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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA

ERIC NELSON, individually, and on behalf
of all others similarly situated,

Plaintiff,

v.

PCT ENTERPRISES, INC. DBA
PRECISION CABINETS AND TRIM, a
California corporation; and DOES 1 through
10, inclusive,

Defendants.

Case No.: C23-00453

*[Assigned for All Purposes to the Honorable
Benjamin T. Reyes, II, Dept. 16]*

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

Preliminary Approval Hearing:

Date:

Time:

Dept.: 16

Complaint filed: February 28, 2023

FAC filed: July 12, 2023

Trial date: Not Set

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on _____, at _____ a.m., or as soon thereafter as
3 the matter may be heard in Department 16 of the Superior Court of California, County of Contra
4 Costa, located at 725 Court Street, Martinez, CA 94553, Plaintiff Eric Nelson ("Plaintiff") will
5 and hereby does move this Court for an Order:

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

13 Pursuant to Code of Civil Procedure § 382 and California Rules of Court 3.769, *et seq.*,
14 this Motion is made on the grounds that the proposed Settlement satisfies all criteria for
15 preliminary approval and falls well within the range of reasonableness. The Settlement was
16 reached through informed, arm's length bargaining between experienced attorneys with the
17 assistance of an experienced neutral, and Plaintiff and Plaintiff's Counsel will fairly and
adequately represent the Class.

18 This Motion is based on this Notice of Motion, the accompanying Memorandum of
19 Points and Authorities ("MPA"), the Declaration of Benjamin H. Haber, the Declaration of Eric
20 Nelson, and on all records and documents on file, together with such oral and documentary
21 evidence that may be presented at the hearing on this matter.

22
23 Respectfully submitted,

24 Dated: September 30, 2026

WILSHIRE LAW FIRM, PLC

25 By: 

26 Benjamin H. Haber
27 Talar DerOhannessian
28 Trenten N. Bilodeaux
Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Pursuant to Code of Civil Procedure § 382 and California Rules of Court 3.769, *et seq.*,
4 Plaintiff seeks preliminary approval of a class action settlement of wage and hour claims, including
5 representative claims brought under the Labor Code Private Attorneys General Act of 2004
6 (“PAGA”), against Defendant PCT Enterprises, Inc. dba Precision Cabinets and Trim
7 (“Defendant”). The proposed Class is defined as all persons who were employed by Defendant in
8 California as hourly-paid or non-exempt employees (“Class Members”) at any time during the
9 period from August 14, 2019, through the date on which the Court issues an order granting
10 preliminary approval of this Settlement, inclusive. (“Class Period”), including current and former
11 employees. The main terms of the Settlement are as follows:

- 12 1. A Gross Settlement Amount of \$1,400,000.00, from which the Net Settlement
13 Amount will be distributed to approximately 659 Class Members on a pro rata basis
14 according to the total workweeks worked by each Class Member during the Class
15 Period;
- 16 2. Attorneys’ fees of up to one third (1/3) of the Gross Settlement Amount (currently
17 \$462,000.00) and up to \$65,000.00 in reimbursement of litigation costs to Plaintiff’s
18 Counsel;
- 19 3. A Class Representative Service Payment of up to \$15,000.00 to Plaintiff;
- 20 4. Costs of settlement administration of up to \$15,000.00; and
- 21 5. Allocation of \$70,000.00 to PAGA penalties, seventy-five percent (75%) of
22 which (\$52,500.00) will be paid to the Labor and Workforce Development
23 Agency (“LWDA”), and twenty-five percent (25%) of which (\$17,500.00) will
24 be paid to all persons who have been employed by Defendant in California as
25 hourly-paid or non-exempt employees (“Aggrieved Employees”) at any time
26 during the period from March 9, 2022, through the date on which the Court
27 issues an order granting preliminary approval of this Settlement, inclusive
28 (“PAGA Period”), including current and former employees.

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

9 **II. PROCEDURAL HISTORY**

10 On February 28, 2023, Plaintiff filed this putative class action against Defendant alleging:
11 (1) failure to pay minimum and straight time wages; (2) failure to pay overtime wages; (3) failure
12 to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to provide
13 accurate itemized wage statements; (6) failure to produce requested employment records; (7)
14 failure to timely pay final wages at termination; and (8) unfair business practices ("Class Action").
15 Declaration of Benjamin H. Haber in Support of Plaintiff's Motion for Preliminary Approval of
16 Class Action and PAGA Settlement ("Haber Decl.") at ¶ 3.

17 On March 9, 2023, Plaintiff provided written notice to the LWDA and Defendant of the
18 specific provisions of the Labor Code alleged to have been violated, including the facts and theories
19 in support. Haber Decl. at ¶ 4, Exhibit 1. The LWDA did not notify Plaintiff that it intended to
20 investigate within 65 days of this written notice. *Id.* Therefore, on July 12, 2023, Plaintiff filed a
21 First Amended Complaint in this Class Action adding a ninth cause of action for civil penalties
22 under PAGA. *Id.*

23 On November 6, 2024—following an extensive informal discovery exchange—parties
24 attended mediation with Honorable Daniel J. Buckley (Ret.). The parties did not resolve the matter
25 at mediation but continued to engage in extensive settlement discussions through the mediator. *Id.*
26 at ¶ 5. On April 4, 2025, Plaintiff served formal written discovery onto Defendant. *Id.* at ¶ 6. On
27 April 30, 2025, Defendant served formal written discovery onto Plaintiff. *Id.* at ¶ 7.

28 On May 30, 2025, Defendant provided responses to Plaintiff's formal written discovery

1 requests. *Id.* at ¶ 8. On June 20, 2025, Plaintiff responded to Defendant’s formal written discovery
2 requests. *Id.* at ¶ 9. On July 17 and 18, 2025, Plaintiff deposed three of Defendant’s Persons Most
3 Knowledgeable. *Id.* at ¶ 10. On August 19, 2025, Defendant took Plaintiff’s full-day deposition
4 and separately delivered the putative class contact list to Plaintiff’s counsel. *Id.* at ¶ 11.

5 The parties engaged in extensive conference regarding discovery and the possibility of
6 resolution by way of a second mediation session. The parties ultimately decided to attempt a second
7 session to resolve the matter. The parties exchanged updated data and documents prior to the
8 second mediation session. Plaintiff’s counsel communicated with numerous putative class
9 members in preparation for that mediation. *Id.* at ¶¶ 12-13.

10 On November 25, 2025, the parties participated in a private mediation with Mark LeHocky,
11 Esq. *Id.* at ¶ 14. The mediator made a proposal, which was accepted by the parties. *Id.* The parties
12 negotiated the terms of the Settlement over the next several months, which was finalized on June
13 17, 2026. *Id.* at ¶ 15, Exhibit 2. On September 30, 2026, Plaintiff submitted a copy of the Settlement
14 Agreement to the LWDA. *Id.* at ¶ 16, Exhibit 3.

15 **III. SUMMARY OF THE SETTLEMENT TERMS**

16 **A. Terms of the Proposed Settlement**

17 The Parties have agreed to settle the claims alleged in this case for a Gross Settlement
18 Amount of \$1,400,000.00. Settlement Agreement at § 3.1. Subject to Court approval, the following
19 payments will be deducted from the Gross Settlement Amount: (1) a Class Representative Service
20 Payment of up to \$15,000.00 to Plaintiff; (2) attorneys’ fees of up to one third (1/3) of the Gross
21 Settlement Amount (currently \$462,000.00) and reimbursement of litigation costs of up to
22 \$65,000.00 to Plaintiff’s Counsel; (3) costs of settlement administration of up to \$15,000.00 to
23 ILYM; (4) Individual Class Payments to Class Members; and (5) PAGA Penalties in the amount
24 of \$70,000.00, which will be allocated 75% to the LWDA (\$52,500.00) and 25% to Aggrieved
25 Employees (\$17,500.00). *Id.* at § 3.2 *et seq.* After all requested deductions are made, the remaining
26 Net Settlement Amount is currently estimated to be \$773,000.00.

27 Individual Class Payments will be calculated based on the number of Workweeks worked
28 by each Class Member during the Class Period. *Id.* at § 3.2.4. For tax purposes, the Individual

1 Class Payments will be allocated 20% to wages and 80% to interest and penalties. *Id.* at § 3.2.4.1.
2 Defendant will separately pay employer payroll taxes owed on the wage portions of the individual
3 class payments separate from the Gross Settlement Amount. *Id.* at § 3.1.

4 The Administrator will calculate each Individual PAGA Payment by (a) dividing the
5 amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$17,500.00) by the total
6 number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA
7 Period, and (b) multiplying the result by each individual Aggrieved Employee's PAGA Pay
8 Periods. *Id.* at § 3.2.5.1. For tax purposes, the individual PAGA payments will be allocated 100%
9 to penalties. *Id.*

10 Any deductions not approved by the Court will be retained by the Settlement Administrator
11 in the Net Settlement Amount. *Id.* at §§ 3.2.1, 3.2.2, 3.2.3, 3.2.5. Funds from any uncashed checks
12 will be transmitted by the Settlement Administrator to the California Controller's Unclaimed
13 Property Fund in the name of the Class Member. *Id.* at § 4.4.3. None of the Gross Settlement
14 Amount will revert to Defendant. *Id.* at § 3.1.

15 **B. Proposed Settlement Administration**

16 The Parties' proposed Class Notice complies with the requirements of California Rules of
17 Court, Rule 3.766(d). *See* Exhibit A to Settlement Agreement. It provides information regarding
18 the nature of this lawsuit, a summary of the settlement terms, the formula used for calculating
19 individual class and PAGA payments and instructions to dispute the calculations, instructions on
20 how to opt-out of or object to the Settlement, the date, time, and location of the final approval
21 hearing, and the amounts sought for the class representative service payment, attorneys' fees and
22 litigation costs, and settlement administration costs. *See generally, id.* The Class Notice also
23 notifies Class Members that they do not need to submit a claim in order to participate in the
24 Settlement and receive a payment. *See id.* The Settlement Administrator will mail Class Members
25 the Class Notice by first-class mail in English and in Spanish. Settlement Agreement at § 7.4.2.

26 If a Class Notice is returned as undeliverable, the Settlement Administrator will re-mail the
27 Class Notice within five (5) calendar days to the forwarding address provided by the U.S. Postal
28 Service. Settlement Agreement at § 7.4.3. If no forwarding address is provided, the Settlement

1 Administrator will conduct a Class Member Address Search and re-mail the Class Notice to the
2 most current address obtained. *Id.* The deadline to opt-out of the Settlement or to submit an
3 objection or dispute will be extended by fourteen (14) days for all Class Members whose Class
4 Notice was remailed. *Id.* at §7.4.4.

5 **C. Proposed Release**

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

9 Released Class Claims:

10 Upon Defendant's payment in full of the GSA and the employer's taxes for the portion
11 of the Settlement allocated to settlement of wage claims, the claims waived, released,
12 and discharged by Class Members (other than those who submit timely and valid
13 requests for exclusion) as to the Released Parties are all claims arising during the Class
14 Period which were asserted against Defendant in the operative complaint filed in the
Action or which reasonably could have been asserted against Defendant based on the
factual allegations stated the operative complaint filed in the Action.

15 Settlement Agreement at § 5.2.

16 Released PAGA Claims:

17 Upon Defendant's payment in full of the GSA and the employer's taxes for the portion
18 of the Settlement allocated to settlement of wage claims, the claims waived, released,
19 and discharged by Aggrieved Employees and the State of California as to the Released
20 Parties are all claims under PAGA arising during the PAGA Period (a) which were
21 asserted against Defendant in Plaintiff's PAGA Notice preceding the Action and/or the
22 operative complaint filed in the Action or (b) which reasonably could have been asserted
against Defendant based on the factual allegations stated in Plaintiff's PAGA Notice
preceding the Action and/or the operative complaint filed in the Action.

23 Settlement Agreement at § 5.3.

24 Only Plaintiff will agree to a general release and a waiver of Civil Code § 1542. Settlement
25 Agreement at §§ 5.1, 5.1.1.

26 **IV. THE PROPOSED SETTLEMENT AGREEMENT MEETS ALL CRITERIA FOR**
27 **PRELIMINARY APPROVAL**

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

1 Class certification is appropriate when there is: (1) an ascertainable and sufficiently
2 numerous class; (2) a well-defined community of interest among class members; and (3) substantial
3 benefits from certification that render proceeding as a class superior to the alternatives. *Brinker*
4 *Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1021 (2012). Although courts still need to
5 review and consider each element for certification, a lesser standard can be used to provisionally
6 certify a settlement class. *Global Minerals & Metals Corp. v. Superior Court*, 113 Cal.App.4th
7 836, 859 (2003).

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

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

18 The Class here consists of all persons who were employed by Defendant in California as
19 hourly-paid or non-exempt employees at any point during the Class Period, including current and
20 former employees. See Settlement Agreement at §§ 1.5, 1.12. The Class is also readily
21 ascertainable from Defendant’s business records, because all Class Members are or were
22 employees of Defendant. *Id.* Defendant’s records show there are approximately 659 Class
23 Members, making joinder of all Class Members impracticable. Haber Decl. at ¶ 10.

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

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

28 **a. Common Questions Predominate**

1 In determining whether common issues “predominate,” courts consider both plaintiff’s
2 legal theories and defendant’s affirmative defenses. *Duran v. U.S. Bank Nat’l Ass’n*, 59 Cal.4th 1,
3 28-29 (2014). The “predominate common questions” factor does not require that all class members
4 have identical claims. *Ayala v. Antelope Valley Newspapers, Inc.*, 59 Cal.4th 522, 530 (2014).
5 Rather, the focus is on whether issues shared by the class members are sufficiently uniform to
6 permit class-wide assessment, and whether individual variations in proof on those issues are
7 manageable. *Id.*

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

20 *b. Plaintiff is Typical of the Class*

21 Typicality does not require that the representative plaintiff’s claims and those of the class
22 members be identical or perfectly aligned. *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224,
23 228 (2001), disapproved on other grounds by *Hernandez v. Restoration Hardware, Inc.*, 4 Cal.5th
24 260 (2018). Typicality does not require that a plaintiff’s claims be identical to those of other class
25 members, only that their claims and the defenses applicable to them are sufficiently similar to those
26 of other class members that a named plaintiff is able to adequately represent the class and focus on
27 common issues. *Medraza v. Honda of North Hollywood*, 166 Cal.App.4th 89, 99 (2008).

28 Plaintiff has alleged that he and Class Members were employed by the same Defendant and

1 injured by Defendant's common wage and hour policies and practices, including Defendant's
2 scheduling, timekeeping, pay, meal period, rest period, and reimbursement policies. *See* Haber
3 Decl. at ¶ 19. Through informal discovery, Plaintiff confirmed that these challenged policies and
4 practices applied to Plaintiff and Class Members alike. *See id.* at ¶ 17. Therefore, Plaintiff's claims
5 and Class Members' claims arise from the same challenged employment policies and practices and
6 are based on the same legal theories.

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

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

14 Plaintiff's interests are coextensive with Class Members' interests. Declaration of Eric
15 Nelson in Support of Plaintiff's MPA ("Nelson Decl.") at ¶ 6. Plaintiff has demonstrated an ability
16 to advocate for the interests of Class Members by initiating this lawsuit, providing information to
17 his attorneys, meeting with his attorneys regarding the claims, making himself available the day of
18 mediation to answer questions, and reviewing the proposed Settlement. *Id.* at ¶ 11.

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

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

23 Courts have held that class treatment of wage and hour claims is clearly "superior to the
24 other available methods for the fair and efficient adjudication of the controversy." *Dean Witter*
25 *Reynolds, Inc. v. Superior Court*, 211 Cal.App.3d 758, 772-773 (1989). This is so because "[p]ublic
26 policy has long favored the 'full and prompt payment of wages due an employee.'" *Sav-On Drug*
27 *Stores, Inc. v. Superior Court*, 34 Cal.4th 319, 340 (2004). Here, a class action is superior to a
28 multitude of individual lawsuits. Given the size and amount of each Class Member's 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 outweigh any potential recovery. Haber Decl. at ¶ 18. Therefore, a class action is the superior method for seeking relief.

B. The Settlement Meets the Standards for Preliminary Approval

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

1. The Settlement is Entitled to a Presumption of Fairness

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

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

Courts have recognized that the involvement of a respected mediator provides a high degree of assurance that the settlement is the result of arm’s length bargaining. *See Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 52-53 (2008). The Settlement in this matter was the product of a full-day mediation session with a respected mediator. Haber Decl. at ¶ 5. The negotiations were adversarial, conducted at arm’s length, and tempered by the efforts of both sides to serve the interests of their

clients. *Id.*

b. Sufficient Investigation and Discovery Have Been Conducted

Prior to attending mediation, Plaintiff's Counsel thoroughly investigated the claims, applicable law, and potential defenses. Haber Decl. at ¶ 17. Plaintiff's Counsel assessed the value to the class claims using the data and documents that 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, Plaintiff's personnel file/documents concerning Plaintiff, Defendant's employee handbook(s), Defendant's written wage-and-hour policies, job descriptions, and a random sampling of time and payroll records. *Id.*

c. Plaintiff's Counsel is Experienced in Similar Litigation

Plaintiff is represented by Wilshire Law Firm, PLC. Haber Decl. at ¶ 30. Plaintiff's Counsel has extensive experience litigating wage and hour class actions on behalf of employees. *See id.* at ¶¶ 31-38. Plaintiff's Counsel has been involved as counsel in numerous class actions that have resulted in millions of dollars in recovery. *See id.*

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

A settlement does not have to provide 100% of the damages sought to be considered fair and reasonable. *See Rebney v. Wells Fargo Bank*, 220 Cal.App.3d 1117, 1139 (1991). Although the exposure Plaintiff's Counsel calculated is substantial, the various risks at succeeding at class certification and through trial affected the valuation of the claims for settlement purposes. Haber Decl. at ¶ 21.

Minimum and Overtime Wages: Plaintiff's unpaid minimum and overtime wage claims were based on the allegation that Defendant required Class Members to perform work duties while off the clock, without compensation. Haber Decl. at ¶ 21. For example, Plaintiff alleged that Defendant required him and other Class Members perform off-the-clock work pre-shift, during meal periods, rest periods, and post-shift without additional compensation. *Id.* For purposes of calculating Defendant's liability based on a best-case scenario for Plaintiff and the Class, Plaintiff's Counsel assumed that all unpaid worktime should have been paid at the overtime

1 rate of pay and conservatively estimated that Defendant is liable for one (1) hour of unpaid
2 worktime per workweek. *Id.* This results in potential exposure for this claim of approximately
3 \$2,816,568.96 (63,781 workweeks x \$29.44 average hourly rate of pay x 1 hour/workweek x
4 1.5 overtime rate). Because this claim would have relied heavily on Class Member testimony and
5 would not be evidenced in Defendant's time and payroll records, the risk of succeeding at class
6 certification and trial was substantial. Accordingly, Plaintiff's Counsel applied a risk discount
7 based on a 30% chance of succeeding at class certification and a 30% chance of succeeding at
8 trial on the merits, yielding a realistic damage estimate of approximately \$253,491.21
9 (\$2,816,568.96 x 30% x 30%). *Id.*

10 Meal Periods: Plaintiff's meal period claim was based on the allegation that Defendant
11 failed to provide Class Members with legally compliant meal periods or pay meal period premiums
12 in lieu thereof. Haber Decl. at ¶ 13. For example, Plaintiff alleged that Defendant required him and
13 other Class Members to perform work related tasks while clocked out for meal periods without
14 payment of premiums or revising the timeclock to reflect when the meal period truly ended.
15 Plaintiff also alleged Defendant performed auto-deduction of meal periods at times. *Id.*
16 Additionally, Plaintiff's Counsel's expert consultant determined there was a 76% meal period
17 violation rate (for shifts over 5 hours) from the sampling of Defendant's time and payroll records,
18 where meal periods were short, late, or missed (there was a 66.6% violation rate for shifts over 6
19 hours that are not waivable and apparent auto-deduction meal periods). *Id.* Defendant contends and
20 the evidence suggests that these instances were subject to a bell system that would relieve
21 Defendant's obligation to record meal periods and provide a complete defense on this issue. *Id.*
22 Therefore, potential liability for the meal period claim is approximately \$6,469,334.02 (289,140
23 shifts over 5 hours x \$29.44 average hourly rate x 76% violation rate). *Id.* After taking into account
24 the difficulty of certifying and proving meal period claims, as well as Defendant's contention that
25 the claim lacks merit and that a 76% violation rate is unrealistic, Plaintiff's Counsel discounted
26 this figure based on a 30% chance of succeeding at class certification and a 20% chance of
27 succeeding at trial, yielding a realistic damage estimate of approximately \$388,160.04
28 (\$6,469,334.02 x 30% x 20%). *Id.*

1 Rest Periods: Plaintiff's rest period claim was based on the allegation that Defendant failed
2 to provide Class Members with legally compliant rest periods or pay rest period premiums in lieu
3 thereof. Haber Decl. at ¶ 23. For example, Plaintiff alleged that Defendant required him and other
4 Class Members to work through their rest periods due to the heavy workload, as well as donning
5 and doffing work attire during rest periods when provided. *Id.* Based on Plaintiff's allegations and
6 Plaintiff's and other Class Members' experience working for Defendant, Plaintiff's Counsel
7 applied a 100% violation rate to all qualifying shifts during the Class Period. Therefore,
8 Defendant's potential liability for the rest period claim is approximately \$8,780,597.76 (298,254
9 shifts of 3.5 hours or longer x \$29.44 average hourly rate x 100% violation rate). However,
10 Plaintiff's Counsel discounted this figure to account for the difficulty of certifying and proving
11 rest period claims, particularly because rest periods do not have to be recorded, and to account for
12 the possibility of Class Members voluntarily choosing to forego a rest period. *Id.* Because this
13 claim would have relied exclusively on Class Member testimony, Plaintiff's Counsel discounted
14 this claim based on a 30% chance of succeeding at class certification and a 20% chance of
15 succeeding at trial, yielding a realistic damage estimate of approximately \$526,835.87
16 (\$8,780,597.76 x 30% x 20%). *Id.*

17 Reimbursements: Plaintiff's reimbursement claim was based on the allegation that
18 Defendant failed to indemnify Class Members for expenses incurred as a direct result of performing
19 their job duties for Defendant, such as mandatory use of personal cell phones for work purposes,
20 including after hours. Haber Decl. at ¶ 24. For purposes of calculating Defendant's liability based
21 on a best-case scenario for Plaintiff and the Class, Plaintiff's Counsel estimated that Defendant
22 was liable to each Class Member for \$10.00 per workweek in unreimbursed expenses, for a total
23 amount of approximately \$637,810.00 (\$10 x 63,781 workweeks). *Id.* However, Defendant argued
24 that these expenses were not required by Defendant, and that it could not have known that these
25 expenses were being incurred. *Id.* Accordingly, Plaintiff's Counsel discounted this claim based on
26 a 30% chance of succeeding at class certification and a 30% chance of succeeding at trial, yielding
27 a realistic damage estimate of approximately \$57,402.90 (\$637,810.00 x 30% x 30%). *Id.*

28 In sum, Plaintiff's Counsel estimated that Plaintiff's maximum recovery for the off-the-

1 clock claim, meal period violations, and rest period violations (i.e., the wage claims) is
2 approximately \$18,066,500.74. Haber Decl. at ¶ 25. However, after factoring in the risk and
3 uncertainty of prevailing at certification and trial, Plaintiff's Counsel estimates that Plaintiff's
4 realistic estimated recovery for these non-penalty wage claims is approximately \$1,168,487.12. *Id.*

5 Derivative Penalties: Plaintiff alleged that as a result of Defendant's failure to pay all wages
6 owed, Defendant owed waiting time penalties and wage statement penalties. Haber Decl. at ¶ 26.
7 With respect to Plaintiff's derivative claims for statutory penalties, Plaintiff's Counsel estimated
8 that Defendant's maximum potential liability is approximately \$4,931,678.72. *Id.* Defendant's
9 maximum potential liability for waiting time penalties is approximately \$3,099,678.72 ([428
10 employees x \$29.44 average hourly rate of pay x 8.00 hours/day x 30 days) based on approximately
11 428 formerly employed Class Members during the 3-year statute of limitations period and an
12 average shift length of 8 hours. *Id.* Defendant's maximum potential liability for inaccurate wage
13 statements is approximately \$1,832,000.00 (458 employees x \$4,000.00 statutory maximum) based
14 on approximately 458 Class Members who worked during the 1-year statute of limitations period
15 and approximately 20,813 pay periods in that statutory timeframe. *Id.* In light of the foregoing,
16 Plaintiff's Counsel believes that it would be unrealistic to expect the Court to award the full
17 \$4,931,678.72 in statutory penalties given Defendant's defenses, the contested nature of Plaintiff's
18 claims, the challenges of establishing willfulness as applicable, and the discretionary nature of
19 penalties. *Id.* Considering that the underlying wage claims are realistically estimated to be
20 approximately \$1,168,487.12, such a disproportionate award would also raise due process
21 concerns. *Id.* As such, Plaintiff's counsel discounted these figures to account for the risk and
22 uncertainty of obtaining class certification and prevailing at trial, resulting in a realistic evaluation
23 of approximately \$185,980.72 for waiting time penalty claims (\$3,099,678.72 x 30% x 20%), and
24 approximately \$109,920.00 for wage statement penalty claims (\$1,832,000.00 x 30% x 20%), or
25 approximately \$295,900.72 total for statutory penalties. *Id.*

26 PAGA: For the PAGA claim, Plaintiff's Counsel determined that Defendant's potential
27 exposure could reach \$2,081,300.00, assuming the initial \$100 penalty would apply for each of the
28 20,813 pay periods in the PAGA Period. Haber Decl. at ¶ 27. However, even assuming success on

1 the merits of each claim, PAGA gives the Court discretion to reduce penalties for a variety of
2 reasons, including where to do otherwise would result in an award that is unjust, arbitrary and
3 oppressive, or confiscatory. *Id.* As such, Plaintiff's counsel discounted this figure to account for
4 the risk and uncertainty of prevailing at trial, resulting in a realistic evaluation of approximately
5 \$208,130.00 for PAGA penalties ($\$2,081,300.00 \times 10\%$). The settlement allocates \$70,000.00 of
6 the Gross Settlement Amount to PAGA, therefore the PAGA allocation amounts to 5% of the Gross
7 Settlement Amount and approximately 34% of the realistic maximum damages for PAGA penalties
8 ($\$70,000 / \$208,130.00$). *Id.*

9 Using these estimated figures, Plaintiff's Counsel predicted that the realistic maximum
10 recovery for all claims, including penalties, would be approximately \$1,729,920.74. Haber Decl.
11 at ¶ 28. This means that the gross settlement amount represents approximately 81% of the realistic
12 maximum recovery ($\$1,400,000.00 / \$1,729,920.74$). *Id.* Considering the risk and uncertainty of
13 prevailing at class certification and at trial, this is an excellent result for the Class. *Id.* Indeed,
14 because of the proposed Settlement, Class Members will receive timely, guaranteed relief and will
15 avoid the risk of an unfavorable judgment. *Id.*

16 Based on the figures in the Settlement Agreement, the Net Settlement Amount available for
17 class settlement payments is currently estimated to be \$773,000.00 for approximately 659 Class
18 Members. Haber Decl. at ¶ 29. As a result, each Settlement Class Member would be eligible to
19 receive an average net benefit of approximately \$1,172.99. *Id.* Based on the estimated Net
20 Settlement Amount available for individual class payments and there being approximately 63,781
21 workweeks in the Class Period, the estimated weekly valuation for Individual Class Payments is
22 \$12.12 ($\$773,000 / 63,781$ workweeks). *Id.*

23 C. The Requested Service Payment is Reasonable

24 Plaintiff seeks a Class Representative Service Payment of up to \$15,000.00 for accepting
25 the responsibilities of representing the interests of the Class and potential costs that were not borne
26 by any other Class Member. Settlement Agreement at § 3.2.1. A named plaintiff is eligible for
27 payment that reasonably compensates the plaintiff for undertaking and fulfilling a fiduciary duty
28 to represent absent class members. *See Cellphone Termination Fee Cases*, 186 Cal.App.4th 1380,

1 1393 (2010); *Bell v. Farmers Ins. Exch.*, 115 Cal.App.4th 715, 726 (2004).

2 Throughout this case, Plaintiff assisted counsel in providing information necessary to
3 prosecute the claims, meeting with counsel regarding the claims, maintaining regular contact with
4 counsel, making himself available the day of mediation to answer questions, and reviewing the
5 Settlement to ensure it was fair to the Class. Nelson Decl. at ¶ 11. No action would likely have
6 been taken by Class Members individually and no compensation would have been recovered for
7 them, but for Plaintiff's services on behalf of the Class. By actively pursuing this action, Plaintiff
8 furthered the California public policy goal of enforcing the State's wage-and-hour laws. *See Sav-*
9 *On*, 34 Cal.4th at 340. The requested Class Representative Service Payment is reasonable and
10 should be preliminarily approved. Plaintiff has provided a declaration regarding his work
11 performed to date and will provide additional information as requested or required by the Court at
12 final approval.

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

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

20 Plaintiff seeks appointment of Wilshire Law Firm, PLC as Class Counsel. The attorneys
21 performed significant work and expended litigation costs in prosecuting this matter with no
22 guarantee of payment. Haber Decl. at ¶ 30. Plaintiff's Counsel seeks preliminary approval for up
23 to one third (1/3) of the Gross Settlement Amount in attorneys' fees, currently estimated to be
24 \$462,000.00, and up to \$65,000.00 in reimbursement of litigation costs. Given the work performed
25 in this matter, the extensive information exchange, and the substantial recovery obtained on behalf
26 of the Class, Plaintiff's Counsel achieved a settlement through efficient and diligent work. *See*
27 *generally*, Haber Decl. At final approval, Plaintiff's Counsel will fully brief the merits of its request
28 for the award of attorneys' fees and litigation costs.

E. The Administration Costs Are Reasonable

The parties have agreed upon using ILYM to administer this Settlement. Settlement Agreement at §§ 1.2, 7.1. Plaintiff seeks preliminary approval of not more than \$15,000.00 for ILYM to administer this Settlement pursuant to ILYM's will-not-exceed bid. *See* Haber Decl. at ¶ 41, Exhibit 4. The services covered by this payment are extensive and necessary to carry out the Settlement administration.

V. CONCLUSION

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

Respectfully submitted,

Dated: September 30, 2026

WILSHIRE LAW FIRM, PLC

By:

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