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Kern County Superior Court
By Christina Vasquez, Deputy

Attorneys for Plaintiff Karla Morales, individually and on behalf of others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF KERN

KARLA MORALES, individually, and on behalf of all others similarly situated, *Plaintiff*, v. CASTEEN DENTAL CORPORATION, a California corporation; and DOES 1 through 10, inclusive, *Defendants*.	Lead Case No.: BCV-23-102915 Consolidated Case No.: BCV-23-103655 *Assigned for all purposes to:* *Hon. Gregory Pulskamp* *Dept. J* **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Date: April 18, 2025 Time: 8:30 a.m. Dept.: J

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on either April 18, 2025, at 9:00 a.m., or as soon thereafter as the matter may be heard in Department J of the above-entitled Court, located at 1215 Truxtun Avenue, Bakersfield, CA 93301, Plaintiff Karla Morales ("Plaintiff") will and hereby does move this Court for an Order:

1. Granting preliminary approval of the proposed Class Action and PAGA Settlement Agreement ("Settlement");
2. Conditionally certifying the proposed Class for settlement purposes only;
3. Appointing Plaintiff as the Class Representative;
4. Appointing Wilshire Law Firm, PLC as Class Counsel;
5. Appointing 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 John G. Yslas, the Declaration of Karla Morales, 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: March 24, 2025

WILSHIRE LAW FIRM

By: ______________________

John G. Yslas
Attorneys for Plaintiff

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TABLE OF AUTHORITIES

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I. INTRODUCTION

Pursuant to California Rules of Court, Rule 3.769(d) and (e), Plaintiff seeks preliminary approval of a class action settlement of wage and hour claims, including representative claims brought under the Private Attorneys' General Act of 2004 ("PAGA"), against Defendant Casteen Dental Corporation ("Defendant") (hereinafter, with Plaintiff, collectively referred to as the "Parties"). The proposed Class is defined as all persons currently or formerly employed by Defendant Casteen Dental Corporation as hourly-paid, non-exempt employees in the State of California ("Class Members") during the Class Period of August 29, 2019 through the day the Court grants preliminary approval of the Settlement ("Class Period"). The main terms of the Settlement are as follows:

1. A Gross Settlement Amount of $1,080,000.00, which will be distributed to approximately 306 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 $360,000.00) and up to $20,000.00 in reimbursement of litigation costs to Plaintiff's Counsel;
3. A class representative service payment of up to $10,000.00 to Plaintiff Karla Morales;
4. Costs of settlement administration of up to $6,850.00; and
5. Allocation of $30,000.00 to PAGA penalties, seventy-five percent (75%) of which ($22,500.00) will be paid to the Labor and Workforce Development Agency ("LWDA"), and twenty-five percent (25%) of which ($7,500.00) will be paid to all persons currently or formerly employed by Defendant Casteen Dental Corporation as hourly-paid, non-exempt employees in the State of California during the PAGA Period of August 30, 2022 through the day the Court grants preliminary approval of the Settlement ("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

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through informed, arm's length bargaining between experienced attorneys with the assistance of an experienced neutral. As such, Plaintiff requests that the Court grant preliminary approval of the Settlement, conditionally certify the Class for settlement purposes only, appoint Plaintiff as the Class Representative, appoint Plaintiff's Counsel as Class Counsel, appoint ILYM, Group, Inc. ("ILYM") 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 August 29, 2023, Plaintiff filed this action as a putative class action against Defendant, alleging: (1) failure to pay minimum and straight time wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to timely pay final wages at termination; (6) failure to provide accurate itemized wage statements; (7) failure to indemnify employees for expenditures; (8) failure to produce requested employment records; and (9) 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 August 30, 2023, Plaintiff Karla Morales sent a letter to the LWDA as required by Lab. Code § 2699.3(a). Yslas Decl. at ¶ 4. The LWDA did not respond to this notice, indicating it did not intend to investigate, thereby authorizing Plaintiff to represent the State of California as a private attorney general for the purposes of PAGA. *Id*.On October 30, 2023, Plaintiff filed a representative action against Defendant alleging civil penalties under PAGA (Cal. Lab. Code § 2699, *et seq*.), Case No. BCV-23-103655. Yslas Decl. at ¶ 5.

The Parties subsequently participated in a private mediation with mediator Tagore Subramaniam on October 24, 2024. Yslas Decl. at ¶ 6. The negotiations were adversarial, conducted at arm's length, and tempered by the efforts of both sides to serve the interest of their clients. *Id.* The following day, the parties were able to reach an agreement on general settlement terms and finalized the Memorandum of Understanding ("MOU") on October 25, 2024. *Id*.

After finalizing the MOU, Plaintiff and Defendant (hereinafter, collectively referred to as the "Parties") negotiated the terms of the Settlement over the next few months, which was finalized

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on February 8, 2025. *Id.* at ¶ 7, Exhibit 1 ("Settlement Agreement"). On March 24, 2025, Plaintiff submitted a copy of the Settlement Agreement to the LWDA. *Id.* at ¶ 8, Exhibit 2.

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 $1,080,000.00. Settlement Agreement at §§ 1.25, 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 Karla Morales; (2) attorneys' fees of up to one-third (1/3) of the Gross Settlement Amount (currently $360,000.00) and reimbursement of actual litigation costs to Plaintiff's Counsel currently estimated not to exceed $20,000.00; (3) costs of settlement administration of up to $6,850.00 to ILYM; and (4) PAGA penalties in the amount of $30,000.00, which will be allocated 75% to the LWDA ($22,500.00) and 25% to Aggrieved Employees ($7,500.00). *Id.* at §§ 3.2.1, 3.2.2, 3.2.3, 3.2.5. After all requested deductions are made, the remaining Net Settlement Amount is currently estimated to be $653,150.00. *Id*. at § 1.31.

Individual Class Payment will be calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period, and (b) multiplying the result by each individual Participating Class Member's Workweeks. *Id*. at § 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(A). Defendant will separately pay any and all employer payroll taxes owed on the wage positions of the Individual Class Payments separate from the Gross Settlement Amount. *Id*. at § 3.1.

Individual PAGA Payments to Aggrieved Employees will be calculated by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties ($7,500.00) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period, and (b) multiplying the result by each individual Aggrieved Employee's PAGA Pay Periods. *Id*. at § 3.2.5(A). Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. *Id*. For tax purposes, the Individual PAGA Payments will be allocated 100% to penalties.

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Any deductions not approved by the Court will be retained by the Settlement Administrator in the Net Settlement Amount. *Id.* at §§ 3.2.1-3.2.3. 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 thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, 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 Member 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 representatives 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 with a Spanish translation. Settlement Agreement at §§ 1.12, 7.4.2.

If a Class Notice is returned as undeliverable, the Settlement Administrator will re-mail the Class Notice no later than five calendar days to the forwarding address provided by the U.S. postal Service. *Id*. at § 7.4.3. 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.

C. Proposed Release

All Participating Class Members will release "(i) all claims, rights, demands, liabilities, and causes of action, in law or in equity, arising at any time during the Class Period for the claims brought by Plaintiff in the Operative Class Complaint, or that could have been brought by Plaintiff, based on the facts alleged therein or in the PAGA Notice, including claims for: (1) failure to pay minimum and straight time wages (including, but not limited to, due to alleged offthe-clock work,

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rounding, improper calculation of wages, and otherwise underpaid wages), (2) failure to pay overtime wages (including, but not limited to, due to alleged off-the-clock work, rounding, improper calculation of wages, and otherwise underpaid wages), (3) failure to provide meal periods (including, but not limited to, alleged non-compliant first and second meal breaks, remaining on premises or on-duty during meal periods, off-the-clock work, rounding, improper, calculation of meal period premiums, and any failure to pay meal period premiums), (4) failure to provide rest periods (alleged non-compliant rest breaks, insufficient or interrupted rest breaks, remaining on premises or on-duty during rest breaks, off-the-clock work, rounding, improper calculation of rest period premiums, and any failure to pay rest period premiums), (5) failure to timely pay earned wages during employment and/or at termination, (6) failure to provide accurate wage statements and maintain required records, (7) failure to indemnify employees for expenditures; (8) failure to produce requested employment records; and (9) unfair business practices; and (ii) Any and all causes of action, claims, rights, damages, punitive or statutory damages, penalties, liabilities, expenses, and losses alleged in the Operative Class Complaint, or that could have been alleged based upon the facts alleged in the operative complaint during the Class Period ("Released Class Claims"). To the extent based on facts alleged in the Actions or the PAGA Letter, the Released Class Claims encompass, but are not limited to, all claims pursuant to the applicable IWC Wage Order (including Wage Order 4-2001), and Labor Code §§ 98.6 201, 201.3, 202, 203, 204, 210, 216, 218.5, 218.6, 225.5, 226, 226.3, 226.6, 226.7, 227.3, 232, 232.5, 233, 234, 245, 246, 247.5, 248.2, 248.5, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1102.5, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, 1198.5, 1199, 1527, 2698, 2699, 2802, 2810.5, 3366, 3457, 6401, 8397.4." Settlement Agreement at § 5.2.

All Aggrieved Employees will release "all claims, rights, demands, liabilities and causes of action for PAGA civil penalties, that Aggrieved Employees have had, now have, or may have in the future against Released Parties based on any acts or omissions occurring during the PAGA Period, and based on the claims alleged or that reasonably could have been alleged based on the facts alleged in the Operative PAGA Complaint or alleged in Plaintiff's notice to the LWDA, including but not limited to, any and all claims for PAGA Penalties pursuant to Wage Order 4-

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2001, and Labor Code §§ 98.6 201, 201.3, 202, 203, 204, 210, 216, 218.5, 218.6, 225.5, 226, 226.3, 226.6, 226.7, 227.3, 232, 232.5, 233, 234, 245, 246, 247.5, 248.2, 248.5, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1102.5, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, 1198.5, 1199, 1527, 2698, 2699, 2802, 2810.5, 3366, 3457, 6401, 8397.4 (the "Released PAGA Claims"). The Released PAGA Claims are those that accrued during the PAGA Period only. The State of California shall release all and any PAGA claims rights, demands, liabilities, penalties, fines, debts and causes of action, arising from the PAGA claims pled in the Operative PAGA Complaint or LWDA notice; or that could have been pled in the Actions based on the allegations therein. Any Aggrieved Employees who submit a valid and timely Request for Exclusion are still entitled to their Individual PAGA Payment and have no right or ability to opt out of the portion of this Settlement releasing the Released PAGA Claims." *Id.* at § 5.3. Only Plaintiffs will agree to a general release and a waiver of Civil Code § 1542. *Id*. at §§ 5.1, 5.1.1.

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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 all persons currently or formerly employed by Defendant Casteen Dental Corporation as hourly-paid, non-exempt employees in the State of California during the Class Period. *See* Settlement Agreement at §§ 1.5, 1.13. The Class is also readily ascertainable from Defendant's business records, because all Class Members are or were employees of Defendant. Yslas Decl. at ¶ 10. Defendant's records show there are approximately 306 Class Members, making joinder of all Class Members impracticable. *Id*.

2. A Well-Defined Community of Interest Exists

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

a. Common Questions Predominate

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

Plaintiff has alleged that Defendant maintained common employment policies and/or practices that unlawfully deprived Class Members of wages, meal periods, rest periods, reimbursements for business expenses, accurate wage statements, and timely payment of wages upon separation of employment. Yslas Decl. at ¶ 11. 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

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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. *Id*. Therefore, the Court can and should exercise its discretion to grant conditional class certification for settlement purposes.

b. Plaintiff is 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).

Plaintiff has alleged that she and Class Members were employed by the same 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. *See* Yslas Decl. at ¶ 11. Through informal discovery, including the production of documents by Defendant, Plaintiff confirmed that these challenged policies and practices applied to Plaintiff as well as Class Members. *See Id.* at ¶ 9. Therefore, Plaintiff's claims and Class Members' claims arise from the same challenged employment policies and practices and are based on the same legal theories.

c. Plaintiff and Plaintiff's 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.

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Nat'l Solar Equip. Owners' Ass'n v. Grumman Corp., 235 Cal.App.3d 1273, 1286 (1991). The proposed representative Plaintiff and proposed Class Counsel present no such conflict.

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

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

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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' claims, 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).

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 achieved with the assistance of a respected mediator following a full day of mediation. 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, Plaintiff's Counsel thoroughly investigated the claims, applicable law, and potential defenses. *Id.* at ¶ 9. Plaintiff's 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, Plaintiff Karla Morales' personnel file, employment handbooks and policies, job descriptions, and a random sampling of time and payroll records. *Id.*

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c. <u>Plaintiffs' Counsel is Experienced in Similar Litigation</u>

Plaintiff is represented by Wilshire Law Firm. *Id.* at ¶ 21. Plaintiff's Counsel have extensive experience litigating wage and hour class actions on behalf of employees. *See Id.* at ¶¶ 22-33. Plaintiff's Counsel have 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. Yslas Decl. at ¶ 9.

<u>Minimum and Overtime Wages</u>: 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. *Id.* at ¶ 13. Based on Plaintiff's estimate that they worked a total of one-hour off-the-clock each week, Plaintiff's Counsel assumed each Class Member worked one-hour off-the-clock per week in calculating potential exposure to be approximately $923,610.33 for these claims. *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. *Id.* Accordingly, Plaintiff's Counsel applied a risk discount to this claim based on a 30% chance at class certification and 20% chance at trial to reach a settlement value of approximately $55,416.62. *Id.*

<u>Meal Periods</u>: Plaintiff's 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 ¶ 14. Plaintiff's believed there to be a violation rate of nearly 45.7% for shifts over five hours and calculated potential exposure on this claim to be approximately $1,069,290.30. *Id.* However, Defendant argued that Class Members signed meal period waivers. *Id.* Accordingly, Plaintiff's Counsel believed there

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was a 50% chance of succeeding at class certification and a 40% chance of succeeding at trial, resulting in a risk discount to reach a settlement value of approximately $213,858.06. *Id.*

<u>Rest Breaks</u>: Plaintiff's rest period claim was based on the allegation that Defendant maintained a practice that required class members to work in lieu of taking rest breaks and failed to pay rest break premiums when class members were deprived their rest breaks. *Id.* at ¶ 15. Plaintiff's Counsel applied a 100% violation rate for the Class Period based on Plaintiff's and other Class Members' experience working for Defendant, Defendant's potential liability for the rest period claim is $2,339,803.72. *Id.* However, we discounted this figure to account for the difficulty of certifying and proving rest period claims, particularly because rest periods do not have to be recorded, and to account for the possibility of Class Members voluntarily choosing to forego a rest period. Defendant also asserted compliance as a defense to the rest period claim. Thus, yielding a realistic damage estimate of $467,960.74 based on a 50% chance of succeeding at class certification and a 40% chance of succeeding at trial. *Id.*

<u>Reimbursements</u>: Plaintiff's reimbursement claim was based on the allegation that Defendant required Class Members to use their personal cellular phones for work-related purposes. *Id.* at ¶ 16. Assuming a very conservative $30/per month per employee for unpaid reimbursements, this results in a damage estimate of $810,540.00. *Id.* However, after discounting this figure based on an evaluation of a 50% chance of succeeding at class certification and a 40% chance of succeeding at trial to account for the difficulty of certifying and proving unpaid reimbursements and necessary business expenses, yields a realistic damage estimate of $162,108.00. *Id.*

<u>Derivative and PAGA Penalties</u>: Plaintiff 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 ¶ 18. Plaintiff's Counsel calculated that potential exposure for the waiting time penalty claim was approximately $777,708.75, approximately $737,350.00 for the wage statement penalty claim, and $611.300.00 for PAGA violations based on the Court assessing a $100 penalty for initial violations for all 6,113 pay periods within the one-year statute. *Id*. However, it would be unrealistic to expect the Court to award the full $2,126,358.75 in penalties given Defendant's defenses, the contested nature of Plaintiff's claims

and the discretionary nature of penalties. *Id*. Considering the underlying claims are realistically estimated to be $899,343.42[1], such a disproportionate award would also raise due process concerns. *Id.* at ¶ 18.

Weighing these factors and applying a discount to account for the risk and uncertainty of prevailing at trial, we arrived at $211,807.05 (based on Plaintiff's realistic estimated recovery of $93,325.05 for waiting time penalties + $88,482.00 for wage statement penalty claims) for statutory and civil penalties after considering an evaluation of a 40% chance of succeeding at class certification and a 30% chance of succeeding at trial. *Id.* at ¶ 19. Most importantly, after taking into consideration that the Court would have discretion to reduce the PAGA award based on whether the amount of the award would be "unjust, arbitrary and oppressive, or confiscatory" Lab. Code §2699(e)(2), Plaintiff could not place a high value on the PAGA penalties, and therefore allocated $30,000.00 of the Gross Settlement Amount to settle these claims. *Id*. See *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 U.S. Dist. LEXIS 33900 at *24 (N.D. Cal. Apr. 3, 2009) (finding amount of PAGA penalties reasonable where the amounts are negotiated in good faith and "there is no indication that [the] amount was the result of self-interest at the expense of other Class Members"); *Nordstrom Comm'n Cases* 186 Cal.App.4th 576, 579 (2010) ("trial court did not abuse its discretion in approving a settlement which does not allocate any damages to the PAGA claims").

Using these estimated figures, Plaintiff predicted that the realistic maximum recovery for all claims, including penalties, would be $1,111,150.47 ($899,343.42 in damages for violations + $211,807.05 (inclusive of wage statement penalties, waiting time penalties, and PAGA penalties) in statutory and civil penalties). *Id.* at ¶ 20. This means that the $1,080,000.00 settlement figure represents 97.20% of the realistic maximum recovery. *Id.* Considering the risk and uncertainty of prevailing at class certification and at trial, this is an excellent result for the Class. *Id*. Indeed,

[1] We estimate that Plaintiff's realistic estimated recovery for the non-penalty claims is $899,343.42 ($55,416.62 for unpaid wages + $213,858.06 for meal period violations + $467,960.74 for rest break violations + $162,108.00 for unpaid reimbursements). Yslas Decl., ¶ 17.

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because of the proposed Settlement, Class Members will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment. *Id.*

C. The Requested Service Payment is Reasonable

Plaintiff seeks a Class Representative Service Payment of up to $10,000.00 for Plaintiff Karla Morales, 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, Plaintiff assisted counsel in gathering evidence necessary to prosecute the claims, maintained regular contact with counsel, was available on the day of mediation to answer questions, and reviewed the Settlement to ensure it was fair to the Class. Morales Decl. at ¶ 7. No action would likely have been taken by Class Members individually and no compensation would have been recovered for them, but for Plaintiff's services on behalf of the Class. By actively pursuing this action, Plaintiff 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.

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 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.").

Plaintiff seeks 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 ¶¶ 21-33. Plaintiff's Counsel seeks preliminary approval for

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$360,000.00 in attorneys' fees, which is one-third (1/3) of the Gross Settlement Amount, and reimbursement of actual litigation costs not to exceed $20,000.00. Given the work performed in this matter, the extensive information exchange, and the substantial recovery obtained on behalf of the Class, Plaintiff's Counsel achieved a settlement through efficient and diligent work. *See generally*, Yslas Decl. At final approval, Plaintiff's 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. 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: March 24, 2025

WILSHIRE LAW FIRM

By: ______________________

John G. Yslas
Attorneys for Plaintiff