John G. Yslas (SBN 187324)
john.yslas@wilshirelawfirm.com
Jeffrey C. Bils (SBN 301629)
jeffrey.bils@wilshirelawfirm.com
Aram Boyadjian (SBN 334009)
aram.boyadjian@wilshirelawfirm.com
Andrew Sandoval (SBN 346996)
andrew.sandoval@wilshirelawfirm.com
Lisa B. Iturriaga (SBN 339678)
lisa.iturriaga@wilshirelawfirm.com
WILSHIRE LAW FIRM, PLC
660 S. Figueroa Street, Sky Lobby
Los Angeles, California 90017
Telephone: (213) 381-9988
Facsimile: (213) 381-9989

Attorneys for Plaintiffs

TENTATIVE RULINGS will be available beginning at 1:30PM on the court day preceding the scheduled hearing at www.cc-courts.org

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF CONTRA COSTA

DANIEL THOMAS ATALIG HOCOG and ALFRED ESTRADA SANTOS JR., individually, and on behalf of all others similarly situated, and on behalf of the State of California and other aggrieved persons, *Plaintiffs*, v. SERVICE MANAGEMENT SYSTEMS, INC., a Tennessee corporation; and DOES 1 through 10, inclusive, *Defendants*.	Case No.: C23-02424 *Assigned for all purposes to: Hon. Edward G. Weil Dept. 39* **NOTICE OF MOTION AND PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Date: 03/05/26 Time: 9:00a Dept.: 39

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on _______________ at ________ a.m./p.m., or as soon thereafter as the matter may be heard in Department 39 of the above-entitled Court, located at 725 Court Street, Martinez, California 94553, plaintiffs Daniel Thomas Atalig Hocog and Alfred Estrada Santos Jr. (collectively, "Plaintiffs") will and hereby do move this Court for an Order:

1. Granting preliminary approval of the proposed Joint Stipulation Re: Class Action and PAGA Settlement ("Initial Settlement") and Supplemental Agreement to Class Action and PAGA Settlement Agreement ("Supplemental Agreement") (collectively, with "Initial Settlement", the "Settlement");
2. Conditionally certifying the proposed Class for settlement purposes only;
3. Conditionally appointing Plaintiffs as the Class Representatives;
4. Conditionally appointing Wilshire Law Firm, PLC as Class Counsel;
5. Appointing Apex Class Action Administration as the Settlement Administrator; and
6. Setting a final approval hearing date.

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

This Motion is based on this Notice of Motion, the accompanying Memorandum of Points and Authorities, the Declaration of John G. Yslas, the Declarations of Plaintiffs Daniel Thomas Atalig Hocog and Alfred Estrada Santos Jr., 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.

Dated: September 24, 2025

WILSHIRE LAW FIRM, PLC

By: *Lisa Iturriaga*
Lisa B. Iturriaga
Attorneys for Plaintiffs

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I. INTRODUCTION

Pursuant to California Rules of Court, Rule 3.769(d) and (e), Plaintiffs seek preliminary approval of the Parties' Joint Stipulation Re: Class Action and PAGA Settlement ("Settlement Agreement"), resolving the wage and hour claims, including a representative claim brought under the Private Attorneys' General Act of 2004 ("PAGA"), brought against Defendant Service Management Systems, Inc. ("Defendant"). The proposed Class is defined as all current and former non-exempt employees employed by Defendant in California during the Class Period (from April 1, 2019 through April 1, 2025) (or if any such person is incompetent, deceased or unavailable due to military service, the person's legal representative or successor in interest evidenced by reasonable verification) ("Class Members"). The main terms of the Settlement are as follows:

1. A Gross Settlement Amount of $265,000.00, which will be distributed to approximately 321 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 $88,333.33) and in reimbursement of litigation costs to Plaintiffs' Counsel up to $20,000.00;
3. Class Representatives Service Payments of up to $5,000.00 to each Plaintiff;
4. Costs of settlement administration of up to $8,800.00; and
5. Allocation of $40,000.00 to PAGA penalties, seventy-five percent (75%) of which ($30,000.00) will be paid to the Labor and Workforce Development Agency ("LWDA"), and twenty-five percent (25%) of which ($10,000.00) will be paid to all non-exempt, hourly individuals that worked for Defendant in California at any time during the PAGA Period from January 2, 2023 through May 13, 2025.

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 represents an excellent outcome for the settlement group, particularly in light of the substantial risks, challenges, and costs to both sides were the case to proceed to trial. The Settlement was reached through informed, arm's length bargaining between experienced attorneys with the assistance of an experienced neutral. As such, Plaintiffs request that the Court grant preliminary approval of the Settlement, conditionally certify the Class for settlement purposes only, provisionally appoint Plaintiffs as the Class Representatives, provisionally appoint Wilshire Law Firm, PLC as Class Counsel, appoint Apex Class Action Administration ("APEX") 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 September 26, 2023, Plaintiffs 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, Case No. C23-02424 ("Class Action"). Declaration of John G. Yslas in Support of Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement ("Yslas Decl.") at ¶ 3.

On November 15, 2023, Plaintiffs sent a letter to the LWDA as required by Lab. Code § 2699.3(a). *Id.* at ¶ 4, Exhibit E. The LWDA did not notify Plaintiff that it intended to investigate. *Id.* Therefore, on January 19, 2024, Plaintiffs filed a representative action against Defendant alleging civil penalties under PAGA (Cal. Lab. Code § 2699, *et seq*.), Case No. C24-00164 ("PAGA Action"). *Id*. at ¶ 5.

The Parties subsequently participated in a private mediation with mediator Lisa Klerman, Esq. on February 20, 2025. *Id*. 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.* The Parties negotiated the terms of the Settlement over the next few months, which was finalized on June 17, 2025. *Id*. at ¶ 7, Exhibit A ("Initial Settlement").

On August 26, 2025, Plaintiffs filed a First Amended Class & PAGA Representative Action Complaint consolidating the Class Action and PAGA Action under Case No. C23-02424. *Id*. at ¶ 8. On September 23, 2025, Plaintiffs submitted a copy of the Initial Settlement to the LWDA. Yslas

Decl. at ¶ 9, Exhibit C. On the same date, the Parties finalized an amendment to the Settlement as to a typographical error in Paragraph 22(a) of the Settlement. *Id.* at ¶ 10, Exhibit B ("Supplemental Agreement"). On September 23, 2025, Plaintiffs also submitted a copy of the Supplemental Agreement to the LWDA. *Id*., Exhibit D.

Throughout this litigation and at mediation, Defendant has denied Plaintiffs' allegations, denies any failure to comply with the laws identified in the operative complaint, denies any and all liability for the causes of action that are or reasonably could have been alleged based on the facts in the complaint, and denies the case is manageable or amenable to class treatment and raised defenses to Plaintiffs' claims, both individually and on a representative basis—including in its answers and case management statements. At mediation and throughout the litigation, Defendant maintained that its employment policies and practices meet the requirements of the Labor Code and applicable Wage Orders. At mediation and throughout the litigation, Defendant further maintained Plaintiffs and all Class Members signed binding mutual arbitration agreements with a valid class action waiver. To date, no class has been certified, and the Court has not made any findings that Defendant engaged in any wrongdoing or in violation of any state law, rule or regulation, with respect to the issues presented in the litigation.

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 $265,000.00. Settlement Agreement at ¶ 21. Subject to Court approval, the following payments will be deducted from the Gross Settlement Amount: (1) Class Representatives Service Payments of up to $5,000.00 each Plaintiff; (2) attorneys' fees of up to one-third (1/3) of the Gross Settlement Amount (currently $88,333.33) and reimbursement of actual litigation costs to Plaintiffs' Counsel currently estimated not to exceed $20,000.00; (3) costs of settlement administration of up to $8,800.00 to APEX; and (4) PAGA penalties in the amount of $40,000.00, which will be allocated 75% to the LWDA ($30,000.00) and 25% to Aggrieved Employees ($10,000.00). Settlement Agreement at ¶ 22(a)-(g). After all requested deductions are made, the remaining Net Settlement Amount is currently estimated to be $97,866.67.

Individual Settlement Payments to Participating Class Members will be calculated as follows: The Net Settlement Amount shall be divided by the number of aggregate Qualified Workweeks worked by all Participating Class Members during the Class Period to produce a "Weekly Settlement Value." Each Participating Class Member shall be eligible to receive a settlement payment in the amount of the total number of Qualified Workweeks attributable to the Participating Class Member during the Class Period multiplied by the Weekly Settlement Value, less applicable withholdings, provided that the Participating Class Member has not submitted a Request for Exclusion. Settlement Agreement at ¶ 22(f). For tax purposes, the Settlement Administrator shall be responsible for calculating the portion of each Individual Settlement Payment to be allocated as wages. Twenty-Five Percent (25%) of each Individual Settlement Payment shall be allocated as wages, and Seventy-Five (75%) of each Individual Settlement Payment shall be allocated as interest and penalties. Settlement Agreement at ¶ 24(h). The employer's share of payroll taxes shall be paid by Defendant outside of the Total Class Action Settlement Amount. Settlement Agreement at ¶ 24(i).

Payment of Portion of PAGA Allocation to PAGA Group Members will be allocated as follows: Twenty-five percent (25%) ($10,000.00) of the PAGA Allocation to be paid to the PAGA Group Members shall be divided by the number of aggregate Qualified Pay Periods worked by all PAGA Group Members during the PAGA Period to produce a "Pay Period Settlement Value." A "Qualified Pay Period" shall be a pay period where a PAGA Group Member was employed by Defendant in California as a non-exempt employee during the PAGA period, though Defendant may exclude, if feasible, pay periods where a class member did not record any time worked in Defendant's timekeeping system, including vacation and leave pay periods. Each PAGA Group Member shall be eligible to receive a settlement payment in the amount of the total number of Qualified Pay Periods attributable to the PAGA Group Member during the PAGA Period multiplied by the Pay Period Settlement Value (the "PAGA Payment"). Settlement Agreement at ¶ 22(g). One Hundred Percent (100%) of the payment to PAGA Group Members as part of the PAGA Allocation will be treated as penalties and PAGA Group Members will be issued an IRS

Form 1099 for that portion of the payment. Settlement Agreement at ¶ 24(j). Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

Any deductions not approved by the Court will be retained by the Settlement Administrator in the Net Settlement Amount. *See* Settlement Agreement at ¶¶ 22(a)-(g), 23. Funds from any uncashed checks will be transmitted by the Administrator to the California State Controller's Office Unclaimed Property Fund in the name of the Participating Class Member and/or PAGA Group Member, thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). Settlement Agreement at ¶ 24(n). None of the Gross Settlement Amount will revert to Defendant. Settlement Agreement at ¶ 23.

B. Proposed Settlement Administration

The Parties' proposed Class Notice complies with the requirements of California Rules of Court, Rule 3.766(d). *See* Exhibit 1 to Settlement Agreement. It provides information regarding the nature of this lawsuit, a summary of the settlement terms, the formula used for calculating individual class and PAGA payments and instructions to dispute the calculations, instructions on how to opt-out of or object to the Settlement, the date, time, and location of the final approval hearing, and the amounts sought for the class representative service payment, attorneys' fees and litigation costs, and settlement administration costs. *See generally, id*. The Class Notice also notifies Class Members that they do not need to submit a claim in order to participate in the Settlement and receive a payment. *See id*. The Settlement Administrator will mail Class Members the Class Notice by first-class mail. Settlement Agreement at ¶ 24(b).

If a Class Notice is returned as undeliverable, the Settlement Administrator will re-mail the Class Notice on or before the Response Deadline to the forwarding address provided by the U.S. Postal Service. Settlement Agreement at ¶ 24(d). If no forwarding address is provided, the Settlement Administrator will conduct a Class Member Address Search and re-mail the Class Notice to the most current address obtained. *Id.* The deadline to opt-out of the Settlement or to submit an objection or dispute will be extended by an additional fourteen (14) days for all Class Members whose Class Notice was remailed. Settlement Agreement at ¶ 24(e).

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C. Proposed Release

Release by Plaintiff and Participating Class Members: Plaintiffs and Participating Class Members release the Released Parties from: All causes of action and factual or legal theories that were alleged in the operative Class Action complaint or reasonably could have been alleged based on the facts and legal theories contained in the operative Class Action complaint, including the claims at issue in the Amended Complaint, including all of the following claims for relief: (a) failure to provide proper meal periods, and to properly provide premium pay in lieu thereof; (b) failure to provide proper rest periods, and to properly provide premium pay in lieu thereof; (c) failure to pay wages due, including but not limited to minimum wages, straight-time wages, overtime wages, vacation pay, sick pay, meal period premiums, rest period premiums, reporting time wages, split differentials, and bonuses; (d) failure to reimburse for all necessary expenditures or losses, including without limitation cleaning supplies, tools, personal cell phone expenses, and mileage; (e) failure to pay all wages timely at the time of termination and/or during employment; (f) failure to provide complete, accurate or properly formatted wage statements, including but not limited to failure to provide information pertaining to sick pay balances, amount of sick pay available for use, and/or payments on wage statements; (g) failure to maintain accurate records of hours worked and meal periods; (h) failure to produce requested employment records; (i) unfair business practices that could have been premised on the claims, causes of action or legal theories of relief described above or any of the claims, causes of action or legal theories of relief pleaded in the operative complaint; (j) any other claims or penalties under the wage and hour laws pleaded in the Class Action; and (k) all damages, penalties, interest and other amounts recoverable under said claims, causes of action or legal theories of relief (collectively, the "Released Claims"). The period of the Release shall extend to the limits of the Class Period. The res judicata effect of the Judgment will be the same as that of the Release. Defendant shall be entitled to a release of Released Claims which occurred during the Class Period only during such time that the Settlement Class Member was classified as non-exempt, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, claims while classified as exempt, and claims outside of the Class Period. Settlement Agreement at ¶ 16.

PAGA Release: Plaintiffs, PAGA Group Members, and the State of California will release the Released Parties from the following claims for civil penalties during the PAGA Period: All causes of action and factual or legal theories that were alleged or reasonably could have been alleged in the operative PAGA Action complaint and/or PAGA notice letter, including all claims for PAGA penalties under the California Labor Code Private Attorneys General Act of 2004 that could have been premised on the claims, causes of action or legal theories described in the operative PAGA Action complaint and/or PAGA notice letter, including the claims that are at issue in the Amended Complaint, including all of the following claims for relief: (a) failure to provide proper meal periods, and to properly provide premium pay in lieu thereof; (b) failure to provide proper rest periods, and to properly provide premium pay in lieu thereof; (c) failure to pay wages due, including but not limited to minimum wages, straight-time wages, overtime wages, vacation pay, sick pay, meal period premiums, rest period premiums, reporting time wages, split differentials, and bonuses; (d) failure to reimburse for all necessary expenditures or losses, including without limitation cleaning supplies, tools, personal cell phone expenses, and mileage; (e) failure to pay all wages timely at the time of termination and/or during employment; (f) failure to provide complete, accurate or properly formatted wage statements, including but not limited to failure to provide information pertaining to sick pay balances, amount of sick pay available for use, and/or payments on wage statements; (g) failure to maintain accurate records of hours worked and meal periods; and (h) failure to produce requested employment records (collectively, the "PAGA Released Claims"). The period of the Release shall extend to the limits of the PAGA Period. The res judicata effect of the Judgment will be the same as that of the Release. Settlement Agreement at ¶ 17.

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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 current and former non-exempt employees employed by Defendant in California during the Class Period from April 1, 2019 through April 1, 2025, (or if any such person is incompetent, deceased or unavailable due to military service, the person's legal representative or successor in interest evidenced by reasonable verification). *See* Settlement Agreement at ¶¶ 1(f)-(g). The Class is also readily ascertainable from Defendant's business records, because all Class Members are or were employees of Defendant. Yslas Decl. at ¶ 12. Defendant's records show there are approximately 321 Class Members, which Plaintiffs contend makes 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. Plaintiffs Contend that 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.*

Plaintiffs have 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 ¶ 13. Plaintiffs further maintain that these allegations present common factual and legal questions of, *inter alia*, whether Defendant applied the same scheduling, timekeeping, pay, meal period, rest period, and reimbursement policies to all Class Members, whether these policies and practices resulted in Labor Code violations, whether Defendant's conduct was intentional, and whether Class Members are entitled to damages and/or penalties. *Id*. Plaintiffs allege that 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. Plaintiffs Contend that They Are Typical of the Class

Typicality does not require that the representative plaintiff's claims and those of the class members be identical or perfectly aligned. *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 228 (2001), disapproved on other grounds by *Hernandez v. Restoration Hardware, Inc.*, 4 Cal.5th

260, 269-280 (2018). Typicality does not require that a plaintiff's claims be identical to those of other class members, only that their claims and the defenses applicable to them are sufficiently similar to those of other class members that a named plaintiff is able to adequately represent the class and focus on common issues. *Medrazo v. Honda of North Hollywood*, 166 Cal.App.4th 89, 99 (2008).

Plaintiffs have alleged that they and Class Members were employed by 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 ¶ 14. Through informal discovery, including the production of documents by Defendant, Plaintiffs maintain that these challenged policies and practices applied to Plaintiffs as well as Class Members. *See id.* at ¶ 11. Therefore, Plaintiffs allege that their claims and Class Members' claims arise from the same challenged employment policies and practices and are based on the same legal theories.

c. <u>Plaintiffs Contend that They and Their Counsel Will Adequately Represent the Class</u>

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

Plaintiffs declare that their interests are coextensive with Class Members' interests. Declaration of Daniel Thomas Atalig Hocog in Support of Plaintiffs' Motion for Preliminary Approval ("Hocog Decl.") at ¶ 6; Declaration of Alfred Estrada Santos Jr. in Support of Plaintiffs' Motion for Preliminary Approval ("Santos Decl.") at ¶ 6. Plaintiffs allege that they have demonstrated an ability to advocate for the interests of Class Members by initiating this lawsuit, gathering documents and information, keeping in regular contact with their attorneys, making themselves available on the day of mediation and meeting with their attorneys to understand the claims and theories of liability at issue, and reviewing the proposed Settlement. Hocog Decl. at ¶ 7; Santos Decl. at ¶ 7.

Likewise, Plaintiffs maintain that their counsel, Wilshire Law Firm, PLC, has expended considerable time and effort on this case and will continue to do so through final approval. *See generally*, Yslas Decl. Therefore, Plaintiffs should be appointed Class Representatives, and their counsel should be appointed Class Counsel.

3. Plaintiffs Allege that a Class Action is Superior to a Multitude of Individual Lawsuits

Courts have held that class treatment of wage and hour claims is clearly "superior to the other available methods for the fair and efficient adjudication of the controversy." *Dean Witter Reynolds, Inc. v. Superior Court*, 211 Cal.App.3d 758, 772-773 (1989). This is so because "[p]ublic policy has long favored the 'full and prompt payment of wages due an employee.'" *Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal.4th 319, 340 (2004). Here, a class action is superior to a multitude of individual lawsuits. Given the size and amount of each Class Members' claim, Class Members have little incentive to litigate their claims on an individual basis because the out-of-pocket expenses and personal commitment necessary to litigate each claim likely outweighs any potential recovery. Yslas Decl. at ¶ 12. 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. Plaintiffs will analyze the fourth factor at final approval after Class Members have been notified of the Settlement and provided with an opportunity to object.

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

Courts have recognized that the involvement of a respected mediator provides a high degree of assurance that the settlement is the result of arm's length bargaining. *See Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 52-53 (2008). The Settlement in this matter was achieved with the assistance of a respected mediator following a full day of mediation and both Parties' acceptance of a neutral mediator's proposal. Yslas Decl. at ¶ 6. The negotiations were adversarial, conducted at arm's length, and tempered by the efforts of both sides to serve the interests of their clients. *Id.*

b. Sufficient Investigation and Discovery Have Been Conducted

Prior to attending mediation, Plaintiffs' Counsel thoroughly investigated the claims, applicable laws, and potential defenses. *Id.* at ¶ 11. Prior to mediation, the Parties exchanged informal discovery, which included: (a) analysis by the Parties of certain records, arbitration agreements, a complete set of payroll and time data for Defendant's non-exempt employees during the relevant timeframe, and policies pertaining to Plaintiffs, Class Members, and the claims asserted in the Action; (b) research of the law applicable to Plaintiffs' claims and Defendant's affirmative defenses, as well as the damages alleged by Plaintiffs; (c) examination and analysis of information and documents; and (d) consideration of information disclosed at and in connection with mediation. *Id*. Plaintiffs' Counsel assessed the value to the class claims using the documents and data Defendant produced in informal discovery, including class data providing the dates of employment for Class Members, Plaintiffs' personnel files, employment handbooks and policies, job descriptions, and a complete set of time and payroll records. *Id.*

c. *Plaintiffs' Counsel is Experienced in Similar Litigation*

Plaintiffs are represented by Wilshire Law Firm, PLC. *Id.* at ¶ 21. Plaintiffs' Counsel has extensive experience litigating wage and hour class actions on behalf of employees. *See id.* at ¶¶ 22-33. Plaintiffs' 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 Plaintiffs' Claims and the Risks and Expense of Further Litigation

A settlement does not have to provide 100% of the damages sought to be considered fair and reasonable. *See Rebney v. Wells Fargo Bank*, 220 Cal.App.3d 1117, 1139 (1991). Although the exposure Plaintiffs' 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 ¶ 14.

Minimum and Overtime Wages: Plaintiffs unpaid minimum and overtime wage claims were based on the allegation that Defendant required Class Members to perform work duties before clocking in. *Id.* at ¶ 15. Based on Plaintiffs' estimate that they worked a total of 1 hour off-the-clock each week, Plaintiff's Counsel assumed each Class Member worked 1-hour off-the-clock per week in calculating potential exposure to be approximately $305,676.99 for these claims. *Id.* However, Defendant argued that any off-the-clock time was undocumented and unknown to Defendant, and that Defendant was therefore not obligated to pay for this time. *Id.* Defendants also argued that the claims were not suitable for class certification because all putative class members entered into binding arbitration agreements with a valid class action waiver. Moreover, Defendants argued that Plaintiffs' claims were erroneous because at all relevant times, Defendant maintained policies that: (1) prohibited off-the-clock work; (2) require managers to obtain written authorization before adjusting time data; and (3) require employees to review their time data on a weekly basis and report any instance in which the data does not accurately reflect all time worked. 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, Plaintiffs' Counsel applied a risk discount based on a 50% chance of succeeding at class certification and a 45% chance of succeeding at trial on the merits, yielding a realistic damage estimate of approximately $68,777.32 ($305,676.99 x 50% x 45%), or approximately 26% of the Gross Settlement Amount. *Id.*

Meal Periods: Plaintiffs meal period claim was based on the allegation that Defendant failed to maintain a policy and practice of paying meal period premiums when Class Members' meal periods were late, short, or missed. *Id*. at ¶ 16. Plaintiffs' meal period claim was further based on the allegation that Defendant's practiced in time rounding as reflected in Defendant's records which evidenced that 66.1% of recorded meal periods were exactly 30 minutes, which is highly unrealistic. *Id*. As such, Plaintiff's Counsel found a violation rate of approximately 5.2% and calculated potential exposure on this claim to be approximately $51,551.40. *Id*. Defendant denied Plaintiffs' meal period claims. Defendant again pointed to the arbitration agreement signed by Plaintiffs and all putative class members, along with additional defenses including that Defendant maintained facially compliant meal break policies and practices; the data reflected an exceptionally high compliance rate; Defendant paid putative class member full and complete meal period premiums when due, and putative class members completed daily attestations concerning their ability to take compliant meal breaks and rest periods. Defendant also disputes the propriety of certification on this claim as well, under the holding in *Brinker* and other state and federal decisions. *See also Lampe v. Queen of the Valley Medical Center*, 19 Cal. App. 5th 832 (2018) (affirming denial of class certification because the "question of whether a missed meal break was due to the employer's failure to allow it or from the employee's voluntary choice not to take it requires an individualized inquiry. . . . The expert's analysis does not change the nature of the claims."). Plaintiff's Counsel applied a risk discount based on an 80% chance of succeeding at class certification and a 70% chance of succeeding at trial on the merits, yielding a realistic damage estimate of approximately $28,868.78 ($51,551.40 x 80% x 70%), or approximately 11% of the Gross Settlement Amount. *Id.*

Rest Breaks: Plaintiffs rest break claim was based on the allegation that Defendant failed to provide Class Members rest periods and when Class Members did receive rest breaks they were late, short, or missed. *Id.* at ¶ 17. Plaintiffs' Counsel applied a 100% violation rate to all shifts over

3.5 hours and calculated a potential exposure of $991,373.08 for this claim. *Id.* However, Defendant argued that a 100% violation rate was unrealistic. *Id.* Defendant disputes Plaintiffs' rest break claim and contends that Class Members were allowed to take ten-minute rest periods and regularly took such breaks. Defendant's contentions with respect to the rest period claim include the following. First, Defendant contends that its rest break policies are compliant with California law. Second, Defendant contends that Class Members have completed daily rest break attestations about having the opportunity to take compliant breaks. Third, Defendant contends that it has paid rest break premiums at the correct rate of pay during the entirety of the putative class period. Fourth, Defendant contends that there are no work demands that would prevent employees from taking rest periods. Fifth, Defendant contends that Plaintiffs' claims are covered by an enforceable arbitration agreement. Defendant also argues that this claim would be difficult to certify given the predominance of individualized inquiries as to whether, and to what extent, each Class Member was unable to take compliant rest breaks during their shifts. *Id*. Because this claim would have relied exclusively on Class Member testimony, Plaintiffs' Counsel applied a risk discount based on a 30% chance of succeeding at class certification and a 20% chance of succeeding at trial on the merits, yielding a realistic damage estimate of approximately $59,482.38 ($991,373.08 x 30% x 20%), or approximately 22% of the Gross Settlement Amount. *Id.*

<u>Reimbursements</u>: Plaintiffs' reimbursement claim was based on the allegation that Defendant required Class Members to use their personal cell phones and purchase materials, such as fuel for pressure washing machines, to carry out their job duties. *Id.* at ¶ 18. Based on Plaintiffs' estimate that they incurred $30 in unreimbursed expenses per month, Plaintiffs' Counsel assumed each Class Member incurred $30 in unreimbursed expenses per month in calculating potential exposure to be approximately $98,415.00 for this claim. *Id.* However, Defendant argued that these expenses were not required by Defendant, Defendant maintained an expense reimbursement policy, Defendant always provided putative class members all tools necessary to perform their jobs, and that this claim was inherently unsuitable for certification. *Id.* Accordingly, Plaintiffs' Counsel could not attribute any value to this claim in terms of settlement value. *Id.*

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Derivative Penalties: Plaintiffs alleged that as a result of Defendant's alleged failure to pay all wages and meal and rest period premiums owed, Defendant owed waiting time penalties and wage statement penalties. *Id.* at ¶ 19. However, Defendant argued that it had good faith defenses that made the imposition of these penalties unwarranted. *Id.* Moreover, Plaintiffs could not recover these penalties if they failed to prove the underlying claims. Plaintiffs' Counsel calculated that potential exposure for the waiting time penalty claim was approximately $853,435.62 (assuming 30 days per employee at 7.1 hours per day, based on the average hours per shift), and approximately $760,000.00 for the wage statement penalty claim (based on $50 for the first violations and $100 for subsequent violations, with a $4,000 employee maximum). *Id.* However, considering that the underlying claims are realistically estimated to be approximately $157,128.49, such a disproportionate award would also raise due process concerns. *Id.* As such, Plaintiffs discounted the figure to account for the risk and uncertainty of prevailing at trial, resulting in a realistic evaluation of approximately $51,206.14 ($853,435.62 x 30% x 20%) for waiting time penalty claims, or approximately 19% of the Gross Settlement Amount and approximately $45,600.00 ($760,000.00 x 30% x 20%) for wage statement penalty claims, or approximately 17% of the Gross Settlement Amount. *Id.*

PAGA: For the PAGA claim, Plaintiffs' Counsel determined that Defendant's potential exposure could potentially reach $221,100.00, assuming the initial $100 penalty would apply for each of the 2,211 pay periods in the PAGA Period. *Id*. at ¶ 20. However, even assuming success on the merits of each claim, PAGA gives the Court discretion to reduce penalties for a variety of reasons, including whether the amount of the award would be unjust, arbitrary and oppressive, or confiscatory. *Id*. Here, Defendants argued that its policies and practices demonstrated a good faith commitment to comply with the Labor Code. As such, Plaintiffs allocated $40,000.00 of the Gross Settlement Amount to settle the PAGA claims, or 15.1% of the Gross Settlement Amount. *Id*.

C. The Requested Service Payment is Reasonable

Plaintiffs seek a Class Representative Service Payment of up to $5,000.00 to each Plaintiff 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 § 22(c). A named plaintiff is eligible for payment that reasonably compensates her for undertaking and fulfilling a fiduciary duty to represent absent class members. *See Cellphone Termination Fee Cases*, 186 Cal.App.4th 1380, 1393 (2010); *Bell v. Farmers Ins. Exch.*, 115 Cal.App.4th 715, 726 (2004).

Throughout this case, Plaintiffs assisted counsel in gathering evidence necessary to prosecute the claims, maintained regular contact with counsel, and reviewed the Settlement to ensure it was fair to the Class. Hocog Decl. at ¶ 7; Santos 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 Plaintiffs' services on behalf of the Class. By actively pursuing this action, Plaintiffs furthered the California public policy goal of enforcing the State's wage and hour laws. *See Sav-On*, 34 Cal.4th at 340. The requested Class Representatives Service Payments are reasonable and should be preliminarily approved. Plaintiffs have provided a declaration regarding their work performed to date and will provide additional information as requested or required by the Court at final approval.

D. The Requested Attorneys' Fees and Costs Are Reasonable

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

Plaintiffs seek appointment of Wilshire Law Firm, PLC as Class Counsel. The attorneys performed significant work and expended litigation costs in prosecuting this matter with no guarantee of payment. Yslas Decl. at ¶ 21. Plaintiffs' Counsel seek preliminary approval for $88,333.33 in attorneys' fees, which is up to one-third (1/3) of the Gross Settlement Amount, and reimbursement of actual litigation costs not to exceed $20,000.00. Settlement Agreement at ¶ 22(b). Given the work performed in this matter, the extensive information exchange, and the substantial recovery obtained on behalf of the Class, Plaintiffs' Counsel achieved a settlement through efficient and diligent work. *See generally*, Yslas Decl. At final approval, Plaintiffs'

Counsel will fully brief the merits of their request for the award of attorneys' fees and litigation costs.

V. CONCLUSION

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

Dated: September 24, 2025

WILSHIRE LAW FIRM, PLC

By: Lisa Iturriaga
Lisa B. Iturriaga
Attorneys for Plaintiffs