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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

DOMINIC DULANEY, individually, and on behalf of the State of California and other aggrieved persons, *Plaintiff*, v. KQED, INC., a California corporation; and DOES 1 through 10, inclusive, *Defendants*. --- DOMINIC DULANEY, individually, and on behalf of all others similarly situated, *Plaintiff*, v. KQED, INC., a California corporation; and DOES 1 through 10, inclusive, *Defendants*.	Lead Case No. CGC-24-611614 Consolidated with Case No. CGC-24-612506 *[Assigned for All Purposes to the Hon. Ethan P. Schulman, Dept. 304]* **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** <u>Preliminary Approval Hearing:</u> Date: April 2, 2026 Time: 11:00 a.m. Dept: 304 *Date and Time Approved by Dept. 304* Action Filed: January 11, 2024

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 2, 2026, at 11:00 a.m., or as soon thereafter as the matter may be heard in Department 304 of the Superior Court of California, County of San Francisco, located at 400 McAllister Street, San Francisco, California 94102, Plaintiff Dominic Dulaney ("Plaintiff") will and hereby does move this Court for an Order:

1. Granting preliminary approval of the proposed Class Action and PAGA Settlement Agreement and Class Notice ("Settlement");
2. Conditionally certifying the proposed Class for settlement purposes only;
3. Appointing Plaintiff Dominic Dulaney as the Class Representative;
4. Appointing John G. Yslas, Eugene Zinovyev, John Brown, Gabriella Solé, Emily K. Borman, and Courtney M. Miller of Wilshire Law Firm, PLC as Class Counsel;
5. Appointing ILYM Group Inc. as the Settlement Administrator; and
6. Setting a final approval hearing date.

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

This Motion is based on this Notice of Motion, the accompanying Memorandum of Points and Authorities, the Declaration of John G. Yslas, the Declaration of Dominic Dulaney, the Declaration of Lisa Mullins, 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.

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Respectfully submitted,

Dated: January 9, 2026

WILSHIRE LAW FIRM, PLC

By: /s/ Courtney M. Miller
Courtney M. Miller
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to California Rules of Court, Rule 3.769(d) and (e), Plaintiff Dominic Dulaney ("Plaintiff") seeks preliminary approval of a class action settlement of wage and hour claims, including representative claims brought under the Private Attorneys General Act of 2004 ("PAGA"), against KQED, Inc. ("Defendant"). The proposed Class is defined as all non-exempt employees of KQED in California ("Class Members") during the period from August 27, 2019, through May 8, 2025 ("Class Period"). The main terms of the Settlement are as follows:

1. A Gross Settlement Amount of $895,000.00, which will be distributed to approximately 586 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 estimated to be $298,333.33) and up to $28,000.00 in reimbursement of litigation costs to Plaintiff's Counsel;
3. A Class Representative Service Payment of up to $10,000.00 to Plaintiff;
4. Costs of settlement administration of up to $8,150.00; and
5. Allocation of $50,000.00 to PAGA penalties, seventy-five percent (75%) of which ($37,500.00) will be paid to the Labor and Workforce Development Agency ("LWDA"), and twenty-five percent (25%) of which ($12,500.00) will be paid to all non-exempt employees of KQED in California ("Aggrieved Employees") during the period from November 7, 2022, through May 8, 2025 ("PAGA Period").

The Settlement meets all criteria for preliminary approval and falls within the range of reasonableness given the risks and expenses of further litigation. The Settlement was reached through informed, arm's length bargaining between experienced attorneys with the assistance of an experienced neutral. As such, Plaintiff requests that the Court grant preliminary approval of the Settlement, conditionally certify the Class for settlement purposes only, appoint Plaintiff as the Class Representative, appoint Plaintiff's Counsel as Class Counsel, appoint ILYM Group Inc. 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 November 7, 2023, Plaintiff provided written notice to the LWDA and Defendant of the specific provisions the Labor Code alleged to have been violated, including the facts and theories in support. Declaration of John G. Yslas in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement ("Yslas Decl.") at ¶ 3, Exhibit 1. The LWDA did not notify Plaintiff that it intended to investigate within 65 days of this written notice. Yslas Decl. at ¶ 3. Therefore, on January 11, 2024, Plaintiff filed this representative action against Defendant for civil penalties under PAGA, in the Superior Court of California, County of San Francisco, Case No. CGC-24-611614 ("PAGA Action"). *Id*.

On February 20, 2024, Plaintiff filed 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, in the Superior Court of California, County of San Francisco, Case No. CGC-24-612506 ("Class Action"). Declaration of John G. Yslas in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement. Yslas Decl. at ¶ 4.

On November 7, 2025, the Court ordered the PAGA Action and Class Action consolidated and assigned for all purposes to the same Court, with the PAGA Action designated as the lead case. Yslas Decl. at ¶ 5.

On January 28, 2025, the Parties participated in a private full-day mediation with mediator Steve Cerveris. 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*. The mediator made a proposal and the Parties accepted it. *Id*. The Parties negotiated the terms of the Settlement over the next several months and finalized the Settlement in September 2025. *Id*. at ¶ 7, Exhibit 2 ("Settlement Agreement"). On December 29, 2025, Plaintiff submitted a copy of the Settlement Agreement to the LWDA. *Id.* at ¶ 8, Exhibit 3.

III. SUMMARY OF THE SETTLEMENT TERMS

A. Terms of the Proposed Settlement

The parties have agreed to settle the claims alleged in this Class Action and PAGA Action for a Gross Settlement Amount of $895,000.00. Settlement Agreement at § 3.1. Subject to Court approval, the following payments will be deducted from the Gross Settlement Amount: (1) a Class Representative Service Payment of up to $10,000.00 to Plaintiff; (2) attorneys' fees of up to one third (1/3) of the Gross Settlement Amount (currently estimated to be $298,333.33) and reimbursement of litigation costs of up to $28,000.00 to Plaintiff's Counsel; (3) costs of settlement administration of up to $8,150.00 to ILYM Group Inc.; (4) individual class payments to Class Members; and (5) PAGA penalties in the amount of $50,000.00, which will be allocated 75% to the LWDA ($37,500.00) and 25% to Aggrieved Employees ($12,500.00). *Id.* at § 3.2. After all requested deductions are made, the remaining Net Settlement Amount is currently estimated to be $500,516.67. Yslas Decl. at ¶ 21.

Individual class payments will be calculated based on the number of workweeks worked by each Class Member during the Class Period. *Id*. at § 3.2.4. For tax purposes, the individual class payments will be allocated 20% to wages and 80% to interest and penalties. *Id*. at § 3.2.4.1. Defendant will separately pay any and all employer payroll taxes owed on the wage positions of the individual class payments separate from the Gross Settlement Amount. *Id*. at 3.1.

Individual PAGA Payments to Aggrieved Employees will be calculated based on the number of PAGA Pay Periods worked by each Aggrieved Employee during the PAGA Period. *Id*. at § 3.2.5.1. For tax purposes, the Individual PAGA Payments will be allocated 100% to penalties. *Id*. at § 3.2.5.2.

Any deductions not approved by the Court will be retained by the Settlement Administrator in the Net Settlement Amount. *Id.* at § 3.2. Funds from any uncashed checks will be transmitted by the Settlement Administrator to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue." *Id.* at § 4.4.3. None of the Gross Settlement Amount will revert to Defendant. *Id*. at § 3.1.

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B. Proposed Settlement Administration

The parties' proposed Class Notice complies with the requirements of California Rules of Court, Rule 3.766(d). *See* Exhibit A to Settlement Agreement. It provides information regarding the nature of this lawsuit, a summary of the settlement terms, the formula used for calculating individual class 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 § 7.4.2.

If a Class Notice is returned as undeliverable, the Settlement Administrator will re-mail the Class Notice within three (3) business days to the forwarding address provided by the U.S. Postal Service. *Id*. at § 7.4.3. 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 14 days for all Class Members whose Class Notice was remailed. *Id*. at § 7.4.4.

C. Proposed Releases

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

<u>Released Parties</u>: "KQED, each of its respective present and former parent companies, subsidiaries, divisions, concepts, related or affiliated companies, and each of its present and former shareholders, officers, directors, employees, agents, attorneys, insurers, reinsurers, successors and assigns, and any individual or entity that could be liable for any of the Released Claims." Settlement Agreement at § 1.41.

<u>Release by Participating Class Members</u>: "Plaintiff and the Settlement Class Members may hereafter discover facts or legal arguments in addition to or different from those they now know or

currently believe to be true with respect to the claims, causes of action, and legal theories of recovery in this Action which are the subject matter of the Released Claims. Regardless, the discovery of new facts or legal arguments shall in no way limit the scope or definition of the Released Claims, and by virtue of this Agreement, Plaintiff and the Settlement Class Members shall be deemed to have, and by operation of the Final Judgment approved by the Court, shall have, fully, finally, and forever settled and released all of the Released Class Claims as defined in this Agreement." Settlement Agreement at § 5.2.

Released Class Claims: "All causes of action and/or legal theories that were alleged in any operative complaint in the Class Action, or that could have been alleged based on the factual allegations in any operative complaint, including but not limited to all of the following claims for relief: (a) failure to pay minimum and straight time wage; (b) failure to pay overtime wages; (c) failure to provide meal periods; (d) failure to authorize and permit rest periods; (e) failure to timely pay final wages at termination; (f) failure to provide accurate itemized wage statements; (g) unreimbursed expenses; (h) failure to produce requested employment records; (i) violations of the Unfair Competition Law; and (j) all damages, penalties, interest and other amounts recoverable under said causes of action or primary rights under the law, to the extent permissible, including but not limited to the California Labor Code, the applicable Wage Orders, and the California Unfair Competition Law as to the facts alleged in the Action (collectively, the "Released Class Claims"). The Released Class Claims shall cover the Class Period." Settlement Agreement at § 5.2.1.

Release by Aggrieved Employees: "All Aggrieved Employees shall be deemed to have, and by operation of the Final Judgment approved by the Court, shall have, fully, finally, and forever settled and released all of the Released PAGA Claims as defined in this Agreement." Settlement Agreement at § 5.3.

Released PAGA Claims: "All claims for civil penalties that were alleged in any operative complaint in the PAGA Action, or could be sought under PAGA based on the facts and theories alleged in any notice submitted by Plaintiff to the California Labor & Workforce Development Agency, including but not limited under the California Labor Code and applicable Wage Orders (collectively, the "Released PAGA Claims"). The Released PAGA Claims shall cover the PAGA

Period." Settlement Agreement at § 5.3.1.

General Release: Only Plaintiff will agree to a general release and a waiver of Civil Code § 1542. *Id*. at §§ 5.1, 5.1.1.

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

A. Provisional Certification of the Class is Appropriate

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

1. The Proposed Class is Numerous and Ascertainable

"Ascertainability" is determined by examining the class definition and the size of the class, and may also involve examining the means available to identify class members. *Noel v. Thrifty Payless, Inc.*, 7 Cal.5th 955, 980-981, 985-986 (2019). As the settlement eliminates the need for trial, "the case management issues inherent in the ascertainable class determination need not be confronted." *Global Minerals*, 113 Cal.App.4th at 859. Further, under California law, there is no minimum number of class members for maintenance of a class action. *Hendershot v. Ready to Roll 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 non-exempt employees of Defendant in California during the Class Period. *See* Settlement Agreement at § 1.5. The Class is also readily ascertainable from Defendant's business records, because all Class Members are or were employees of Defendant. *Id*. Defendant's records show there are approximately 586 Class Members, making joinder of all Class Members impracticable. Yslas Decl. at ¶ 10.

2. A Well-Defined Community of Interest Exists

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

a. Common Questions Predominate

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

Plaintiff has alleged that Defendant maintained common employment policies and/or practices that unlawfully deprived Class Members of wages, meal periods, rest periods, reimbursements for business expenses, accurate wage statements, timely payment of wages upon separation of employment, and timely production of employment records. Yslas Decl. at ¶ 11. These allegations present common factual and legal questions of, inter alia, whether Defendant applied the same scheduling, timekeeping, pay, meal period, rest period, reimbursement, and employment record production 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*. These common questions could be resolved using Class Members' time records, payroll records, testimony from Defendant's designated representative(s), and Class Members' testimony. *Id*. Therefore, the Court can and should exercise its discretion to grant conditional class certification for settlement purposes.

b. Plaintiff is Typical of the Class

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

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

Plaintiff has alleged that he and other 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, reimbursement, and employment record production policies. *See* Yslas Decl. at ¶ 11. Through informal discovery, Plaintiff confirmed that these policies and practices applied to Plaintiff as well as Class Members. *See id.* at ¶ 9. Therefore, Plaintiff's alleged claims and Class Members' alleged claims arise from the same employment policies and practices and are based on the same legal theories.

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

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

Plaintiff's interests are coextensive with Class Members' interests. Declaration of Dominic Dulaney in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement ("Dulaney Decl.") at ¶ 6. Plaintiff has demonstrated an ability to advocate for the interests of Class Members by initiating this lawsuit, providing information to his attorneys, meeting with his attorneys regarding the claims, making himself available the day of mediation to answer questions, and reviewing the proposed Settlement. Dulaney Decl. at ¶ 7.

Likewise, 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, Plaintiff should be appointed Class Representative, and his counsel should be appointed Class Counsel.

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

Courts have held that class treatment of wage and hour claims is clearly "superior to the other available methods for the fair and efficient adjudication of the controversy." *Dean Witter Reynolds, Inc. v. Superior Court*, 211 Cal.App.3d 758, 772-773 (1989). This is so because "[p]ublic policy has long favored the 'full and prompt payment of wages due an employee.'" *Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal.4th 319, 340 (2004). Here, a class action is superior to a multitude of individual lawsuits. Given the size and amount of each Class 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 outweigh any potential recovery. Yslas Decl. at ¶ 10. Therefore, a class action is the superior method for seeking relief.

B. The Settlement Meets the Standards for Preliminary Approval

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

1. The Settlement is Entitled to a Presumption of Fairness

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

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

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

b. Sufficient Investigation and Discovery Have Been Conducted

Prior to attending mediation, Plaintiff's Counsel thoroughly investigated the claims, applicable law, and potential defenses. *Id.* at ¶ 9. Plaintiff's Counsel assessed the value to the class claims using the documents and data Defendant produced in informal discovery. *Id*. The data and documents produced by Defendant included the number of Class Members and Aggrieved Employees, the number of workweeks in the Class Period, and the number of pay periods in the PAGA Period, the average rate of pay, documents concerning Plaintiff, wage-and-hour policy documents, and anonymized Class Members' time and payroll records. *Id.*

c. Plaintiff's Counsel is Experienced in Similar Litigation

Plaintiff is represented by Wilshire Law Firm, PLC. *Id.* at ¶ 1. Plaintiff's Counsel has extensive experience litigating wage-and-hour class actions on behalf of employees. *See id.* at ¶¶ 22-35. Plaintiff's Counsel has been involved as counsel in numerous class actions that have resulted in millions of dollars in recovery. *See id.*

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

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

Decl. at ¶ 12. Based on an analysis of the facts and legal contentions in this case, documents and information from Defendant, Plaintiff's Counsel evaluated Defendant's maximum exposure. *Id*. Plaintiff's Counsel took into account the risk of not having the claims certified and the risk of not prevailing at trial, even if the claims are certified. *Id*. After using the data Defendant provided, including class member timekeeping and payroll records, as well as class member demographics, with the assistance of a statistics expert, Plaintiff's Counsel created a damages model to evaluate the realistic range of potential recovery for the class. *Id*.

Minimum and Overtime Wages: Plaintiff's unpaid minimum and overtime wage claims were based on the allegation that Defendant required Class Members to routinely perform work duties off the clock. Yslas Decl. at ¶ 13. For example, Plaintiff alleges that Defendant required him and other Class Members to perform work off the clock both before and after their scheduled shifts to avoid accrual of overtime and/or to meet company expectations. *Id*. Based on these allegations, Plaintiff's Counsel conservatively estimated that Class Members worked one (1) hour off the clock per week as overtime in calculating potential exposure to be approximately $3,329,476.62 for these claims (46,378 workweeks x $47.86 hourly rate x 1.5 overtime rate of pay x 1.00 hour of unpaid work per workweek). *Id*. Because this claim would have relied heavily on Class Member testimony and would not be evidenced in Defendant's time and payroll records, the risk of succeeding at class certification was substantial. *Id*. Accordingly, Plaintiff's Counsel applied a risk discount based on a 30% chance of succeeding at class certification and a 30% chance of succeeding at trial on the merits, yielding a realistic damage estimate of approximately $299,652.90 ($3,329,476.62 x 30% x 30%). *Id.*

Meal Periods: Plaintiff's meal period claim was based on the allegation that Defendant failed to provide Class Members with legally compliant meal periods or pay meal period premiums in lieu thereof. Yslas Decl. at ¶ 14. For example, Plaintiff alleges that meal periods for him and other Class Members were often missed, shortened and/or interrupted for various reasons, including understaffing. *Id*. Plaintiff further alleges that Defendant required him and other Class Members to keep walkie-talkies on them during their meal periods and they were expected to use them to engage in continuous work-related communications. *Id*. Additionally, Plaintiff's Counsel's expert found a violation rate of approximately 57.9% in Defendant's time and payroll records for shifts greater than five (5) hours. *Id*. Therefore, potential liability for the meal period claims is approximately $3,364,080.41 (121,399 shifts greater than 5 hours x $47.86 hourly rate x 57.9% violation rate). *Id*. However, Defendant did not agree that any violations occurred and argued that any perceived violations appearing in data were a result of Class Members' own choice not to take compliant meal periods or the data showing unpaid premiums allegedly owed were the result of Class Members' own fault such that they were not owed premiums. Defendant argued that it maintained compliant meal period policies. *Id*. Accordingly, Plaintiff's Counsel applied a risk discount based on a 50% chance of succeeding at class certification and a 40% chance of succeeding at trial on the merits, yielding a realistic damage estimate of approximately $672,816.08 ($3,364,080.41 x 50% x 40%). *Id.*

<u>Rest Periods</u>: Plaintiff's rest period claim was based on the allegation that Defendant failed to provide Class Members with legally compliant rest periods or pay rest period premiums in lieu thereof. Yslas Decl. at ¶ 15. For example, Plaintiff alleges that rest periods for him and other Class Members were often missed, shortened and/or interrupted for various reasons, including understaffing. *Id*. Plaintiff further alleges that Defendant required him and other Class Members to keep walkie-talkies on them during their rest periods and they were expected to use them to engage in continuous work-related communications. *Id*. Based on these allegations, Plaintiff's Counsel applied a 100% violation rate to all shifts of 3.5 hours or longer. Therefore, potential liability for the rest period claims is approximately $6,286,554.58 (131,353 shifts of 3.5 hours or longer x $47.86 hourly rate x 100% violation rate). *Id*. However, Plaintiff's Counsel discounted this figure to account for the difficulty of certifying and proving rest period claims, particularly because rest periods do not have to be recorded, and to account for the possibility of Class Members voluntarily choosing to forego a rest period. *Id*. Because this claim would have relied exclusively on Class Member testimony, Plaintiff's Counsel discounted this claim based on a 30% chance of succeeding at class certification and a 20% chance of succeeding at trial, yielding a realistic damage estimate of approximately $377,193.27 ($6,286,554.58 x 30% x 20%). *Id.*

<u>Reimbursements</u>: Plaintiff's reimbursement claim was based on the allegation that

Defendant failed to indemnify Class Members for expenses incurred as a direct result of performing their job duties for Defendant. Yslas Decl. at ¶ 16. For example, Plaintiff alleges that Defendant failed to reimburse him and other Class Members for personal cell phone use which was required to perform their work duties. *Id*. For purposes of calculating Defendant's liability based on a best-case scenario for Plaintiff and the Class, Plaintiff's Counsel estimated that Defendant was liable to each class member for $30 per pay period, or $7.50 per workweek, in unreimbursed expenses, for a total amount of approximately $347,835.00 ($7.50 x 46,378 workweeks). *Id*. Plaintiff's Counsel discounted this figure based on an evaluation of a 30% chance of succeeding at class certification and a 30% chance of succeeding at trial to account for the difficulty of certifying and proving expense reimbursement claims, yielding a realistic damage estimate of approximately $31,305.15 ($347,835.00 x 30% x 30%). *Id.*

In sum, Plaintiff's Counsel estimated that Plaintiff's maximum recovery for the off-the-clock claim, meal period violations, and rest period violations (i.e., the wage claims) is approximately $13 million, but after factoring in the risk and uncertainty of prevailing at certification and trial, Plaintiff's Counsel estimates that Plaintiff's realistic estimated recovery for these non-penalty wage claims is approximately $1,349,662.25. Yslas Decl. at ¶ 17.

<u>Derivative Penalties</u>: Plaintiff alleges that as a result of Defendant's failure to pay all wages owed, Defendant owed waiting time penalties and wage statement penalties. Yslas Decl. at ¶ 18. With respect to Plaintiff's derivative claims for statutory penalties, Plaintiff's Counsel estimated that Defendant's realistic potential liability is approximately $221,717.04. *Id*. Defendant's maximum potential liability for waiting time penalties is approximately $2,842,884.00 (264 employees x $47.86 hourly rate x 7.50 hours/day x 30 days) based on approximately 264 formerly employed class members during the 3-year statute of limitations period. Defendant's maximum potential liability for inaccurate wage statements is approximately $852,400.00 ([246 employees x 1 initial violation/employee x $50 for an initial violation] + [(8,647 pay periods - 246 initial violations) x $100 for each subsequent violation]) based on approximately 246 class members who worked during the 1-year statute of limitations period and approximately 8,647 pay periods in the statutory timeframe. *Id*. In light of the foregoing, Plaintiff's Counsel believes that it would be

unrealistic to expect the Court to award the full $3,695,284.00 in statutory penalties given Defendant's defenses, the contested nature of Plaintiff's claims, the challenges of establishing willfulness as applicable, and the discretionary nature of penalties. Considering that the underlying wage claims are realistically estimated to be approximately $1,349,662.25, such a disproportionate award would also raise due process concerns. *Id*. As such, Plaintiff's Counsel discounted these figures to account for the risk and uncertainty of prevailing at trial, resulting in a realistic evaluation of approximately $170,573.04 for waiting time penalty claims ($2,842,884.00 x 30% x 20%), and approximately $51,144.00 for wage statement penalty claims ($852,400.00 x 30% x 20%), or approximately $221,717.04 total for statutory penalties. *Id.*

PAGA: For the PAGA claim, Plaintiff's Counsel determined that Defendant's potential exposure could potentially reach $1,039,100.00, assuming the initial $100 penalty would apply for each of the 10,391 pay periods in the PAGA Period. Yslas Decl. at ¶ 19. However, even assuming success on the merits of each claim, PAGA gives the Court discretion to reduce penalties for a variety of reasons, including where to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory. *Id*. As such, Plaintiff's Counsel discounted this figure to account for the risk and uncertainty of prevailing at trial, resulting in a realistic evaluation of approximately $103,910.00 for PAGA penalties ($1,039,100.00 x 10%). *Id*. The settlement allocates $50,000.00 of the Gross Settlement Amount to PAGA penalties, therefore the PAGA allocation amounts to 48% of the realistic maximum damages for PAGA penalties ($50,000.00 / $103,910.00). *Id.*

Using these estimated figures, Plaintiff's Counsel predicted that the realistic maximum recovery for all claims, including penalties, would be approximately $1,706,594.44. Yslas Decl. at ¶ 20. This means that the realistic maximum recovery represents approximately 52% of the gross settlement figure ($895,000.00 / $1,706,594.44). *Id*. Considering the risk and uncertainty of prevailing at class certification and at trial, this is an excellent result for the Class. *Id*. Indeed, because of the proposed Settlement, Class Members will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment. *Id*.

Based on the figures in the Settlement Agreement, the Net Settlement Amount available for class settlement payments is currently estimated to be $500,516.67 for approximately 586 Class

Members. Yslas Decl. at ¶ 21. As a result, each Settlement Class Member would be eligible to receive an average net benefit of approximately $854.12. *Id*. Based on the estimated Net Settlement Amount available for individual class payments and there being approximately 46,378 workweeks in the Class Period, the estimated weekly valuation for individual class payments is $10.79 ($500,516.67/ 46,378 workweeks). *Id*. Based on these current estimates, the lowest estimated individual class payment could be $10.79 ($10.79 x 1 week) and the highest estimated individual class payment could be $3,215.42 ($10.79 x approximately 298 weeks in the Class Period). *Id*. Based on these current estimates and the fact that Plaintiff worked for Defendant for approximately 235 weeks during the Class Period, Plaintiff's estimated individual class payment is $2,535.65 ($10.79 x approximately 235 weeks). *Id*.

C. The Requested Service Payments are Reasonable

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

Throughout this case, Plaintiff assisted counsel in providing information necessary to prosecute the claims, meeting with counsel regarding the claims, maintaining regular contact with counsel, making himself available the day of mediation to answer questions, and reviewing the Settlement to ensure it was fair to the Class. Dulaney Decl. at ¶ 7. No action would likely have been taken by Class Members individually and no compensation would have been recovered for them, but for Plaintiff's services on behalf of the Class. By actively pursuing this action, Plaintiff furthered the California public policy goal of enforcing the State's wage and hour laws. *See Sav-On*, 34 Cal.4th at 340. The requested class representative service payments are reasonable and should be preliminarily approved. Plaintiff has provided declarations regarding his 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.").

Plaintiff seeks appointment of Wilshire Law Firm, PLC as Class Counsel. The attorneys performed significant work and expended litigation costs in prosecuting this matter with no guarantee of payment. Yslas Decl. at ¶ 22. Plaintiff's Counsel seeks preliminary approval of up to one third (1/3) of the Gross Settlement Amount, currently estimated to be $298,333.33, and up to $28,000.00 in reimbursement of litigation costs. Given the work performed in this matter, the extensive information exchange, and the substantial recovery obtained on behalf of the Class, Plaintiff's Counsel achieved a settlement through efficient and diligent work. *See generally*, Yslas Decl. At final approval, Plaintiff's Counsel will fully brief the merits of its request for the award of attorneys' fees and litigation costs.

E. The Administration Costs are Reasonable

The Parties have agreed upon using ILYM Group Inc. to administer this Settlement. Settlement Agreement at § 1.2. Plaintiff seeks preliminary approval of $8,150.00 for ILYM Group Inc. to administer this Settlement pursuant to ILYM Group Inc.'s bid. *See* Yslas Decl. at ¶ 36; Declaration of Lisa Mullins of ILYM Group Inc. in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement, Exhibit C. The services covered by this bid are extensive and necessary to carry out the Settlement administration.

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V. CONCLUSION

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

Respectfully submitted,

Dated: January 9, 2026

WILSHIRE LAW FIRM, PLC

By: /s/ Courtney M. Miller
Courtney M. Miller
Attorneys for Plaintiff