 ($\$264,716.78 \times .4 \times .4$). *Id.*

4 Meal Periods: Plaintiff alleged that Defendants failed to provide Class Members with
5 legally compliant meal periods or pay meal period premiums in lieu thereof. *Id.* ¶ 42. For example,
6 Plaintiff alleged that, due to non-compliant policies and a heavy workload, he and other Class
7 Members were required to take their meal periods late or perform work when they were supposed
8 to be off duty. Plaintiff's consultant found a violation rate of approximately 23.3% for meal-period
9 eligible shifts in Class Members' time and payroll records, where meal breaks were late, short, or
10 missed. Therefore, Defendant's estimated maximum exposure for the meal period claim is
11 approximately \$169,792.27 (28,017 shifts per Workweek $\times .233 \times \$26.01$). Taking into account
12 Defendants' contentions that a 23.3% violation rate is unrealistic and that the claim generally lacks
13 merit, as well as the difficulty of certifying and proving meal period claims, Class Counsel
14 discounted this figure based on a 60% chance of certifying a class and a 40% chance of prevailing
15 at trial. Defendant's estimated realistic exposure is thus \$40,750.14 ($\$169,792.27 \times .6 \times .4$). *Id.*

16 Rest Periods: Plaintiff alleges that Defendants failed to provide Class Members with legally
17 compliant rest periods or pay rest period premiums in lieu thereof. *Id.* ¶ 43. For example, as with
18 meal periods, Plaintiff alleged that Defendants' policies and practices resulted in Class Members'
19 working while they were supposed to be off duty. Because rest periods are not recorded, Class
20 Counsel assumed a 100% violation rate, and Defendants' estimated maximum exposure for the rest
21 period claim is \$742,377.42 (28542 shifts per Workweek $\times 1$ (100% violation rate) $\times \$26.01$).
22 However, Class Counsel considered the difficulty of certifying and proving rest period claims, not
23 only because rest periods do not have to be recorded, but also because Class Members may elect
24 to forego them. Moreover, because it would have relied exclusively on Class Member testimony,
25 this figure was discounted by a 50% chance of certifying a class and a 30% chance of prevailing
26 at trial. Defendants' estimated realistic exposure is thus \$111,356.61 ($\$742,377.42 \times .5 \times .3$). *Id.*

27 Reimbursements: Plaintiff alleges that Defendants failed to reimburse expenses necessarily
28 incurred in the performance of their duties. *Id.* ¶ 44. For example, Plaintiff and other Class

1 Members were required use their personal cell phones to communicate with supervisors, including
2 for purposes of scheduling and managing workloads. Assuming expenses of \$50 per month (\$12.50
3 per Workweek) per Class Member, Defendants' estimated maximum exposure is \$84,812.50
4 ($\$12.50 \times 6,785$). However, this figure was discounted by a 30% chance of certifying a class and
5 30% chance of prevailing at trial on the merits, and Defendant's estimated realistic exposure for
6 this claim is \$7,633.13 ($\$84,812.50 \times .3 \times .3$). *Id.*

7 In sum, we estimated that Defendant's maximum exposure for off-the-clock work and meal
8 and rest period violations, excluding reimbursements ("Wage Claims"), is approximately
9 \$1,176,886.47. However, after factoring in the risk and uncertainty of certifying a class and
10 prevailing at trial, Class Counsel estimates that Defendant's realistic exposure for the Wage Claims
11 is approximately \$194,461.43. *Id.* ¶ 45.

12 Derivative Penalties: Plaintiff alleged that, as a result of Defendants' failure to pay all
13 wages owed, Defendants owed waiting time penalties and wage statement penalties. *Id.* ¶ 46. Based
14 on approximately 73 formerly employed Class Members working an average 8-hour shift during
15 the 3-year limitations period, Defendants' maximum potential exposure for waiting time penalties
16 is approximately \$256,328.55 (73 employees x \$26.01 average hourly rate x 4.5 hours/day x 30
17 days). Based on approximately 63 Class Members who worked approximately 12,471 pay periods
18 during the 1-year limitations period, Defendant's maximum potential exposure for inaccurate wage
19 statements is approximately \$210,050 (63 employees x 1 x \$50 for an initial violation) + [(2,132
20 pay periods - 63 initial violation) x \$100 for each subsequent violation]). Class Counsel believe
21 that it would be unrealistic to expect the Court to award the full \$466,378.55 in statutory penalties,
22 given Defendants' defenses, the contested nature of Plaintiff's claims, the challenges of
23 establishing willfulness, and the discretionary nature of penalties. Considering further that the
24 underlying Wage Claims are realistically estimated to be approximately \$194,461.43, such a
25 disproportionate award would also raise due process concerns. Accordingly, these figures were
26 discounted to account for the risk and uncertainty of certifying a class and prevailing at trial, and
27 Defendants' estimated realistic exposure is \$38,449.28 for waiting time penalties ($\$256,328.55 \times$
28 $.5 \times .3$), and \$31,507.50 for wage statement penalties ($\$210,050 \times .5 \times .3$), or approximately

1 \$69,956.78 total realistic exposure for statutory penalties. *Id.*

2 PAGA: Class Counsel determined that Defendants’ maximum potential exposure could
3 reach \$213,200, assuming the initial \$100 penalty would apply for each of 2,132 pay periods in
4 the PAGA Period. *Id.* ¶ 47. However, even assuming success on the merits of each claim, the Court
5 has discretion to reduce penalties, including where to do otherwise would result in an award that
6 is unjust, arbitrary, and oppressive or confiscatory. Accordingly, this figure was discounted to
7 account for the risk and uncertainty of prevailing at trial, and Defendant’s realistic exposure is
8 approximately \$106,600 ($\$213,200 \times .5$). The PAGA allocation of \$20,000 represents
9 approximately 9.4% of the Gross Settlement Amount and approximately 19% of the realistic
10 maximum for PAGA penalties ($\$20,000 / \$106,600$). *Id.*

11 Using these figures, Class Counsel estimated that Defendants’ realistic exposure for all
12 claims, including the PAGA penalties, is \$378,651.34. The \$350,000.00 settlement figure thus
13 represents approximately 92% of Defendants’ realistic maximum liability ($\$350,000.00 /$
14 $\$378,651.34$). Given the risk and uncertainty of prevailing on class certification and at trial, the
15 Settlement will give Class Members timely, guaranteed relief and avoid the risk of an unfavorable
16 judgment, which is an excellent result for the Class. *Id.* ¶ 48.

17 Based on Class Counsel’s calculations and all payments under the Settlement, the Net
18 Settlement Amount is currently estimated to be \$163,843.33. With an estimated Workweek value
19 of \$24.15 ($\$163,843.33 / 6,785$), the average Individual Class Payment to Participating Class
20 Members is approximately \$1,861.86. Weighed against the risks of litigation, the uncertainty of
21 certifying a class, the burdens of proof necessary to establish liability at trial, and the likely appeal
22 from a favorable judgment, the Settlement is within the “ballpark” of reasonableness, and
23 preliminary approval is appropriate. *Id.* ¶¶ 49, 50.

24 **C. The PAGA Allocation is Reasonable**

25 Where settlements negotiate a good faith amount for PAGA penalties, and there is no
26 indication that this amount was the result of self-interest at the expense of other class members,
27 such amounts are generally considered reasonable. *Moniz v. Adecco USA, Inc.* (2021) 72 Cal. App.
28 5th 56, 89, *disapproved of on other grounds by Turrieta v. Lyft, Inc.* (2024) 16 Cal. 5th 664 (“[A]

1 trial court thus must scrutinize whether, in resolving the action, a PAGA plaintiff has adequately
2 represented the state's interests, and hence the public interest.”). Courts have approved PAGA
3 penalties in the range of zero to two percent of the total maximum amount of the Settlement. *See*
4 *Jack v. Hartford Fire Ins. Co.* 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving a
5 PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.* 2012 WL 12882124 at *5 (C.D. Cal.
6 Jan. 23, 2012) (acknowledging that courts approve PAGA claim settlements in the range of zero
7 to two percent of the total settlement).

8 Here, the Parties negotiated PAGA Penalties in the amount of \$20,000, allocated pursuant
9 to statute, 25% to Aggrieved Employees (\$5,000.00) and 75% to the LWDA (\$15,000.00) to settle
10 all PAGA claims. Wallace Decl. ¶ 14. The amount is higher than many other agreements approved
11 by the courts where seemingly nominal amounts were allocated to settle PAGA claims. *See, e.g.,*
12 *Zubia v. Shamrock Foods Co.* No. CV1603128ABAGRX, 2017 WL 10541431, at *14 (C.D. Cal.
13 Dec. 21, 2017) (approving a PAGA settlement of 0.1%); *Hopson v. Hanesbrands Inc.*, No. CV-08-
14 0844 EDL, 2008 WL 3385452, at *1 (N.D. Cal. Aug. 8, 2008) (approving a PAGA settlement of
15 0.3% or \$1,500); *Garcia v. Gordon Trucking, Inc.* No. 1:10-CV-0324 AWI SKO, 2012 WL
16 5364575, at *3 (E.D. Cal. Oct. 31, 2012) (approving a PAGA settlement of 0.27%).) The proposed
17 PAGA Penalties, negotiated in good faith, are approximately 9.4% of the Gross Settlement
18 Amount, which far exceeds amounts that are routinely approved. Wallace Decl. ¶ 47.

19 **D. The Class Representative Service Payment Is Reasonable**

20 A named plaintiff is eligible for payment or service award that reasonably compensates him
21 or her for undertaking and fulfilling a fiduciary duty to represent absent class members. *See*
22 *Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1393; *Bell v. Farmers Ins. Exch.*
23 (2004) 115 Cal.App.4th 715, 726. Here, Plaintiff seeks a Class Representative Service Award of
24 up to \$10,00.00 for accepting the responsibilities of representing the interests of the Class and
25 potential costs that were not borne by any other Class Member.

26 Plaintiff assisted Class Counsel throughout this case, providing information necessary to
27 prosecute the claims, communicating with the attorneys regarding the claims and defenses at issue,
28 making themselves available the day of mediation to answer questions, and reviewing the

1 Agreement, among other documents, to ensure it was fair to the Class. Sheridan Decl. ¶ 16. No
2 action would likely have been taken by individual Class Members, and no compensation recovered,
3 but for Plaintiff's service on their behalf. By actively pursuing this action, Plaintiff also advanced
4 the State's public policy and goal of enforcing wage-and-hour laws. *See* Wallace Decl. ¶¶ 67, 68;
5 *see, e.g., Sav-On Drug Stores*, 34 Cal.4th at 340 (noting "a clear public policy...that is specifically
6 directed at the enforcement of California's minimum wage and overtime laws for the benefit of
7 workers.") (citation omitted). The Class Representative Service Payment is reasonable given the
8 substantial benefits Plaintiff helped to obtain for the Class.

9 **E. Class Counsel Fees and Costs Are Reasonable**

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

16 Plaintiff seeks preliminary approval of Wilshire Law Firm, PLC as Class Counsel. The
17 attorneys performed significant work and expended litigation costs in prosecuting this matter with
18 no guarantee of payment. Wallace Decl. ¶ 51. Class Counsel also seek preliminary approval for up
19 to one-third (1/3) of the GSA in attorneys' fees, currently estimated to be \$116,666.67, and up to
20 \$35,000.00 to reimburse reasonable litigation expenses. *Id.* ¶ 14. Class Counsel obtained a fair and
21 reasonable settlement on behalf of the Class through efficient and diligent work. *Id.* ¶¶ 33-49. At
22 final approval, Class Counsel will fully brief the merits of the requests for the Class Counsel Fees
23 and Litigation Expenses.

24 **F. Administration Costs Are Reasonable**

25 Class Counsel proposed administrators to Defendant's counsel and selected the "not-to-
26 exceed" bid from Apex for \$\$4,490.00 to administer this Settlement. Wallace Decl. ¶ 69.

27 ///

28 ///

1 **V. CONCLUSION**

2 For the foregoing reasons, Plaintiff respectfully request that the Court grant preliminary
3 approval of the proposed Settlement and set a final approval hearing on or after March 22, 2027.

4 Dated: September 28, 2026

WILSHIRE LAW FIRM, PLC

5 By:  _____

6 Benjamin H. Haber

7 Daniel J. Kramer

8 Angela Leong

9 Karen L. Wallace

10 Attorneys for Plaintiff