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

DEIVI RIVERA, individually, and on behalf
of all others similarly situated, the State of
California and other aggrieved employees,

Plaintiff,

v.

VALYRIA LLC, a corporation; TRANSPAC,
an unknown entity; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: CU23-02357

*[Assigned for All Purposes to the Honorable
Stephen Gizzi, Dept. 3]*

**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: March 2, 2027

Time: 9:00 a.m.

Dept.: 3

Action Filed: July 3, 2023

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on March 2, 2027, at 9:00 a.m./p.m., or as soon thereafter as the matter may be heard in Department 3 of the Superior Court of California, County of Solano, located at Old Solano Courthouse, 580 Texas St, Fairfield. CA 94533, Plaintiff Deivi Rivera ("Plaintiff") will and hereby does move this Court for an Order:

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

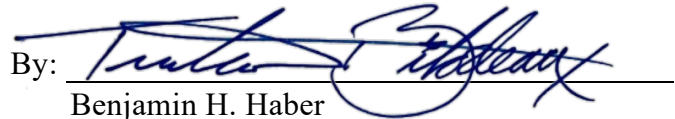
Pursuant to California Rules of Court, Rule 3.769(d) and (e), this Motion is made on the grounds that the proposed Settlement satisfies all criteria for preliminary approval and falls well within the range of reasonableness. The Settlement was reached through informed, arm's length bargaining between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

This Motion is based on this Notice of Motion, the accompanying Memorandum of Points and Authorities, the Declaration of Benjamin H. Haber, the Declaration of Deivi Rivera, 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: August 31, 2026

WILSHIRE LAW FIRM, PLC

By: 
Benjamin H. Haber
Daniel J. Kramer
Trenten N. Bilodeaux
Angela Leong

Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to California Rules of Court, Rule 3.769(d) and (e), Plaintiff seeks preliminary approval of a class action settlement of wage and hour claims, including representative claims brought under the Labor Code Private Attorneys General Act of 2004 (“PAGA”), against Defendant Valyria, LLC dba Transpac Brands (“Defendant”). The proposed Class is defined as all persons employed by Valyria in California as an hourly-paid and/or non-exempt employee (“Class Members”) at any time during the period from July 3, 2019, through January 21, 2025 (“Class Period”). The main terms of the Settlement are as follows:

1. A Gross Settlement Amount of \$380,000.00, which will be distributed to approximately 186 Class Members on a pro rata basis according to the total workweeks worked by each Class Member during the Class Period;
2. Attorneys’ fees of up to one third (1/3) of the Gross Settlement Amount (currently \$126,666.67) and up to \$25,000.00 in reimbursement of litigation costs to Plaintiff’s Counsel;
3. A Class Representative Service Payment of up to \$10,000.00 to Plaintiff;
4. Costs of settlement administration of up to \$7,950.00; and
5. Allocation of \$20,000.00 to PAGA penalties, seventy-five percent (75%) of which (\$15,000.00) will be paid to the Labor and Workforce Development Agency (“LWDA”), and twenty-five percent (25%) of which (\$5,000.00) will be paid to all persons employed by Valyria in California as an hourly-paid and/or non-exempt employee (“Aggrieved Employees”) at any time during the period from July 21, 2022, through January 21, 2025 (“PAGA Period”).

The Settlement meets all criteria for preliminary approval and falls within the range of reasonableness given the risks and expenses of further litigation. The Settlement was reached through informed, arm’s length bargaining between experienced attorneys with the assistance of an experienced neutral. As such, Plaintiff requests that the Court grant preliminary approval of the Settlement, conditionally certify the Class for settlement purposes only, appoint Plaintiff as the

1 Class Representative, appoint Plaintiff's Counsel as Class Counsel, appoint ILYM Group, Inc.
2 ("ILYM") as the Settlement Administrator, authorize the Settlement Administrator to administer
3 notice of the Settlement to the Class, and set a final approval hearing date.

4 **II. PROCEDURAL HISTORY**

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

12 On July 21, 2023, Plaintiff provided written notice to the LWDA and Defendant of the
13 specific provisions of the Labor Code alleged to have been violated, including the facts and theories
14 in support. Haber Decl. at ¶ 4, Exhibit 1. The LWDA did not notify Plaintiff that it intended to
15 investigate within 65 days of this written notice. *Id.*

16 On September 26, 2023, Defendant removed the class action to the Eastern District of
17 California, case number 2:23-at-00978. *Id.* at ¶ 5. On November 13, 2023, Plaintiff filed a separate
18 action in the Superior Court of California, County of Solano, for civil penalties under PAGA, Case
19 No. CU23-05351 (the "PAGA Action"), which has requested to be dismissed without prejudice
20 and consolidated with the class action. *Id.* On November 22, 2023, Plaintiff's Motion to Remand
21 was granted and the class action was remanded back to Solano County Superior Court. *Id.*

22 On April 27, 2026, Plaintiff filed a First Amended Class and Representative Complaint to
23 add Plaintiff's cause of action alleged pursuant to PAGA. Haber Decl. at ¶ 6.

24 On November 22, 2024, the Parties participated in a private mediation with David Phillips.
25 *Id.* at ¶ 7. The negotiations were adversarial, conducted at arm's length, and tempered by the efforts
26 of both sides to serve the interests of their clients. The mediator made a proposal, which was
27 accepted by the Parties. *Id.* The Parties negotiated the terms of the Settlement, which was finalized
28 on August 5, 2026. *Id.* at ¶ 8, Exhibit 2 ("Settlement Agreement"). On August 31, 2026, Plaintiff

submitted a copy of the Settlement Agreement to the LWDA. *Id.* at ¶ 9, Exhibit 3.

III. SUMMARY OF THE SETTLEMENT TERMS

A. Terms of the Proposed Settlement

The Parties have agreed to settle the claims alleged in this case for a Gross Settlement Amount of \$380,000.00. Settlement Agreement at § 3.1. Subject to Court approval, the following payments will be deducted from the Gross Settlement Amount: (1) a Class Representative Service Payment of up to \$10,000.00 to Plaintiff; (2) attorneys' fees of up to one third (1/3) of the Gross Settlement Amount (currently \$126,666.67) and reimbursement of litigation costs of up to \$25,000.00 to Plaintiff's Counsel; (3) costs of settlement administration of up to \$7,950.00 to ILYM; (4) Individual Class Payments to Class Members; and (5) PAGA Penalties in the amount of \$20,000.00, which will be allocated 75% to the LWDA (\$15,000.00) and 25% to Aggrieved Employees (\$5,000.00). *Id.* at § 3.2 *et seq.* After all requested deductions are made, the remaining Net Settlement Amount is currently estimated to be \$190,383.33.

Individual Class Payments will be calculated based on the number of Workweeks worked by each Class Member during the Class Period. *Id.* at § 3.2.4. For tax purposes, the Individual Class Payments will be allocated 10% to wages and 90% to interest and penalties. *Id.* at § 3.2.4.1. Defendant will separately pay employer payroll taxes owed on the wage positions of the individual class payments separate from the Gross Settlement Amount. *Id.* at § 3.1.

Individual PAGA Payments to Aggrieved Employees will be calculated based on the number of 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.*

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

///

1 **B. Proposed Settlement Administration**

2 The Parties' proposed Class Notice complies with the requirements of California Rules of
3 Court, Rule 3.766(d). *See* Exhibit A to Settlement Agreement. It provides information regarding
4 the nature of this lawsuit, a summary of the settlement terms, the formula used for calculating
5 individual class and PAGA payments and instructions to dispute the calculations, instructions on
6 how to opt-out of or object to the Settlement, the date, time, and location of the final approval
7 hearing, and the amounts sought for the class representative service payment, attorneys' fees and
8 litigation costs, and settlement administration costs. *See generally, id.* The Class Notice also
9 notifies Class Members that they do not need to submit a claim in order to participate in the
10 Settlement and receive a payment. *See id.* The Settlement Administrator will mail Class Members
11 the Class Notice by first-class mail in English and in Spanish. Settlement Agreement at § 8.4.2.

12 If a Class Notice is returned as undeliverable, the Settlement Administrator will re-mail the
13 Class Notice within three (3) business days to the forwarding address provided by the U.S. Postal
14 Service. Settlement Agreement at § 8.4.3. If no forwarding address is provided, the Settlement
15 Administrator will conduct a Class Member Address Search and re-mail the Class Notice to the
16 most current address obtained. *Id.* The deadline to opt-out of the Settlement or to submit an
17 objection or dispute will be extended by fourteen (14) days for all Class Members whose Class
18 Notice was remailed. *Id.* at § 8.4.4.

19 **C. Proposed Release**

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

23 Release by Participating Class Members:

24 All Participating Class Members, on behalf of themselves and their respective former and
25 present representatives, agents, attorneys, heirs, administrators, successors, and assigns,
26 release Released Parties from all claims that were alleged, or reasonably could have been
27 alleged, based on the Class Period facts stated in the Operative Complaint and Original
28 Class Action Complaint. Except as set forth in Section 6.3 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.

Settlement Agreement at § 6.2.

Released PAGA Claims:

All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint, Original PAGA Complaint, and the PAGA Notice.

Settlement Agreement at § 6.3.

Only Plaintiff will agree to a general release and a waiver of Civil Code § 1542. Settlement Agreement at §§ 6.1, 6.1.1.

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

A. Provisional Certification of the Class is Appropriate

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

1. The Proposed Class is Numerous and Ascertainable

“Ascertainability” is determined by examining the class definition and the size of the class and may also involve examining the means available to identify class members. *Noel v. Thrifty Payless, Inc.*, 7 Cal.5th 955, 980-981, 985-986 (2019). As the settlement eliminates the need for trial, “the case management issues inherent in the ascertainable class determination need not be confronted.” *Global Minerals*, 113 Cal.App.4th at 859. Further, under California law, there is no minimum number of class members for maintenance of a class action. *Hendershot v. Ready to Roll*

1 *Transp., Inc.*, 228 Cal.App.4th 1213, 1222 (2014). Class sizes as small as 10 have been permitted.
2 *Rose v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981), disapproved on other grounds by *Noel*,
3 7 Cal.5th at 986.

4 The Class here consists of all persons employed by Defendant in California as an hourly-
5 paid and/or non-exempt employee at any time during the Class Period. *See* Settlement Agreement
6 at § 1.6, 1.13. The Class is also readily ascertainable from Defendant’s business records, because
7 all Class Members are or were employees of Defendant. *Id.* Defendant’s records show there are
8 approximately 186 Class Members, making joinder of all Class Members impracticable. Haber
9 Decl. at ¶ 10.

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

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

14 a. *Common Questions Predominate*

15 In determining whether common issues “predominate,” courts consider both plaintiff’s
16 legal theories and defendant’s affirmative defenses. *Duran v. U.S. Bank Nat’l Ass’n*, 59 Cal.4th 1,
17 28-29 (2014). The “predominant common questions” factor does not require that all class members
18 have identical claims. *Ayala v. Antelope Valley Newspapers, Inc.*, 59 Cal.4th 522, 530 (2014).
19 Rather, the focus is on whether issues shared by the class members are sufficiently uniform to
20 permit class-wide assessment, and whether individual variations in proof on those issues are
21 manageable. *Id.*

22 Plaintiff has alleged that Defendant maintained common employment policies and/or
23 practices that unlawfully deprived Class Members of wages, meal periods, rest periods,
24 reimbursements for business expenses, accurate wage statements, and timely payment of wages
25 upon separation of employment. Haber Decl. at ¶ 11. These allegations present common factual
26 and legal questions of, *inter alia*, whether Defendant applied the same scheduling, timekeeping,
27 pay, meal period, rest period, and reimbursement policies to all Class Members, whether these
28 policies and practices resulted in Labor Code violations, whether Defendant’s conduct was

1 intentional, and whether Class Members are entitled to damages and/or penalties. *Id.* These
2 common questions could be resolved using Class Members’ time records, payroll records,
3 testimony from Defendant’s designated representative(s), and Class Members’ testimony. *Id.*
4 Therefore, the Court can and should exercise its discretion to grant conditional class certification
5 for settlement purposes.

6 *b. Plaintiff is Typical of the Class*

7 Typicality does not require that the representative plaintiff’s claims and those of the class
8 members be identical or perfectly aligned. *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224,
9 228 (2001), disapproved on other grounds by *Hernandez v. Restoration Hardware, Inc.*, 4 Cal.5th
10 260 (2018). Typicality does not require that a plaintiff’s claims be identical to those of other class
11 members, only that their claims and the defenses applicable to them are sufficiently similar to those
12 of other class members that a named plaintiff is able to adequately represent the class and focus on
13 common issues. *Medraza v. Honda of North Hollywood*, 166 Cal.App.4th 89, 99 (2008).

14 Plaintiff has alleged that he and Class Members were employed by the same Defendant and
15 injured by Defendant’s common wage and hour policies and practices, including Defendant’s
16 scheduling, timekeeping, pay, meal period, rest period, and reimbursement policies. *See* Haber
17 Decl. at ¶ 11. Through informal discovery, Plaintiff confirmed that these challenged policies and
18 practices applied to Plaintiff and Class Members alike. *See id.* at ¶ 9. Therefore, Plaintiff’s claims
19 and Class Members’ claims arise from the same challenged employment policies and practices and
20 are based on the same legal theories.

21 *c. Plaintiff and Plaintiff’s Counsel Will Adequately Represent the Class*

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

28 Plaintiff’s interests are coextensive with Class Members’ interests. Declaration of Deivi

Rivera in Support of Plaintiff’s MPA (“Rivera Decl.”) at ¶ 6. Plaintiff has demonstrated an ability to advocate for the interests of Class Members by initiating this lawsuit, providing information to his attorneys, meeting with his attorneys regarding the claims, making himself available the day of mediation to answer questions, and reviewing the proposed Settlement. *Id.* at ¶ 11.

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

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

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

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

10 Courts have recognized that the involvement of a respected mediator provides a high degree
11 of assurance that the settlement is the result of arm’s length bargaining. *See Chavez v. Netflix, Inc.*,
12 162 Cal.App.4th 43, 52-53 (2008). The Settlement in this matter was the product of a full-day
13 mediation session with a respected mediator. Haber Decl. at ¶ 6. The negotiations were adversarial,
14 conducted at arm’s length, and tempered by the efforts of both sides to serve the interests of their
15 clients. *Id.*

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

17 Prior to attending mediation, Plaintiff’s Counsel thoroughly investigated the claims,
18 applicable law, and potential defenses. Haber Decl. at ¶ 10. Plaintiff’s Counsel assessed the value
19 to the class claims using the data and documents that Defendant produced in informal discovery,
20 including class data providing the number of Class Members, the number of workweeks in the
21 Class Period, and the number of pay periods in the PAGA Period, Plaintiff’s personnel
22 file/documents concerning Plaintiff, Defendant’s employee handbook(s), Defendant’s written
23 wage-and-hour policies, job descriptions, and a random sampling of time and payroll records. *Id.*

24 ***c. Plaintiff’s Counsel is Experienced in Similar Litigation***

25 Plaintiff is represented by Wilshire Law Firm, PLC. Haber Decl. at ¶ 1. Plaintiff’s Counsel
26 has extensive experience litigating wage and hour class actions on behalf of employees. *See id.* at
27 ¶¶ 23-30. Plaintiff’s Counsel has been involved as counsel in numerous class actions that have
28 resulted in millions of dollars in recovery. *See Id.*

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

3 A settlement does not have to provide 100% of the damages sought to be considered fair
4 and reasonable. *See Rebney v. Wells Fargo Bank*, 220 Cal.App.3d 1117, 1139 (1991). Although
5 the exposure Plaintiff's Counsel calculated is substantial, the various risks at succeeding at class
6 certification and through trial affected the valuation of the claims for settlement purposes. Haber
7 Decl. at ¶ 13.

8 Minimum and Overtime Wages: Plaintiff's unpaid minimum and overtime wage claims
9 were based on the allegation that Defendant required Class Members to perform work duties
10 while off the clock, without compensation. Haber Decl. at ¶ 14. For example, Plaintiff alleged
11 that Defendant required him and other Class Members to perform work tasks off-the-clock
12 before their scheduled shifts, during meal periods, and after their scheduled shifts. *Id.*
13 Specifically, Class Members were allegedly required to arrive early pursuant to company policy
14 to be "ready to work at their starting time each day." *Id.* Further, Class Members allegedly
15 would respond to work-related questions and look for products that had not been inventoried
16 after clocking out. *Id.* For purposes of calculating Defendant's liability based on a best-case
17 scenario for Plaintiff and the Class, Plaintiff's Counsel assumed that all alleged unpaid worktime
18 should have been paid at the overtime rate of pay and conservatively estimated that Defendant
19 may/could be liable for 4.7 hours of unpaid worktime per workweek. *Id.* This results in potential
20 exposure for this claim of approximately \$1,074,279.00 (9,500 workweeks x \$16.04 average
21 hourly rate of pay x 4.7 hours/workweek x 1.5 overtime rate). Because this claim would have relied
22 heavily on Class Member testimony and would not be evidenced in Defendant's time and payroll
23 records, the risk of succeeding at class certification and trial was substantial. Accordingly,
24 Plaintiff's Counsel applied a risk discount based on a 40% chance of succeeding at class
25 certification and a 40% chance of succeeding at trial on the merits, yielding a realistic damage
26 estimate of approximately \$171,884.64 (\$1,074,279.00 x 40% x 40%). *Id.*

27 Meal Periods: Plaintiff's meal period claim was based on the allegation that Defendant
28 failed to provide Class Members with legally compliant meal periods or pay meal period premiums

1 in lieu thereof. Haber Decl. at ¶ 15. For example, Plaintiff alleged that Defendant required him and
2 other Class Members to take late meal breaks due to high workload and understaffing, and had
3 meal breaks interrupted with work-related questions by supervisors. *Id.* Further, Defendant
4 allegedly failed to maintain compliant written meal period policies throughout the class period, of
5 which did not provide for premiums or relieve employees of all duties. *Id.* Additionally, Plaintiff's
6 Counsel's expert consultant determined there may have been a 46.9% meal period violation rate
7 from the sampling of Defendant's time and payroll records, where meal periods were short, late,
8 or missed. *Id.* Therefore, potential liability for the meal period claim is approximately \$325,472.21
9 (43,265 shifts over 5 hours x \$16.04 average hourly rate x 46.9% violation rate). *Id.* After taking
10 into account the difficulty of certifying and proving meal period claims, as well as Defendant's
11 contention that the claim lacks merit and that a 46.9% violation rate is unrealistic, Plaintiff's
12 Counsel discounted this figure based on a 50% chance of succeeding at class certification and a
13 40% chance of succeeding at trial, yielding a realistic damage estimate of approximately
14 \$65,094.44 (\$325,472.21 x 50% x 40%). *Id.*

15 Rest Periods: Plaintiff's rest period claim was based on the allegation that Defendant failed
16 to provide Class Members with legally compliant rest periods or pay rest period premiums in lieu
17 thereof. Haber Decl. at ¶ 16. For example, Plaintiff alleged that Defendant required him and other
18 Class Members to work through their rest breaks due to high workload and understaffing without
19 payment of premiums. *Id.* If an employee was provided a rest break, it was allegedly interrupted
20 by supervisors asking about work-related topics. *Id.* Based on Plaintiff's allegations and Plaintiff's
21 and other Class Members' alleged experience working for Defendant, Plaintiff's Counsel applied
22 a 100% violation rate to all qualifying shifts during the Class Period. Therefore, Defendant's
23 potential liability for the rest period claim is approximately \$706,545.96 (44,049 shifts of 3.5 hours
24 or longer x \$16.04 average hourly rate x 100% violation rate). However, Plaintiff's Counsel
25 discounted this figure to account for the difficulty of certifying and proving rest period claims,
26 particularly because rest periods do not have to be recorded, and to account for the possibility of
27 Class Members voluntarily choosing to forego a rest period. *Id.* Because this claim would have
28 relied exclusively on Class Member testimony, Plaintiff's Counsel discounted this claim based on

1 a 40% chance of succeeding at class certification and a 30% chance of succeeding at trial, yielding
2 a realistic damage estimate of approximately \$84,785.51 ($\$706,545.96 \times 30\% \times 20\%$). *Id.*

3 Reimbursements: Plaintiff's reimbursement claim was based on the allegation that
4 Defendant failed to indemnify Class Members for expenses incurred as a direct result of performing
5 their job duties for Defendant, such as mandatory use of personal cell phones for work purposes
6 such as communicating with employees and using the timeclock mobile application. Haber Decl.
7 at ¶ 17. For purposes of calculating Defendant's liability based on a best-case scenario for Plaintiff
8 and the Class, Plaintiff's Counsel estimated that Defendant may/could be liable to each Class
9 Member for \$6.25 per workweek in unreimbursed expenses, for a total amount of approximately
10 \$59,375.00 ($\$6.25 \times 9,500$ workweeks). *Id.* However, Defendant argued that these expenses were
11 not required by Defendant, and that it could not have known that these expenses were being
12 incurred. *Id.* Accordingly, Plaintiff's Counsel discounted this claim based on a 30% chance of
13 succeeding at class certification and a 30% chance of succeeding at trial, yielding a realistic
14 damage estimate of approximately \$5,343.75 ($\$59,375.00 \times 30\% \times 30\%$). *Id.*

15 In sum, Plaintiff's Counsel estimated that Plaintiff's maximum recovery for the off-the-
16 clock claim, meal period violations, and rest period violations (i.e., the wage claims) is
17 approximately \$2,106,297.17. Haber Decl. at ¶ 18. However, after factoring in the risk and
18 uncertainty of prevailing at certification and trial, Plaintiff's Counsel estimates that Plaintiff's
19 realistic estimated recovery for these non-penalty wage claims is approximately \$321,764.59. *Id.*

20 Derivative Penalties: Plaintiff alleged that as a result of Defendant's alleged failure to pay
21 all wages owed, Defendant owed waiting time penalties and wage statement penalties. Haber Decl.
22 at ¶ 19. With respect to Plaintiff's derivative claims for statutory penalties, Plaintiff's Counsel
23 estimated that Defendant's realistic potential liability may/could be approximately \$ 48,499.08. *Id.*
24 Defendant's maximum potential liability for waiting time penalties may/could have been
25 approximately \$595,918.08 ($144 \text{ employees} \times \$16.04 \text{ average hourly rate of pay} \times 8 \text{ hours/day} \times$
26 $30 \text{ days}) + (144 \text{ employees} \times \$16.04 \times 0.4 \times 1.5 \times 30)$ based on approximately 144 formerly
27 employed Class Members during the 3-year statute of limitations period and an average shift length
28 of 8.4 hours. *Id.* Defendant's maximum potential liability for inaccurate wage statements

1 may/could have been approximately \$212,400 ([114 employees x 1 initial violation/employee x
2 \$50 for an initial violation] + [(2,181 pay periods - 114 initial violations) x \$100 for each
3 subsequent violation]) based on approximately 114 Class Members who worked during the 1-year
4 statute of limitations period and approximately 2,181 pay periods in that statutory timeframe. *Id.*
5 In light of the foregoing, Plaintiff's Counsel believes that it would be unrealistic to expect the
6 Court to award the full \$808,318.08 in statutory penalties given Defendant's defenses, the
7 contested nature of Plaintiff's claims, the challenges of establishing willfulness as applicable, and
8 the discretionary nature of penalties. *Id.* Considering that the underlying wage claims are
9 realistically estimated to be approximately \$321,764.59, such a disproportionate award would also
10 raise due process concerns. *Id.* As such, Plaintiff's counsel discounted these figures to account for
11 the risk and uncertainty of obtaining class certification and prevailing at trial, resulting in a realistic
12 evaluation of approximately \$35,755.08 for waiting time penalty claims (\$595,518.08 x 30% x
13 20%), and approximately \$12,744.00 for wage statement penalty claims (\$212,400.00 x 30% x
14 20%), or approximately \$48,499.08 total for statutory penalties. *Id.*

15 PAGA: For the PAGA claim, Plaintiff's Counsel determined that Defendant's potential
16 exposure could potentially reach \$250,000, assuming the initial \$100 penalty would apply for each
17 of the 2,500 pay periods in the PAGA Period. Haber Decl. at ¶ 20. However, even assuming success
18 on the merits of each claim, PAGA gives the Court discretion to reduce penalties for a variety of
19 reasons, including where to do otherwise would result in an award that is unjust, arbitrary and
20 oppressive, or confiscatory. *Id.* As such, Plaintiff's counsel discounted this figure to account for
21 the risk and uncertainty of prevailing at trial, resulting in a realistic evaluation of approximately
22 \$25,000 for PAGA penalties (\$250,000 x 10%). *Id.* The settlement allocates \$20,000 of the Gross
23 Settlement Amount to PAGA, therefore the PAGA allocation amounts to 5.3% of the Gross
24 Settlement Amount and approximately 80% of the realistic maximum damages for PAGA penalties
25 (\$20,000 / \$25,000). *Id.*

26 Using these estimated figures, Plaintiff's Counsel predicted that the realistic maximum
27 recovery for all claims, including penalties, would be approximately \$400,607.42. Haber Decl. at
28 ¶ 21. This means that the gross settlement amount represents approximately 95% of the realistic

1 maximum recovery (\$380,000.00 / \$400,607.42) *Id.* Considering the risk and uncertainty of
2 prevailing at class certification and at trial, this is an excellent result for the Class. *Id.* Indeed,
3 because of the proposed Settlement, Class Members will receive timely, guaranteed relief and will
4 avoid the risk of an unfavorable judgment. *Id.*

5 Based on the figures in the Settlement Agreement, the Net Settlement Amount available for
6 class settlement payments is currently estimated to be \$190,383.33 for approximately 186 Class
7 Members. Haber Decl. at ¶ 22. As a result, each Settlement Class Member would be eligible to
8 receive an average net benefit of approximately \$1,023.57. *Id.* Based on the estimated Net
9 Settlement Amount available for individual class payments and there being approximately 9,500
10 workweeks in the Class Period, the estimated weekly valuation for Individual Class Payments is
11 \$20.04 (\$190,383.33 / 9,500 workweeks). *Id.*

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

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

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

1 final approval.

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

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

9 Plaintiff seeks appointment of Wilshire Law Firm, PLC as Class Counsel. The attorneys
10 performed significant work and expended litigation costs in prosecuting this matter with no
11 guarantee of payment. Haber Decl. at ¶ 23. Plaintiff's Counsel seeks preliminary approval for up
12 to one third (1/3) of the Gross Settlement Amount in attorneys' fees, currently estimated to be
13 \$126,666.67, and up to \$25,000.00 in reimbursement of litigation costs. Given the work performed
14 in this matter, the extensive information exchange, and the substantial recovery obtained on behalf
15 of the Class, Plaintiff's Counsel achieved a settlement through efficient and diligent work. *See*
16 *generally*, Haber Decl. At final approval, Plaintiff's Counsel will fully brief the merits of its request
17 for the award of attorneys' fees and litigation costs.

18 **E. The Administration Costs Are Reasonable**

19 The Parties have agreed upon using ILYM to administer this Settlement. Settlement
20 Agreement at §§ 1.2, 8.1. Plaintiff seeks preliminary approval of \$7,950.00 for ILYM to administer
21 this Settlement pursuant to ILYM's will-not-exceed bid. *See* Haber Decl. at ¶ 33, Exhibit 4. The
22 services covered by this payment are extensive and necessary to carry out the Settlement
23 administration.

24 **V. CONCLUSION**

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

1 the final approval hearing.

2
3 Respectfully submitted,

4 Dated: August 31, 2026

WILSHIRE LAW FIRM, PLC

5
6 By: _____

7 Benjamin H. Haber

8 Daniel J. Kramer

9 Trenten N. Bilodeaux

10 Angela Leong

11 Attorneys for Plaintiff