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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

JOSE DE JESUS CHIQUITO DIAZ DE LEON,
individually, and on behalf of all others similarly
situated,

Plaintiff,

v.

PHILCAL, INC., dba FARMER BOYS
VICTORVILLE, a California corporation; and
DOES 1 through 10, inclusive,

Defendants.

Case No.: CIVSB2317424

CLASS ACTION

*[Assigned for all purposes to: Hon. David E.
Driscoll, Dept. S22]*

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

PRELIMINARY APPROVAL HEARING

Date: March 24, 2026

Time: 8:30 a.m.

Dept: S22

Complaint filed: July 28, 2023

FAC filed: February 7, 2024

Trial date: Not set

1 **TO THE COURT AND TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 PLEASE TAKE NOTICE that on March 24, 2026 at 8:30 a.m., in Department S22 of the
3 San Bernardino Superior Court, located at 247 West Third Street, San Bernardino, California
4 92415, pursuant to Code of Civil Procedure § 382 and California Rules of Court 3.769 *et seq.*,
5 Plaintiff Jose de Jesus Chiquito Diaz de Leon will move the Court for an Order granting
6 preliminary approval of the proposed class action settlement between Plaintiff and Defendant
7 PhilCal, Inc., dba Farmer Boys Victorville (“Defendant”). Plaintiff further moves the Court for an
8 Order:

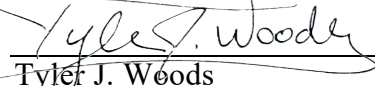
- 9 1. Granting preliminary approval of the Class Action and PAGA Settlement Agreement
10 and Class Notice;
11 2. Certifying a Class for settlement purposes;
12 3. Approving the Notice and the plan for distribution of the Notice;
13 4. Appointing Plaintiff Jose de Jesus Chiquito Diaz de Leon as Class Representative for
14 settlement purposes;
15 5. Appointing Plaintiff’s Counsel, Tyler J. Woods, Alan Wilcox, and Lucy Nguyen of
16 Wilshire Law Firm, PLC, as Class Counsel for settlement purposes;
17 6. Appointing ILYM Group, Inc. as the Settlement Administrator; and
18 7. Scheduling a final approval hearing.

19 The motion will be based upon this notice, the attached memorandum of points and
20 authorities, the Declarations of Tyler Woods and Jose de Jesus Chiquito Diaz de Leon, filed
21 concurrently herewith, the records and files in this action, and any other further evidence or
22 argument that the Court may properly receive at or before the hearing.

23 Respectfully submitted,

24 Dated: December 15, 2025

WILSHIRE LAW FIRM

25 By: 

26 Tyler J. Woods

27 Alan Wilcox

28 Lucy Nguyen

Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Jose de Jesus Chiquito Diaz de Leon (“Plaintiff”) seeks preliminary approval of a proposed \$100,000.00 non-reversionary, wage and hour class action settlement with Defendant PhilCal, Inc., dba Farmer Boys Victorville (“Defendant”). The Settlement will provide substantial monetary payments to approximately 104 class members. And, as set forth more fully below, the proposed Settlement satisfies all the criteria for settlement approval under California law. The Settlement was reached after extensive investigation, discovery, and negotiations. After extensive arms-lengths negotiations and discussions regarding the strengths and weaknesses of Plaintiff’s claims and Defendant’s defenses, the Parties reached a settlement on November 6, 2023. Accordingly, Plaintiff requests that the Court preliminarily approve the proposed Settlement, certify the proposed settlement class, approve the proposed notice, and set a final approval hearing.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiff’s Claims

This is a wage and hour class action and Private Attorneys General Act (“PAGA”) (Cal. Lab. Code §§ 2699, *et seq.*) representative action. Plaintiff and putative class members worked in California as hourly-paid or non-exempt employees for Defendant during the class period. Defendant is a casual fast-food restaurant that specializes in farm fresh ingredients and food and is located in Victorville, California. (Declaration of Tyler Woods in Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement [“Woods Decl.”], ¶ 2.)

Plaintiff alleges that Defendant’s payroll, timekeeping, and wage and hour practices resulted in Labor Code violations. Plaintiff alleges that Defendant failed to pay for all hours worked. Plaintiff further alleges that Defendant failed to provide employees with legally compliant meal and rest periods, and Defendant failed to reimburse business expenses. Based on these allegations, Plaintiff asserts related claims for failure to provide accurate wage statements, failure to pay all final wages at termination, unfair business practices, and civil penalties under PAGA. (*Id.* at ¶ 3.)

On July 28, 2023, Plaintiff filed a putative wage-and-hour class action complaint against

1 Defendant for: (1) failure to pay minimum and straight time wages (Labor Code §§ 204, 1194,
2 1194.2, and 1197); (2) failure to pay overtime wages (Labor Code §§ 1194 and 1198); (3) failure
3 to provide meal periods (Labor Code §§ 226.7 and 512); (4) failure to authorize and permit rest
4 periods (Labor Code §§ 226.7 and 512); (5) failure to timely pay final wages at termination
5 (Labor Code §§ 201-203); (6) failure to provide accurate itemized wage statements (Labor Code
6 § 226); (7) failure to indemnify employees for expenditures (Labor Code § 2802); and (8) unfair
7 business practices (Business and Professions Code 17200 et seq.). On February 7, 2024,
8 Plaintiff filed a First Amended Complaint against Defendant adding claims for civil penalties
9 under Private Attorneys General Act “PAGA” (Labor Code §§ 2698, *et seq.*) Plaintiff sent a
10 notice to Defendant and the California Labor & Workforce Development Agency (“LWDA”)
11 alleging similar wage and hour violations pursuant to the PAGA (Cal. Lab. Code §§ 2699, *et*
12 *seq.*) on August 23, 2023. (Woods Decl., ¶ 4.)

13 **B. Discovery and Investigation**

14 Following the filing of the Complaint, the Parties exchanged documents and information
15 before engaging in negotiations. After reviewing the documents and information provided by
16 Defendant’s, Class Counsel was able to evaluate the probability of class certification, success
17 on the merits, and Defendant’s maximum monetary exposure for all claims. (Woods Decl., ¶
18 5.) Class Counsel also investigated the applicable law regarding the claims and defenses
19 asserted in the litigation. (*Id.*)

20 **C. Settlement Negotiations**

21 The Parties participated in numerous arms-length negotiations and discussions regarding
22 the Plaintiff’s claims and Defendant’s defenses. (Woods Decl., ¶ 6.) The settlement
23 negotiations were at arm’s length and, although conducted in a professional manner, were
24 adversarial. The Parties went into the negotiations willing to explore the potential for a
25 settlement of the dispute, but each side was also prepared to litigate their position through trial
26 and appeal if a settlement had not been reached. (*Id.*) After extensive negotiations and
27 discussions regarding the strengths and weaknesses of Plaintiff’s claims and Defendant’s
28 defenses, the Parties reached a settlement the material terms of which are encompassed within

1 the Settlement. (*Id.* at ¶ 7, Ex. 1 [Class Action and PAGA Settlement Agreement and Class
2 Notice].)

3 Class Counsel has conducted a thorough investigation into the facts of this case. Based
4 on the foregoing discovery and their own independent investigation and evaluation, Class
5 Counsel is of the opinion that the Settlement is fair, reasonable, and adequate and is in the best
6 interests of the Settlement Class Members in light of all known facts and circumstances, the
7 risk of significant delay, the defenses that could be asserted by Defendant both to certification
8 and on the merits, trial risk, and appellate risk. (*Id.* at ¶ 15.)

9 Indeed, the \$100,000.00 Settlement represents **52% of the realistic maximum recovery**
10 **of \$193,409.33.** (*Id.* at ¶ 24.) Although Class Counsel estimated that Defendant’s maximum
11 potential liability for all claims was approximately \$1 million, when the risk of prevailing at
12 certification and trial are factored into the equation, Class Counsel believes that Defendant’s
13 realistic exposure was \$193,409.33, meaning the Settlement achieves a significant recovery.
14 (*Id.* at ¶¶ 15-28.) Considering the risk and uncertainty of prevailing at class certification and at
15 trial, this is an excellent result for the Class. (*Id.* at ¶ 24.) Indeed, because of the proposed
16 Settlement, class members will receive timely, guaranteed relief and will avoid the risk of an
17 unfavorable judgment.

18 **D. Key Terms of the Proposed Settlement**

19 The Parties used the Los Angeles Superior Court’s Form Class Action and PAGA
20 Settlement Agreement and Class Notice. The Settlement’s key terms include:

21 1. Class Definition: For settlement purposes only, the Parties agree to the certification
22 of a class pursuant to California Code of Civil Procedure § 382 defined as: “all persons employed
23 by Defendant in California and classified as hourly-paid or non-exempt employees who worked
24 for Defendant during the Class Period.” (Settlement, § 1.5.)

25 2. Class Period: “means the period from July 28, 2019 through June 30, 2024.”
26 (Settlement, § 1.12.)

27 3. Participating Class Members: “means a Class Member who does not submit a valid
28 and timely Request for Exclusion from the Settlement.” (Settlement, § 1.35.)

1 4. Aggrieved Employees: “means a person employed by Defendant in California and
2 classified as a hourly-paid or non-exempt employee who worked for Defendant during the PAGA
3 Period.” (Settlement, § 1.4.)

4 5. PAGA Period: “means the period from August 22, 2022 through June 30, 2024.”
5 (Settlement, § 1.31.)

6 6. Gross Settlement Amount: “means \$100,000.00 which is the total amount
7 Defendant agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross
8 Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments,
9 the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative
10 Service Payment, and the Administrator’s Expenses.” (Settlement, § 1.22.)

11 7. Uncashed Checks: If a settlement check is returned to the Settlement Administrator
12 as undeliverable, the Settlement Administrator shall promptly attempt to obtain a valid mailing
13 address by performing a skip trace search and, if another address is identified, shall mail the check
14 to the newly identified address. Any settlement checks remaining uncashed after one hundred and
15 eighty (180) days shall be transmitted to the California Controller's Unclaimed Property Fund in
16 the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of
17 California Code of Civil Procedure Section 384, subd. (b). (Settlement, § 4.4.3.)

18 8. Release by Plaintiff and the Participating Class Members: “Plaintiff and all
19 Participating Class Members, on behalf of themselves and their respective former and present
20 representatives, agents, attorney, heirs, administrators, successors, and assigns, release Released
21 Parties from all claims that were alleged, or reasonably could have been alleged, based on the Class
22 Period and facts stated in the Operative Complaint, including, any and all claims involving any
23 recovery of unpaid minimum wages and unpaid overtime (Cal. Lab. Code §§ 204, 1194, 1194.2,
24 1197, 1198), failure to provide meal and rest periods (Cal. Lab. Code §§ 226.7, 512), failure to
25 provide accurate wage statements (Cal. Lab. Code § 226), failure to pay all wages due at separation
26 (Cal. Lab. Code §§ 201-203), failure to reimburse business expenses (Cal. Lab. Code § 2802), and
27 violation of Unfair Business Practices (Cal. Bus. & Prof. Code §§ 17200, et seq.). Participating
28 Class Members do not release any other claims, including claims for vested benefits, wrongful

1 termination, violation of the Fair Employment and Housing Act, unemployment insurance,
2 disability, social security, workers' compensation, or claims based on facts occurring outside the
3 Class Period.” (Settlement, § 5.2.) This Release will be deemed effective on the date when
4 Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes
5 owed on the Wage Portion of the Individual Class Payments. (Settlement, § 5.)

6 9. Release by Plaintiff and the Aggrieved Employees: “Plaintiff and all Aggrieved
7 Employees, regardless of whether they are Participating Class Members or Non-Participating Class
8 Members, on behalf of themselves and their respective former and present representatives, agents,
9 attorneys, heirs, administrators, successors, and assigns, release the Released Parties from all
10 claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the
11 facts stated in the Operative Complaint and the PAGA Notice that arose during the PAGA Period,
12 including any and all claims involving any alleged failure to pay minimum wages or overtime,
13 failure to provide meal and rest periods, failure to provide accurate wage statements, failure to pay
14 all wages due at separation, and failure to reimburse business expenses, including Labor Code
15 sections 201, 202, 203, 204, 210, , 226, 226.3, 510, 1174.5, 1194, 1197, 1198, 2699, 2699.3, and
16 2802 during the PAGA Period. Aggrieved Employees only release these claims for the duration of
17 the PAGA Period. (“Released PAGA Claims”). The foregoing release shall be binding on Plaintiff,
18 the Aggrieved Employees, and the State of California, and shall bar by res judicata any claim under
19 the PAGA brought by any person, including the Aggrieved Employees, on behalf of the State of
20 California, as to any claims predicated on the Released PAGA Claims.” (Settlement, § 5.3.)

21 10. No Reversion: “None of the Gross Settlement Amount will revert to Defendant.”
22 (Settlement, § 3.1.)

23 11. PAGA Allocation: The settlement includes \$4,000.00 allocated to Plaintiff's claims
24 under PAGA, with 75% of which (\$3,000.00) being paid to the LWDA and 25% (\$1,000.00) being
25 paid to the Aggrieved Employees. (Settlement, § 1.34.) Class Counsel submitted the proposed
26 settlement to the LWDA before filing this Motion for Preliminary Approval. (Woods Decl., ¶ 14.)

27 12. Net Settlement Amount: “means the Gross Settlement Amount, less the following
28 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA

1 Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel
2 Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be
3 paid to Participating Class Members as Individual Class Payments.” (Settlement, § 1.28.)

4 13. Distribution Formula: “An Individual Class Payment calculated by (a) dividing the
5 Net Settlement Amount by the total number of Workweeks worked by all Participating Class
6 Members during the Class Period and (b) multiplying the result by each Participating Class
7 Member’s Workweeks.” (Settlement, § 3.2.4.) As to PAGA: “The Administrator will calculate
8 each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees’ 25%
9 share of PAGA Penalties (\$1,000.00) by the total number of PAGA Period Pay Periods worked by
10 all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each
11 Aggrieved Employee’s PAGA Period Pay Periods.” (Settlement, § 3.2.5.1.)

12 14. Tax Allocation: Any settlement money paid to Settlement Class Members will be
13 allocated as 20% wages, 80% to penalties and interest. (Settlement, § 3.2.4.1.)

14 15. Class Representative Service Award: Subject to Court approval, Plaintiff shall be
15 paid an enhancement award not to exceed \$5,000.00. (Settlement, § 3.2.1.) This amount is for
16 Plaintiff’s time and effort in bringing and presenting the action, and in exchange for a general
17 release of all claims, known or unknown, pursuant to Civil Code Section 1542. (Settlement, § 5.1.)
18 If the Court approves a lesser enhancement, then the unapproved portion or portions shall revert
19 into the Net Settlement Amount to be distributed between the participating Settlement Class
20 Members on a pro-rata basis. (Settlement, § 3.2.1.)

21 16. Attorneys’ Fees and Costs: The Settlement provides that Defendant will not oppose
22 a fee application of up to 33 1/3% (\$33,333.33) of the Gross Settlement Amount, plus out-of-
23 pocket costs not to exceed \$6,500.00. (Settlement, § 3.2.2.)

24 17. Notice of Proposed Class Action Settlement: The Notice sets forth in plain terms, a
25 statement of the case, the terms of the Settlement Agreement, the approximate amount of attorneys’
26 fees, costs, and service award being sought, and an explanation of how the settlement allocations
27 are calculated. (Settlement, Ex. 1, Class Notice.) Class Members will be notified by first-class
28 mail of the settlement. (Settlement, § 7.4.) ILYM Group, Inc. (“ILYM”), the proposed Settlement

1 Administrator, will undertake its best efforts to ensure that the notice is provided to the current
2 addresses of class members, including conducting a national change of address search and re-
3 mailing the notice to updated addresses. (*Id.*; Woods Decl., ¶ 10, Ex. 2 [Settlement Administrator
4 Bid].)

5 **III. DISCUSSION**

6 To prevent fraud, collusion, or unfairness to the class, the settlement of a class action
7 requires court approval. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800-01.) This
8 Court has wide discretion to determine whether the proposed settlement is fair. (*Mallick v. Super.*
9 *Ct.* (1979) 89 Cal.App.3d 434, 438.) Fairness is presumed when: (1) the settlement is reached
10 through arm's-length bargaining; (2) investigation is sufficient to allow counsel and the court to
11 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors
12 is small. (*Dunk*, 48 Cal.App.4th at p. 1800.)

13 In considering whether a settlement is reasonable, the trial court should consider relevant
14 factors, which may include the strength of plaintiff's case, the risk, expense, complexity and likely
15 duration of further litigation, the risk of maintaining class action status through trial, the amount
16 offered in settlement, the extent of discovery completed and the stage of the proceedings, the
17 experience and views of counsel, the presence of a governmental participant, and the reaction of
18 the class members to the proposed settlement. (*Kullar v. Foot Locker Retail, Inc.*, (2008) 168
19 Cal.App.4th 116, 128.) In order to approve a class action settlement, the court must satisfy itself
20 that the class settlement is within the "ballpark" of reasonableness. (*Id.* at p. 133.) The record
21 need not contain an explicit statement of the maximum theoretical recovery. (*Munoz v. BCI Coca-*
22 *Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408-9 [holding that *Kullar* does not
23 require "an explicit statement of the maximum amount the plaintiff class could recover if it
24 prevailed on all its claims", but instead, only an "understanding of the amount that is in controversy
25 and the realistic range of outcomes of the litigation."].)

26 ///

As discussed below, Class Counsel has provided information exceeding the threshold required to provide this Court with materials and information necessary to determine that the proposed settlement is fair, adequate, and reasonable.

A. The Settlement Is Fair, Reasonable, Adequate, and the Product of Investigation, Litigation, and Negotiation

1. The Settlement Is the Product of Discovery, Investigation, and Informed and Non-Collusive Arm's-Length Negotiations

Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered; thus, there is a presumption here that the negotiations were conducted in good faith. (Conte & Newberg, *Newberg on Class Actions* (3rd Ed.) § 11.51.) Settlement is favored, and settlement agreements are realistically assessed. (*Stamburgh v. Super. Ct.* (1976) 62 Cal.App.3d 231, 236; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447 [“The fact that a plaintiff might have received more if the case had been fully litigated is no reason not to approve the settlement.”].)

The Settlement was reached following extensive arms-length negotiations between the parties. (Woods Decl. ¶ 6.) The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. (*Id.*) After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiff's claims and Defendant's defenses, the Parties reached an agreement. (*Id.* at ¶ 7.)

Prior to reaching this settlement, the Parties exchanged documents and information before engaging in negotiations. (*Id.* at ¶ 5.) In conjunction with their extensive factual investigation, Class Counsel investigated the applicable law regarding the claims and defenses asserted in the litigation. (*Id.*) Thus, Plaintiff and his counsel were able to act intelligently and effectively in negotiating the proposed Settlement. (*Id.*)

Class Counsel also has considerable experience and has demonstrated competence with litigating wage and hour class actions. (*Id.* at ¶¶ 39-50.) Again, this supports the position that the terms of the Settlement are premised on objective evidence that has been considered and weighed

1 in light of the risks, expenses, and time consumption to both sides of continued litigation of this
2 action.

3 **2. The Settlement Is Fair and Reasonable in Light of the Parties’** 4 **Respective Legal Positions**

5 A settlement is not judged against what might plaintiff recover had he prevailed at trial, nor
6 does the settlement have to provide 100% of the damages sought to be fair and reasonable.
7 (*Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 246, 250 [“Compromise is inherent
8 and necessary in the settlement process . . . even if the relief afforded by the proposed settlement
9 is substantially narrower than it would be if the suits were to be successfully litigated, this is no
10 bar to a class settlement because the public interest may indeed be served by a voluntary settlement
11 in which each side gives ground in the interest of avoiding litigation.”].)

12 This settlement avoids the risks and the accompanying expense of further litigation.
13 (Woods Decl., ¶ 26.) While Plaintiff is confident in the merits of his claims, a legitimate
14 controversy exists as to each cause of action. (*Id.* at ¶ 25.) Plaintiff also recognizes that proving
15 the amount of wages due to each class member would be an expensive, time-consuming, and
16 uncertain proposition. (*Id.*)

17 The proposed settlement of \$100,000.00 therefore represents a substantial recovery when
18 compared to Plaintiff’s reasonably forecasted recovery. (*Id.* at ¶¶ 15-28.) Because of the proposed
19 Settlement, class members will receive timely, guaranteed relief and will avoid the risk of an
20 unfavorable judgment. When considering the risks of litigation, the uncertainties involved in
21 achieving class certification, the burdens of proof necessary to establish liability, the probability
22 of appeal of a favorable judgment, it is clear that the settlement amount of \$100,000.00 is within
23 the “ballpark” of reasonableness, and preliminary settlement approval is appropriate. (*Id.*) ***Indeed,***
24 ***each Settlement Class Member is eligible to receive an average net benefit of approximately***
25 ***\$431.89.*** (*Id.* at ¶ 27.)

26 **3. Class Counsel Has Extensive Experience in Class Action Litigation**

27 The settlement negotiations were conducted by highly capable and experienced counsel.
28 Class Counsel have a strong record of vigorous and effective advocacy for their clients and are

1 experienced in handling complex wage and hour class action litigation. (Woods Decl., ¶¶ 39-50.)
2 Although Plaintiff and his counsel were prepared to litigate the claims alleged in the litigation,
3 they support the proposed Settlement as being in the best interests of the class.

4 **B. The Proposed Class Notice of Settlement Should Be Approved**

5 The proposed Notice, in the form attached to the Settlement Agreement, should be approved
6 for dissemination to the class. The Notice informs the class of the terms of the settlement and of
7 their rights to be excluded from the settlement. And if there are class members who wish to object
8 to this proposed class action settlement, they will have the opportunity to file their objections and
9 be heard at the Final Approval Hearing. Accordingly, the proposed Notice meets all the
10 requirements of Rule 3.769(f) of the California Rules of Court.

11 **C. The Proposed Attorneys' Fees and Costs Are Reasonable**

12 Under the Settlement, subject to the Court's approval, Defendant agrees to pay Class
13 Counsel reasonable attorneys' fees in amount of \$33,333.33, which is 33 1/3% of the gross
14 Settlement Amount, and up to \$6,500.00 in costs. These amounts are disclosed to all class
15 members in the proposed Notice and are reasonable.

16 **1. Class Counsel Request an Award of Fees Based on the "Common Fund"**
17 **Method**

18 California courts have long awarded attorneys' fees as a percentage of the benefit created
19 by counsel in creating a common fund. The California Supreme Court held that "when a number
20 of persons is entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs
21 for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs
22 may be awarded attorneys' fees out of the fund." (*Serrano v. Priest* (1977) 20 Cal.3d 25, 34,
23 quoting *D'Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1.)

24 Class Counsel seeks an award of attorneys' fees on the "percentage of recovery/ common
25 fund" theory. The purpose of this approach is to "spread litigation costs proportionally among all
26 the beneficiaries so that the active beneficiary does not bear the entire burden alone." (*Vincent v.*
27 *Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn v. State of California* (1995)
28 15 Cal.3d 162, the California Supreme Court stated: "[O]ne who expends attorneys' fees in

1 winning a suit which creates a fund from which others derive benefits may require those passive
2 beneficiaries to bear a fair share of the litigation costs.” (*Id.* at p. 167.) Similarly, in *City and*
3 *County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court recognized
4 that the common fund doctrine has been applied “consistently in California when an action brought
5 by one party creates a fund in which other persons are entitled to share.” (*Id.* at p. 110.)

6 The California Supreme Court affirmed in *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th
7 480 that, “when class action litigation establishes a monetary fund for the benefit of the class
8 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the
9 court may determine the amount of a reasonable fee by choosing an appropriate percentage of the
10 fund created.” (*Id.* at p. 503.) The court explained: “The recognized advantages of the percentage
11 method—including relative ease of calculation, alignment of incentives between counsel and the
12 class, a better approximation of market conditions in a contingency case, and the encouragement
13 it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation—
14 convince us the percentage method is a valuable tool that should not be denied our trial courts.”
15 (*Id.* [internal citations omitted].)

16 **2. The Requested Fee Award Is in Line with Typical Cases**

17 According to a leading treatise on class actions, “No general rule can be articulated on what
18 is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a
19 reasonable fee award from a common fund in order to assure that the fees do not consume a
20 disproportionate part of the recovery obtained for the class, although somewhat larger percentages
21 are not unprecedented.” (*See Conte & Newberg, Newberg on Class Actions* (3rd Ed.) § 14.03.)
22 Attorneys’ fees that are fifty percent of the fund are typically considered the upper limit, with thirty
23 to forty percent commonly awarded in cases where the settlement is relatively small. (*Id.*; see also
24 *Van Vranken v. Atlantic Richfield Company* (N.D. Cal. 1995) 901 F. Supp. 294 [stating that most
25 cases where 30-50 percent was awarded involved “smaller” settlement funds of under \$10
26 million].)

27 Here, Plaintiff requests attorneys’ fees equal to 33 1/3% of the Settlement Amount, which
28 is in line with the prevailing guidelines established in California case law and academic literature

1 and is consistent with awards in California. (*See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th
2 43, 66, n.11 [“Empirical studies show that, regardless whether the percentage method or the
3 lodestar method is used, fee awards in class actions average around one-third of the recovery.”].)
4 Accordingly, Plaintiff respectfully requests that the Court approve the attorneys’ fees as negotiated
5 by the parties and requested herein.

6 **3. This Matter Involves A “Fee-Shifting” Provision of the Labor Code**

7 Labor Code § 1194(a) provides for the recovery of “minimum wage or overtime
8 compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” Under this
9 section, Plaintiff would be permitted to recover his actual attorneys’ fees, even if those fees were
10 larger than the total class recovery at the conclusion of this case. This settlement is beneficial in
11 that it limits the risk of continued expenses and consumption of time, energy, and resources facing
12 Defendant while at the same time rewarding Class Counsel for their decision to assume risk by
13 taking on this matter. In fact, prosecution of this action involved significant financial risk for Class
14 Counsel. (Woods Decl., ¶¶ 37-38.) Class Counsel undertook this matter solely on a contingent
15 basis, with no guarantee of recovery. (*Id.*) Once counsel undertook this litigation on behalf of the
16 Class, Class Counsel committed to pursue it to its conclusion, placing its fiduciary duty to the Class
17 ahead of all other concerns.

18 **4. The Experience, Reputation and Ability of Class Counsel Support the** 19 **Requested Fee Award**

20 As demonstrated by their past experience in pursuing class actions on behalf of consumers
21 and employees, Class Counsel possess considerable expertise in litigating class actions. (Woods
22 Decl., ¶¶ 39-50.) Class Counsel has been involved as lead counsel or co-counsel in several class
23 actions that resulted in millions in recovery. (*Id.*) Because it is reasonable to compensate class
24 counsel commensurate with their skill, reputation and experience, Class Counsel’s requested fee
25 award is supported here.

26 Class Counsel’s experience in wage and hour class actions was integral in evaluating the
27 strengths and weaknesses of the case against Defendant and the reasonableness of the settlement.
28 Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning

1 the rapidly evolving substantive law (state and federal), as well as the procedural law of class
2 action litigation. Based on these and other factors, Class Counsel has frequently received fee
3 awards of this percentage from the gross recovery for the class. Therefore, the requested fee award
4 is reasonable and fair.

5 **D. The PAGA Allocation is Reasonable**

6 Where settlements negotiate a good faith amount for PAGA penalties and “there is no
7 indication that this amount was the result of self-interest at the expense of other” class members,
8 such amounts are generally considered reasonable. (*Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr.
9 3, 2009) No. CV-08-0844 EDL, 2009 WL 928133 at *1, 9.) Courts have approved amounts for
10 PAGA penalties in the range of zero to two percent of the total maximum amount of the
11 Settlement. (*Id.* [approving a PAGA payment of 0.3%, or \$1,500]; see also *Jack v. Hartford Fire*
12 *Ins. Co.* (S.D. Cal. Oct. 13, 2011) 2011 WL 4899942 at *6 [approving a PAGA payment of
13 0.25%]; *McKenzie v. Fed. Express Corp.* (C.D. Cal. Jan. 23, 2012) 2012 WL 12882124 at *5
14 [acknowledging that courts approve PAGA claim settlements in the range of zero to two percent
15 of the total settlement].) Here, the amount to be paid to the LWDA is larger than many other
16 PAGA settlement amounts approved by the courts where seemingly nominal amounts were
17 allocated for such claims. (See, e.g. *Zubia v. Shamrock Foods Co.* (C.D. Cal. Dec. 21, 2017) No.
18 CV1603128ABAGRX, 2017 WL 10541431, at *14 [approving a PAGA settlement of 0.1%];
19 *Hopson, supra*, (N.D. Cal. Aug. 8, 2008) 2008 WL 3385452, at *1 [approving a PAGA
20 settlement of 0.3% or \$1,500]; *Garcia v. Gordon Trucking, Inc.* (E.D. Cal. Oct. 31, 2012) No.
21 1:10-CV-0324 AWI SKO, 2012 WL 5364575, at *3 [approving a PAGA settlement of 0.27%].)
22 Here, the Parties negotiated a good faith amount of \$4,000.00, 75% percent of which (\$3,000.00)
23 will be paid to the LWDA, with 25% (\$1,000.00) to be distributed to the Aggrieved Employees.
24 (Settlement at §1.34.) The \$4,000.00 settlement amount equates to approximately 4% of the
25 Gross Settlement Amount, which far exceeds amounts that are routinely approved. The parties
26 negotiated to allocate 4% of the Settlement to PAGA penalties in good faith and this amount is
27 reasonable considering that the maximum PAGA penalties were estimated at \$212,400.00 (which
28 assumed \$100 per pay period). (Woods Decl. ¶ 23.)

1 **E. The Service Award to Named Plaintiff Is Reasonable**

2 Named plaintiffs in class action lawsuits “are eligible for reasonable incentive payments to
3 compensate them for the expense or risk they have incurred in conferring a benefit on other
4 members of the class.” (*Munoz, supra*, 86 Cal.App.4th at p. 412.) Courts routinely grant approval
5 of class action settlement agreements containing enhancements for the class representatives, which
6 are necessary to provide incentive to represent the class, and are appropriate given the benefit the
7 class representatives help to bring about for the class. (*See Rodriguez v. W. Publ'g Corp.* (9th Cir.
8 2009) 563 F.3d 948, 958-59.)

9 Service awards are particularly important to plaintiffs in wage and hour cases because they
10 promote the important public policies underlying the wage and hour laws. This strong policy is
11 codified in California Labor Code § 90.5, which provides, “it is the policy of this state to vigorously
12 enforce minimum labor standards in order to ensure employees are not required or permitted to
13 work under substandard unlawful conditions”). Nonetheless, the California Supreme Court
14 has noted that “retaliation against employees for asserting statutory rights under the Labor Code is
15 widespread,” despite anti-retaliation statutes designed to protect employees. (*Gentry v. Super. Ct.*
16 (2007) 42 Cal.4th 443, 460-61.) In this context, class representatives should be rewarded for
17 assuming the risk of retaliation for the sake of class members. (*See Frank v. Eastman Kodak Co.*
18 (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

19 Under the settlement agreement, subject to the Court’s approval, Defendant agreed to pay
20 a Service Award in the amount of \$5,000.00 to Plaintiff. This amount is also in exchange for
21 Plaintiff’s general release of all claims against Defendant. Courts routinely approve up to a
22 \$10,000 enhancement award for plaintiffs represented by Class Counsel. (*See, e.g., Moreno v.*
23 *Pretium Packaging, L.L.C.* (C.D. Cal. Aug. 6, 2021) 2021 WL 3673845, *3 [“The Court concludes
24 a \$10,000 incentive award is appropriate.”]; *Suarez, supra*, 2024 WL 150721 at p. *4 [“The court
25 approves awards of \$10,000 for each class representative.”].) Class Counsel represent that Plaintiff
26 devoted a great deal of time and work assisting counsel in the case, communicated with counsel
27 very frequently for litigation and to prepare for mediation, and was frequently in contact with Class
28

1 Counsel during the mediation. (Woods Decl., ¶¶ 29-33.) This amount is reasonable particularly
2 in light of the substantial benefits Plaintiff generated for all class members.

3 When compared with the amounts awarded in typical class action cases, the amount
4 requested here is particularly reasonable. Indeed, a **2006** study examining the average incentive
5 award given to class action plaintiffs from **1993 to 2002** found that the “average award per class
6 representative was \$15,992 and the median award per class representative was \$4,357.” (Eisenberg
7 & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study* (2006) 53 UCLA L.Rev.
8 1303, 1308.) That same study found that named plaintiffs in employment discrimination class
9 actions received an average award of \$69,850 and a median award of \$31,081, while named
10 plaintiffs in other employment class actions received an average award of \$12,121 and a median
11 award of \$13,059. (*Id.* at p. 1334.) The authors of the study found that higher awards in
12 employment cases reflected the “courts’ wish to make representative plaintiffs whole by
13 compensating them for the high costs of their service to the class, including risks of stigmatization
14 or retaliation on the job.” (*Id.* at p. 1308.)

15 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED**

16 **A. Legal Standard**

17 The proposed Settlement Class is well suited for class certification. All of the claims derive
18 from a core set of alleged violations of California’s wage and hour laws and regulations. For the
19 reasons set forth more fully below, for purposes of settlement only, the Class satisfies the
20 prerequisites for certification under Code of Civil Procedure § 382. Section 382 provides: “when
21 the question is one of a common or general interest, of many persons, or when the parties are
22 numerous, and it is impracticable to bring them all before the court, one or more may sue or defend
23 for the benefit of all.” (Code Civ. Proc., § 382.) There are two requirements to section 382: “(1)
24 There must be an ascertainable class; and (2) there must be a well-defined community of interest
25 in the questions of law and fact involved affecting the parties to be represented.” (*Daar v. Yellow*
26 *Cab Co.* (1967) 67 Cal. 2d 695, 704 [citations omitted].) To clarify these requirements, the
27 California Supreme Court has looked to Federal Rule of Civil Procedure 23 to explain that the
28 community-of-interest requirement itself embodies three factors: “(1) predominant questions of

1 law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class
2 representatives who can adequately represent the class.” (*Richmond v. Dart Indus., Inc.* (1981) 29
3 Cal. 3d 462, 470.)

4 California law and policy favor the fullest and most flexible use of the class action device.
5 (*Id.* at pp. 469-73.) Indeed, “Courts long have acknowledged the importance of class actions as a
6 means to prevent a failure of justice in our judicial system” particularly where the rights of
7 consumers are at issue. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 434.) Any doubt as to
8 the appropriateness of class treatment should be resolved in favor of certification. (*Richmond*,
9 *supra*, 29 Cal.3d at pp. 473-75.)

10 **B. Plaintiff Maintains That the Criteria for Class Certification Are Satisfied for**
11 **Settlement Purposes.**

12 **1. The Classes Are Ascertainable and Numerous**

13 The proposed class that Plaintiff seeks to represent is easily ascertainable and includes
14 approximately 104 employees of Defendant.

15 Plaintiff maintains that there is an easily ascertainable class, defined by objective and
16 precise criteria. Because class members are identified using specific criteria in the regular business
17 records of Defendant, i.e., job position, the class is ascertainable. (*Wilner v. Sunset Life Ins. Co.*
18 (2000) 78 Cal.App.4th 952, 959-60 [class membership defined by ownership of product that is the
19 subject of the lawsuit is sufficient to make the class ascertainable].)

20 “The requirement of Code of Civil Procedure section 382 that there be ‘many’ parties to a
21 class action suit is indefinite and has been construed liberally.” (*Rose v. City of Hayward* (1981)
22 126 Cal.App.3d 926, 934.) “Where a question is of common interest to ‘many’ persons, an action
23 may be maintained as a class action even where the parties are numerous and it is in fact practicable
24 to join them all.” (*Id.*) “No set number is required as a matter of law for the maintenance of a
25 class action.” (*Id.*) “Thus, our Supreme Court has upheld a class representing the 10 beneficiaries
26 of a trust in an action for removal of the trustees.” (*Id.*, citing *Bowles v. Super. Ct.* (1955) 44
27 Cal.2d 574; see also, *Collins v. Rocha* (1972) 7 Cal.3d 232 [upholding a 35 member class.])
28 Therefore, Plaintiff contends that numerosity is plainly satisfied.

1 **2. There are Many Common Issues of Law and Fact Which Predominate**

2 The Court should grant conditional class certification for settlement purposes here on the
3 grounds that questions of law and fact common to all class and subclass predominate over any
4 individual questions. This inquiry tests whether proposed classes are sufficiently cohesive to
5 warrant adjudication by representation. (*See, e.g., Clothesrigger, Inc. v. GTE Corp.* (1987) 191
6 Cal.App.3d 605.)

7 Here, the employment practices at issue are: whether Defendant had legally compliant
8 policies and practices to provide employees with meal periods; whether Defendant had legally
9 compliant policies and practices authorizing and permitting its employees to take rest periods;
10 whether Defendant had legally compliant policies and practices for all hours worked, including
11 overtime wages; whether Defendant reimbursed employees for business expenses; whether final
12 payment of wages was untimely and excluded unpaid wages, including meal period premium
13 wages, and rest period premium wages; and whether the wage statements were consequently non-
14 compliant. Plaintiff contends that the factual and legal issues are the same for all of the identified
15 class members, including Plaintiff. Further, all class members suffered from, and seek redress for,
16 the same alleged injuries.

17 **3. Plaintiff's Claims Are Typical of the Claims of the Class**

18 The typicality requirement does not focus on the individual characteristics or circumstances
19 of the representative plaintiff compared to those of the remainder of the class, but rather upon the
20 typicality of the proposed representative's claims as they relate to the defendant's conduct and
21 activities. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47 ["[t]he only requirements are that
22 common questions of law and fact predominate and that the class representative be similarly
23 situated" vis-à-vis the class.]) A representative plaintiff's claims are typical of the class if they
24 arise from the same event, practice or course of conduct, and if the claims rest on the same legal
25 theories. (*Id.*) That is precisely the case here. Plaintiff is a former employee of Defendant; as
26 such, he alleges that he was subject to the same policies and practices as other similarly situated
27 employees.

28 ///

1 **4. Plaintiff and His Counsel Meet the Adequacy Requirement**

2 The adequacy of representation requirements is met by fulfilling two conditions: first, a
3 named plaintiff must be represented by counsel qualified to conduct the pending litigation; second,
4 a named plaintiff's interests cannot be antagonistic to those of the class. (*McGhee v. Bank of*
5 *America* (1976) 60 Cal.App.3d 442, 451.)

6 All of these requirements are met here for settlement purposes. Plaintiff retained counsel
7 with extensive experience in prosecuting complex class actions, including similar class actions that
8 previously settled. (Woods Decl., ¶¶ 39-50.) Class Counsel unquestionably is "qualified,
9 experienced and generally able to conduct the proposed litigation." (*Miller v. Woods* (1983) 148
10 Cal.App.3d 862, 875.) In addition, Plaintiff has no conflicts, and Plaintiff has, with counsel,
11 litigated this case and diligently reviewed the settlement terms, showing his dedication. Plaintiff's
12 willingness to serve as a representative demonstrates his serious commitment to bringing about the
13 best results possible for the class. (*McGhee, supra*, 60 Cal.App.3d at p. 451.)

14 **5. A Class Action is Superior to a Multiplicity of Litigation**

15 Finally, in making its class certification decision, the Court must determine that a class
16 action would be superior to alternative means for the fair and efficient adjudication of the litigation.
17 By consolidating many potential individual actions into a single proceeding, this Court's use of the
18 class action device enables it to manage this litigation in a manner that serves the economics of
19 time, effort and expense for the litigants and the judicial system. Absent class treatment, similarly-
20 situated employees with small but nevertheless meritorious claims for damages would, as a
21 practical matter, have no means of redress because of the time, effort and expense required to
22 prosecute individual actions. (*Gentry v. Super. Ct.* (2007) 42 Cal. 4th 443, 457-62; *Leyva v.*
23 *Medline Ind.* (9th Cir. 2013) 716 F.3d 510, 515.) Moreover, in the context of settlement, the
24 superiority concerns are essentially non-existent.

25 **V. THE PROPOSED NOTICE IS CONSTITUTIONALLY SOUND**

26 **A. The Proposed Notice Plan Satisfies Due Process**

27 Notice requirements are set forth in the California Rules of Court. (Cal. Rules of Court,
28 Rule 3.766 (e), (f).) California law vests the Court with broad discretion in fashioning an

appropriate notice program. (*Cartt v. Super Ct.* (1975) 50 Cal.App.3d 960, 973-74.) There is no statutory or due process requirement that all class members receive actual notice, but in this matter, the class members will receive direct mailed notice. As the Court of Appeals has explained, “[t]he notice given should have a reasonable chance of reaching a substantial percentage of the Class Members” (*Id.* at p. 974.) In this case, notice of the proposed settlement will be provided by direct mailing, the best possible form of notice.

B. The Notice is Accurate and Informative

The proposed Notice should be approved. It will be disseminated through direct U.S. first class mail to the last known address for each Class Member. It informs the Class Members of the terms of the settlement and their right to be excluded from the Settlement. And if there are Class Members who wish to object to this proposed class action settlement, they will have the opportunity to file their objections and be heard at the Final Approval Hearing.

The Notice also fulfills the requirement of neutrality in class notices. (*Conte & Newberg, Newberg on Class Actions* (3rd Ed.) § 8.39.) It summarizes the proceedings to date and the terms and conditions of the settlement agreement, in an informative and coherent manner. It makes clear that the settlement agreement does not constitute an admission of liability by the Defendant, who denies all liability, and it recognizes that this Court has not ruled on the merits of the action. It also states that the final settlement approval decision has yet to be made. The Notice thus complies with the standards of fairness, completeness, and neutrality required of a combined settlement-certification class notice.

VI. CONCLUSION

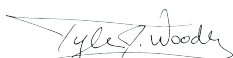
For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the proposed settlement and set a Final Approval Hearing on or after August 17, 2026.

Respectfully submitted,

Dated: December 15, 2025

WILSHIRE LAW FIRM

By: _____



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