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Attorneys for Plaintiffs Cruz Soto and Monica Nanelly Garcia, individually, and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF FRESNO

CRUZ SOTO and MONICA NANELLY GARCIA, individually, and on behalf of all others similarly situated,

Plaintiffs,

v.

ESPINOZA BROTHERS FOOD DISTRIBUTION, INC, a California corporation; ESPINOZA BROTHERS ENTERPRISES, LLC, a California limited liability company; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 22CECG03830

Assigned for all purposes to:
Hon. Jonathan M. Skiles, Dept. 403

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

Date: June 4, 2025
Time: 3:30 p.m.
Dept.: 403

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on June 4, 2025 at 3:30 p.m., or as soon thereafter as the matter may be heard in Department 403 of the above-entitled Court, located at B.F. Sisk Court, 1130 "O" Street, Fresno, CA 93721, Plaintiffs Cruz Soto and Monica Nanelly Garcia ("Plaintiffs") will and hereby do 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 ILYM Group, 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 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 John G. Yslas, the Declarations of Plaintiffs Cruz Soto and Monica Nanelly Garcia, the Declaration of Ian B. Wieland, the Declaration of Bennett Berger, 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: May 12, 2025 **WILSHIRE LAW FIRM, PLC**

By: Samantha Smith
Samantha A. Smith
Attorneys for Plaintiffs

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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 Espinoza Brothers Food Distribution, Inc. and Espinoza Brothers Enterprises, LLC ("Defendant"). The proposed Class is defined as all current and former hourly-paid, non-exempt employees directly employed by Defendant in the State of California ("Class Members") during the Class Period of June 5, 2018 through March 9, 2024 ("Class Period"). The main terms of the Settlement are as follows:

1. A Gross Settlement Amount of $190,000.00, which will be distributed to approximately 106 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 35% of the Gross Settlement Amount (currently $66,500.00) and up to $18,790.76 in reimbursement of litigation costs to Plaintiffs' Counsel;
3. A Class Representative Service Payment of up to $7,500.00 to each Plaintiff;
4. Costs of settlement administration of up to $7,750.00; and
5. Allocation of $10,000.00 to PAGA penalties, seventy-five percent (75%) of which ($7,500.00) will be paid to the Labor and Workforce Development Agency ("LWDA"), and twenty-five percent (25%) of which ($2,500.00) will be paid to Class Members who worked for Defendant during the PAGA Period of February 2, 2022 to March 9, 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, 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 ILYM Group, 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 Cruz Soto 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 25, 2023, Plaintiff Soto provided written notice to the LWDA and Defendant of his intention to file a PAGA claim. Yslas Decl. at ¶ 4. On July 12, 2023, Plaintiff Soto amended his notice letter, adding Plaintiff Nanelly Garcia as a representative, among other things. *Id*. The LWDA did not notify Plaintiffs that it intended to investigate within 65 days of the written notices. *Id*. Therefore, on September 5, 2023, Plaintiffs filed a separate action alleging a claim under PAGA, Case No. 23CECG03630 (the "PAGA Action"). *Id.* On October 16, 2024, Plaintiff Soto filed a Frist Amended Complaint in the Class Action, adding the PAGA claim and Plaintiff Nanelly Garcia into the Class Action ("Operative Complaint"). *Id.* at ¶ 5. The PAGA Action was subsequently dismissed without prejudice. *Id*.

The Parties participated in a private mediation with mediator Hon. Howard R. Broadman (Ret.) on January 9, 2024, which led to the settlement of this Action. *Id.* at ¶ 6. The Parties negotiated the terms of the Settlement over the next several months, which was finalized in November, 2024. *Id.* at ¶ 7, Exhibit 1 ("Settlement Agreement"). On December 19, 2024, Plaintiffs submitted a copy of the Settlement Agreement to the LWDA. *Id.* at ¶ 8, Exhibit 2.

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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 Action for a Gross Settlement Amount of $190,000.00 on behalf of 106 Class Members that worked 5,136 Workweeks during the Class Period of June 5, 2018 through March 9, 2024, unless otherwise modified by the 10% escalator clause. Settlement Agreement at §§ 3.1, 8.[1] Subject to Court approval, the following payments will be deducted from the Gross Settlement Amount: (1) Class Representative Service Payments of up to $7,500.00 to each Plaintiff; (2) attorneys' fees of up to 35% of the Gross Settlement Amount (currently $66,500.00) and reimbursement of litigation costs of $18,790.76 to Plaintiffs' Counsel; (3) costs of settlement administration of up to $7,750.00 to ILYM Group, Inc.; (4) Individual Class Payments to Class Members; and (5) PAGA penalties in the amount of $10,000.00, which will be allocated 75% to the LWDA ($7,500.00) and 25% to Aggrieved Employees ($2,500.00). *Id.* at § 3.2. After all requested deductions are made, the remaining Net Settlement Amount is currently estimated to be $71,959.24. Yslas Decl., ¶23. As a result, each Settlement Class Member is eligible to receive an estimated average net benefit of approximately $678.86, without factoring in payroll taxes. *Id.*

Individual Class Payments will be calculated based on the number of workweeks worked by each Class Member during the Class Period. Settlement Agreement, § 3.2.4. For tax purposes, the Individual Class Payments will be allocated 10% to wages and 90% to penalties, interest, and reimbursement of expenses. *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.

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[1] Pursuant to the Escalator Clause, if the number of workweeks exceeds 5,649 Workweeks (more than a 10% increase), Defendant can either (a) increase the Gross Settlement Amount proportionally for every workweek over the 10% threshold (i.e. in excess of 5,649 workweeks), or (b) in order to avoid triggering a pro rata increase, Defendant can shorten the Class Period end date to a date prior to March 9, 2024 so that the workweek count does not exceed 5,649 workweeks. Settlement Agreement, § 8.

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Individual PAGA Payments to Aggrieved Employees will be calculated based on the number of PAGA Pay Periods worked by each Aggrieved Employee during the PAGA Period. *Id*. at § 3.2.5.1. For tax purposes, the Individual PAGA Payments will be allocated 100% to penalties. *Id*. at § 3.2.5.2.

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 Valley Children's Hospital, thereby leaving no unpaid residue subject to the requirements of Cal. Code of Civ. Proc. § 386, subd. (b). *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.

If a Class Notice is returned as undeliverable, the Settlement Administrator will re-mail the Class Notice within 3 business 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.

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C. Proposed Release

Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, assigns, assignors, grantees, devisees, trustees, or any other entities in which they may have an interest, release Defendants and "Released Parties" (Defendant's owners, officers, directors, partners, accountants, receivers, advisors, consultants, partners, partnerships, parents, divisions, subsidiaries, affiliates, heirs, joint venturers, trustees, investors, fiduciaries, franchisees or franchisors, shareholders and agents, and any other successors, assigns, or legal representatives (Settlement Agreement § 1.41)) from:

> all claims that were alleged, or reasonably could have been alleged, based on the facts alleged in the Class Action, PAGA Action and PAGA Notice, and ascertained in the course of the Action including failure to pay minimum and straight time wages, failure to pay overtime, failure to provide meal periods, failure to authorize and permit rest periods, failure to timely pay final wages at termination, failure to provide accurate itemized wage statements, failure to indemnify employees for expenditures, and unfair business practices. Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation or claims based on facts occurring outside the Class Period, or claims that cannot be released by matter of law.

Settlement Agreement at § 5.2.

Aggrieved Employees, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, assigns, assignors, grantees, devisees, trustees, or any other entities in which they may have an interest will release the Released Parties from:

> all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts asserted in the PAGA Action, and the PAGA Notice.

Id. at § 5.3. Only Plaintiffs will agree to a general release and a waiver of Civil Code § 1542. *Id.* at § 5.1.

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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 106 hourly, non-exempt employees directly employed by Defendant in the State of California during the Class Period (June 5, 2018 through March 9, 2024). *See* Settlement Agreement at §§ 1.5, 1.12; Declaration of Ian B. Wieland in Support of Motion for Preliminary Approval ("Wieland Decl."), ¶4. The Class is also readily ascertainable from Defendant's business records because all Class Members are or were employees of Defendant. Wieland Decl., ¶ 5. Given that Defendant's records show there are approximately 106 Class Members joinder of all Class Members is impracticable. *Id.*; Yslas Decl. at ¶ 10.

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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. <u>*Common Questions Predominate*</u>

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. Yslas Decl. at ¶ 11; Declaration of Plaintiff Monica Nanelly Garcia in Support of Renew Motion for Preliminary Approval ("Garcia Decl."), ¶¶ 2-7; Declaration of Plaintiff Cruz Soto in Support of Renew Motion for Preliminary Approval ("Soto Decl.") ¶¶ 2-7). These allegations present common factual and legal questions of, *inter alia*, whether Defendant applied the same scheduling, timekeeping, pay, meal period, rest period, and reimbursement policies to all Class Members, whether these policies and practices resulted in Labor Code violations, whether Defendant's conduct was intentional, and whether Class Members are entitled to damages and/or penalties. *Id*. These common questions could be resolved using Class Members' time records, payroll records, testimony from Defendant's designated representative(s), and Class Members' testimony. Yslas Decl. at ¶ 11. Therefore, the Court can and should exercise its discretion to grant conditional class certification for settlement purposes.

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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, 269-280 (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 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. Garcia Decl., ¶¶ 2-7; Soto Decl., ¶¶ 2-7. 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. Yslas Decl. at ¶ 9. Therefore, Plaintiffs' and Class Members' claims arise from the same challenged employment policies and practices and are based on the same legal theories. *See generally* Soto Decl. and Garcia Decl.

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. Garcia Decl., ¶¶ 7-16; Soto Decl., ¶¶ 7-15. 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

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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. Garcia Decl., ¶¶ 8-10, 18; Soto Decl., ¶¶ 9-11, 17.

Likewise, Wilshire Law Firm, PLC has expended considerable time and effort on this case and will continue to do so through final approval. *See generally*, Yslas 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. Yslas Decl. at ¶ 10. 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).

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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. Yslas Decl. at ¶ 6. 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 ¶ 9. 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 sampling of time and payroll records. *Id.*

c. Plaintiffs' Counsel is Experienced in Similar Litigation

Plaintiffs are represented by Wilshire Law Firm, PLC. *Id.* at ¶ 19. Plaintiffs' Counsel has extensive experience litigating wage and hour class actions on behalf of employees. *See id.* at ¶¶ 20-30. Plaintiffs' Counsel have been involved as counsel in numerous class actions that have resulted in millions of dollars in recovery. *See id.*

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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). While Plaintiffs are confident in the merits of their claims, a legitimate controversy exists as to each cause of action, particularly the risk that the overtime, meal, and rest break claims could be wiped out entirely. Yslas Decl. at ¶ 21. Plaintiffs also recognize that proving the amount of wages due to each Class Member would be an expensive, time-consuming, and uncertain proposition. *Id*.

This Settlement avoids the risks and the accompanying expense of further litigation. *Id*. at ¶22. Although the Parties had engaged in a significant amount of investigation, informal discovery and class-wide data analysis, the Parties had not yet completed formal written discovery or deposed corporate officers and managers of Defendant. *Id*. Moreover, preparation for class certification and a trial remained for the Parties as well as the prospect of appeals in the wake of a disputed class certification ruling for Plaintiffs and/or adverse summary judgment ruling. *Id*. Had the Court certified any claims, Defendant could move to decertify the claims. *Id*. As a result, the Parties would incur considerably more attorneys' fees and costs through trial. *Id*. As set forth below, the various risks of succeeding at class certification and through trial affected the valuation of the claims for settlement purposes.

<u>Minimum and Overtime Wages</u>: Plaintiffs' unpaid minimum and overtime wage claims were based on the allegation that Defendant required Class Members to perform work duties before clocking in. *Id.* at ¶ 14. Based on Plaintiffs' estimates that they worked a total of one (1) hour off-the-clock each week, Plaintiffs' Counsel assumed each Class Member worked one-hour off-the-clock per week, resulting in potential exposure of approximately $500,000.00 for these claims. *Id.* However, Defendant argued that any off-the-clock time was undocumented and unknown to Defendant, and that Defendant was therefore not obligated to pay for this time. *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 was substantial.

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Id. Plaintiffs' Counsel applied a 90% risk discount to reach a settlement value of approximately $50,000.00 (or approximately 26% of the Gross Settlement Amount). *Id.*

Meal Periods: Plaintiffs meal period claim was based on the allegation that Defendant failed to maintain a policy and practice of paying meal period premiums when its time records showed Class Members' meal periods were late, short, or missed. *Id.* at ¶ 15. An expert analysis of the data showed a violation rate of approximately 20% in Defendant's time and payroll records and calculated potential exposure on this claim to be approximately $315,000.00. *Id*; see Declaration of Bennett Berger in Support of Renewed Motion for Preliminary Approval of Class Action Settlement ("Berger Decl."), ¶ 9. However, Defendant argued that it implemented meal period waivers and on-duty meal period agreements and was therefore compliant. Yslas Decl., ¶ 15. Accordingly, Plaintiffs' Counsel applied an 85% risk discount to reach a settlement value of approximately $50,000.00 (or 26% of the Gross Settlement Amount). *Id.*

Rest Breaks: Plaintiffs' rest break claim was based on the allegation that Defendant failed to relieve Class Members of all duties during rest periods because it required Class Members to carry radios and/or cell phones at all times as they were expected to promptly response to all work related calls. *Id.* at ¶ 15. Plaintiffs' Counsel applied a 100% violation rate to all shifts over 3.5 hours and calculated a potential exposure of $1.6 million for this claim. *Id.* However, Defendant argued that it had no written policy requiring Class Members to carry radios and/or cell phones at all times. *Id*. Because this claim would have relied exclusively on Class Member testimony, Plaintiffs' Counsel applied a 90% risk discount to this claim to reach a settlement value of $160,000.00 (or approximately 84% of the Gross Settlement Amount). *Id.*

Reimbursements: Plaintiffs' reimbursement claim was based on the allegation that Defendant required Class Members to use their personal cell phones to check their schedules and also required Class Members to wear steel-toe boots. *Id.* at ¶ 16. Based on Plaintiffs' estimate that they incurred an average of $50 in unreimbursed expenses per month, Plaintiffs' Counsel assumed each Class Member incurred $50 in unreimbursed expenses per month in calculating potential exposure to be approximately $200,000.00 for this claim. *Id.* However, Defendant argued that these expenses were not required by Defendant, and that it could not have known that these expenses

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were being incurred. *Id.* Accordingly, Plaintiffs' Counsel could not attribute any value to this claim in terms of settlement value. *Id.*

<u>Derivative Penalties</u>: Plaintiffs alleged that as a result of Defendant's alleged failure to pay all wages and meal and rest period premiums owed, Defendant owed waiting time penalties and wage statement penalties. *Id*. at ¶ 19. However, Defendant argued that it had good faith defenses that made the imposition of these penalties unwarranted. *Id*. Moreover, Plaintiffs could not recover these penalties if they failed to prove the underlying claims. *Id* Although Plaintiffs' Counsel calculated that potential exposure for the waiting time penalty claim was approximately $350,000.00, the wage statement penalty was approximately $400,000.00, and $330,400.00 for the PAGA claim (assuming the initial $100 penalty would apply for each of the 3,304 pay periods in the PAGA Period), it would be unrealistic to expect the Court to award the full $1,080,400.00 in penalties given Defendant's defenses, the contested nature of Plaintiffs' claims, and the discretionary nature of penalties. *Id*. Considering that the underlying claims are realistically estimated to be $260,000.00[2], such a disproportionate award would also raise due process concerns. *Id*. Weighing these factors and applying a discount of 90% to account for the risk and uncertainty of prevailing at trial, we arrived at $108,040.00 for statutory and civil penalties. *Id*.

Using these estimated figures, Plaintiffs predicted that the realistic maximum recovery for all claims, including penalties, would be $368,040.00 ($260,000.00 in damages for violations + $108,040.00 in statutory and civil penalties). *Id*. at ¶ 20. This means that the $190,000.00 settlement figure represents **51.6%** of the realistic maximum recovery ($190,000.00 / $368,040.00 = 51.6%). *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

[2] In sum, we estimated that Plaintiffs' maximum recovery for the off-the-clock claim, meal period violations, rest period violations, and failure to reimburse business expenses is $2,615,000.00 ($500,000.00 in unpaid wages + $315,000.00 for meal period violations + $1,600,000.00 for rest break violation + $200,000.00 in unpaid reimbursements), but, after factoring in the risk and uncertainty of prevailing at certification and trial, we estimate that Plaintiffs' realistic estimated recovery for the non-penalty claims is $260,000.00 ($50.000.00 for unpaid overtime + $50,000.00 for meal period violations + $160,000.00 for rest break violations + $0 for unpaid reimbursements). Yslas Decl., ¶ 18.

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Members will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment.[3] *Id*.

C. The Requested Service Payment is Reasonable

In addition to their Individual Settlement Payments, Plaintiffs seek a Class Representative Service Payment of up to $7,500.00 each 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, and reviewed the Settlement to ensure it was fair to the Class. Garcia Decl., ¶¶ 8-10, 18; Soto Decl., ¶¶ 9-11, 17. 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 Payment is 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

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[3] As stated above, the Net Settlement Amount available for Class Member settlement payments is estimated to be $71,959.24, for a class of 106 persons.[3] As a result, each Settlement Class Member is eligible to receive an average net benefit of approximately $678.86, without factoring in payroll taxes. Yslas Decl., ¶ 23.

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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, PLC as Class Counsel. The attorneys performed significant work and expended litigation costs in prosecuting this matter with no guarantee of payment. Yslas Decl. at ¶ 24. Plaintiffs' Counsel seeks preliminary approval for $66,500.00 in attorneys' fees, which is 35% of the Gross Settlement Amount, and $18,790.76 in reimbursement of litigation costs. Settlement Agreement, § 3.2.2. 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*, Yslas 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: May 12, 2025

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