John G. Yslas (SBN 187324)
john.yslas@wilshirelawfirm.com
Samantha A. Smith (SBN 233331)
samantha.smith@wilshirelawfirm.com
Eugene Zinovyev (SBN 267245)
eugene.zinovyev@wilshirelawfirm.com
John Brown (SBN 233605)
jbrown@wilshirelawfirm.com
Lisa B. Iturriaga (SBN 339678)
lisa.iturriaga@wilshirelawfirm.com
WILSHIRE LAW FIRM
3055 Wilshire Blvd., 12th Floor
Los Angeles, California 90010
Telephone: (213) 381-9988
Facsimile: (213) 381-9989

Attorneys for Plaintiff

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Superior Court of California
County of Stanislaus
Clerk of the Court
By: Brenton Ratley, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF STANISLAUS

CHRISTINA PEREZ, individually, and on behalf of all others similarly situated,

Plaintiff,

v.

THE CARSWELL GROUP INC. DBA INDEPENDENT MANAGEMENT SERVICES, a Michigan corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.: CV-23-007642 (Lead Case)
Case No.: CV-24-003622

Assigned for all purposes to:
Hon. John R. Mayne
Dept. 21

DECLARATION OF JOHN G. YSLAS IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT

Date: April 25, 2025
Time: 8:30 a.m.
Dept.: 21

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3055 Wilshire Blvd, 12th Floor
Los Angeles, CA 90010-1137

DECLARATION OF JOHN G. YSLAS

I, John G. Yslas, hereby declare as follows:

1. I am an attorney at law licensed to practice before all of the courts of the State of California. I am a senior partner at Wilshire Law Firm, PLC ("WLF"), counsel for Plaintiff Christina Perez ("Plaintiff") in this matter. I am thoroughly familiar with and have personal knowledge of all of the facts set forth herein.

2. I submit this declaration in support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement.

Procedural History

3. On December 28, 2023, Plaintiff filed an 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. CV-23-007642.

4. On January 2, 2024, Plaintiff Christina Perez sent a letter to the LWDA as required by Lab. Code § 2699.3(a). A true and correct copy of the letter sent to the LWDA on January 2, 2024 is attached hereto as **Exhibit 3**. The LWDA did not respond to this notice, indicating it did not intend to investigate, thereby authorizing Plaintiff to represent the State of California as a private attorney general for the purposes of PAGA.

5. On May 13, 2024, Plaintiff filed a representative action against Defendant alleging civil penalties under PAGA (Cal. Lab. Code § 2699, *et seq*.), Case No. CV-24-003622.

6. The Parties subsequently participated in a private mediation with mediator Gig Kyriacou on October 23, 2024. The negotiations were adversarial, conducted at arm's length, and tempered by the efforts of both sides to serve the interest of their clients. Ultimately, the parties were able to reach a settlement agreement.

7. The Parties negotiated the terms of the Settlement over the next few months, which was finalized on January 21, 2025. A true and correct copy of the fully executed Settlement

Agreement is attached hereto as **Exhibit 1**. Attached thereto as **Exhibit A** is a true and correct copy of the Parties' proposed Class Notice.

8. On April 1, 2025, Plaintiff submitted a copy of the Settlement Agreement to the LWDA. A true and correct copy of the confirmation of the submission my office received after submitting the Settlement Agreement to the LWDA is attached hereto as **Exhibit 2**.

Investigation and Exposure Analysis

9. Prior to attending mediation, Plaintiff's Counsel thoroughly investigated the claims, applicable law, and potential defenses. Plaintiff's Counsel assessed the value to the class claims using the documents and data Defendant produced in informal discovery, including class data providing the number of Class Members, the number of workweeks in the Class Period, and the number of pay periods in the PAGA Period, Plaintiff's personnel file, employment handbooks and policies, job descriptions, and a random sampling of time and payroll records. Plaintiff's Counsel engaged an expert to quantify the potential exposure using the time and payroll records, and then assessed the risks associated with each claim meriting reductions in the likely success at class certification and likely recovery at trial.

10. The Class is also readily ascertainable from Defendant's business records, because all Class Members are or were employees of Defendant. Defendant's records show that there are approximately 52 Class Members, making joinder of all Class Members impracticable. Further, 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.

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

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Members are entitled to damages and/or penalties. These common questions could be resolved using Class Members' time records, payroll records, testimony from Defendant's designated representative(s), and Class Members' testimony.

12. Based on an analysis of the facts and legal contentions in this case, documents and information from Defendant, my team and I evaluated Defendant's maximum exposure. We considered the risk of not having the claims certified and the risk of not prevailing at trial, even if the claims are certified. After using the data Defendant provided, including Class Member timekeeping and payroll records, as well as Class Member demographics (i.e., the number of Class Members, Workweeks, and average total compensation of the Class), with the assistance of a statistics expert, we created a damages model to evaluate the realistic range of potential recovery for the class. The damages model is based on the following benchmarks:

Total Class Members: 51
Terminated Class Members during 3-year statute: 18
Total Workweeks: 2,157
Total Shifts Worked by the Class: 9,776
PAGA Pay Periods: 460
Avg. Hourly Rate: $21.36

13. Minimum and Overtime Wages: Plaintiff alleges that Defendant failed to pay for all hours worked, including minimum wages, straight time wages, and overtime wages, by requiring class members to work off-the-clock, unpaid. For purposes of calculating Defendant's liability based on a best-case scenario for Plaintiff and the Class, Plaintiff's expert estimates that Defendant's maximum potential exposure by assuming that all unpaid work time should have been paid at the overtime rate, not minimum or straight time wages, and we assumed that Defendant is liable for one (1) hour of unpaid worktime per workweek. This results in an estimate of $78,602, but we applied a risk discount based on a 60% chance at class certification and 50% chance at trial to reach a settlement value of approximately $23,580.60 ($78,602 x 60% x 50%) because liability depends on whether Defendant knew or should have known that class members were working off-the-clock.

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14. Meal Periods: With respect to the meal period claim, Plaintiff alleges that Defendant required her and similarly situated class members to either work in lieu of taking meal periods, or their meal periods were untimely or interrupted. Based on our investigation, we discovered that approximately 80% of meal periods were exactly 60 minutes which indicated the likelihood of synthetic time entries and/or inaccuracy. Additionally, Plaintiff and other class members were instructed to record that they took a meal break that was 60 minutes in length when in fact they often did not due to the heavy workload. Plaintiff's experts calculated that the potential liability for the meal period claim is $107,561.00. However, we discounted this figure based on a 50% chance of succeeding at class certification and a 50% chance of succeeding at trial, as well as Defendant's contention that the claim lacks merit, resulting in a risk discount to reach a settlement value of approximately $26,890.25 ($107,561.00 x 50% x 50%).

15. Rest Breaks: With respect to the rest period claim, Plaintiff alleges that Defendant required her and similarly situated class members to work in lieu of taking rest breaks, or their rest periods were untimely or interrupted and failed to pay rest break premiums when class members were deprived their rest breaks. Assuming a 100% violation rate for the Class Period based on Plaintiff's and other Class Members' experience working for Defendant, Defendant's potential liability for the rest period claim is $227,574.00; however, we discounted this figure to account for the difficulty of certifying and proving rest period claims, particularly because rest periods do not have to be recorded, and to account for the possibility of Class Members voluntarily choosing to forego a rest period. Thus, yielding a realistic damage estimate of $27,308.88 ($227,574.00 x 40% x 30%) based on a 40% chance of succeeding at class certification and a 30% chance of succeeding at trial.

16. Reimbursements: Plaintiff alleges that Defendant failed to reimburse necessary business expenses. Defendant's employees (including Plaintiff) were required to use their own personal cell phones for work-related purposes, including but not limited to tracking their time. Assuming a very conservative $10/per month per employee for unpaid reimbursements, this results in a damage estimate of $21,570.00 ($10/workweek x 2,157 workweeks). However, after discounting this figure based on an evaluation of a 50% chance of succeeding at class certification

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and a 40% chance of succeeding at trial to account for the difficulty of certifying and proving unpaid reimbursements and necessary business expenses, yields a realistic damage estimate of $4,314.00 (21,570.00 x 50% x 40%).

17. In sum, we estimated that Plaintiff's maximum recovery for the off-the-clock claim, meal period violations, rest period violations, and failure to reimburse business expenses is $435,307.00 ($78,602.00 for unpaid wages + $107,561.00 for meal period violations + $227,574.00 for rest break violations + $21,570.00 for unpaid reimbursements), but after factoring in the risk and uncertainty of prevailing at certification and trial, we estimate that Plaintiff's realistic estimated recovery for the non-penalty claims are $82,093.73 ($23,580.60 for unpaid wages + $26,890.25 for meal period violations + $27,308.88 for rest break violations + $4,314.00 for unpaid reimbursements).

18. <u>Derivative and PAGA Penalties</u>: Plaintiff alleged that as a result of Defendant's alleged failure to pay all wages and meal and rest period premiums owed, Defendant owed waiting time penalties and wage statement penalties. With respect to Plaintiff's claims for statutory and civil penalties, Plaintiff estimates that Defendant's realistic potential liability is $82,093.73 ($23,580.60 for unpaid wages + $26,890.25 for meal period violations + $27,308.88 for rest break violations + $4,314.00 for unpaid reimbursements). While Defendant's maximum potential liability for waiting time penalties is $185,043.00 (assumes 30 days per employee at 7.6 hours per day), $40,450.00 for inaccurate wage statements (based on $50 for the first violations and $100 for subsequent violations, with a $4,000 employee maximum), and $46,000 for PAGA violations based on the Court assessing a $100 penalty for initial violations for all 460 pay periods within the one-year statute, we believe that it would be unrealistic to expect the Court to award the full $271,493.00 in penalties given Defendant's defenses, the contested nature of Plaintiff's claims, and the discretionary nature of penalties. Considering that the underlying claims are realistically estimated to be $82,093.73, such a disproportionate award would also raise due process concerns.

19. Weighing these factors and applying a discount to account for the risk and uncertainty of prevailing at trial, we arrived at $37,059.16 ($22,205.16 for waiting time penalties ($185,043.00 for waiting time penalties x 40% chance of succeeding at class certification x 30%

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chance of succeeding at trial) + $4,854.00 ($40,450.00 for wage statement penalties x 40% chance of succeeding at class certification x 30% chance of succeeding at trial) + $10,000 for PAGA) for statutory and civil penalties. Most importantly, after taking into consideration that the Court would have discretion to reduce the PAGA award based on whether the amount of the award would be "unjust, arbitrary and oppressive, or confiscatory" Lab. Code §2699(e)(2), Plaintiff could not place a high value on the PAGA penalties, and therefore allocated $10,000 of the Gross Settlement Amount to settle these claims. *See Hopson v. Hanesbrands Inc.,* No. CV-08-0844 EDL, 2009 U.S. Dist. LEXIS 33900 at *24 (N.D. Cal. Apr. 3, 2009) (finding amount of PAGA penalties reasonable where the amounts are negotiated in good faith and "there is no indication that [the] amount was the result of self-interest at the expense of other Class Members"); *Nordstrom Comm'n Cases* 186 Cal.App.4th 576, 579 (2010) ("trial court did not abuse its discretion in approving a settlement which does not allocate any damages to the PAGA claims").

20. Using these estimated figures, Plaintiff predicted that the realistic maximum recovery for all claims, including penalties, would be **$119,152.89** ($82,093.73 in damages for violations + $37,059.16 (inclusive of wage statement penalties, waiting time penalties, and PAGA penalties) in statutory and civil penalties). This means that the $110,000.00 settlement figure represents **92.32%** of the realistic maximum recovery ($110,000.00/$119,152.89 = 92.32%). Considering the risk and uncertainty of prevailing at class certification and at trial, this is an excellent result for the Class.[1] Indeed, because of the proposed Settlement, class members will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment.

Plaintiff's Counsel's Qualifications

21. Plaintiff is represented by WLF. The attorneys at WLF performed significant work and expended litigation costs in prosecuting this matter with no guarantee of payment.

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[1] See, e.g., *Wise v. Ulta Salon, Cosmetics & Fragrance, Inc.* (E.D. Cal. Aug. 21, 2019) 2019 WL 3943859 at *8 (granting preliminary approval where the proposed allocation to settle class claims was between 9.53 percent of Plaintiffs' maximum recovery); *Bravo v. Gale Triangle, Inc.* (C.D. Cal. Feb 16, 2017) 2017 WL 708766 at * 10 (finding that "a settlement for fourteen percent recovery of Plaintiffs' maximum recovery is reasonable"); *In re Omnivision Techs., Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036, 1042 (approving settlement amount that "is just over 9% of the maximum potential recovery asserted by either party.").

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22. WLF was selected by Best Lawyers and U.S. News & World Report as one of the nation's Best Law Firms since 2020 and is comprised of more than 100 attorneys and over 600 employees. WLF is actively and continuously practicing in employment litigation, representing employees in both individual and class actions in both state and federal courts throughout California.

23. WLF is qualified to handle this Litigation because its attorneys are experienced in litigating Labor Code violations in both individual, class action, and representative action cases. WLF has handled, and is currently handling, numerous wage and hour class action lawsuits, as well as class actions involving consumer rights and data privacy litigation.

24. I graduated from the University of California, Santa Barbara with High Honors in 1991 with Bachelor of Arts degrees in Psychology. I received my Juris Doctor from UCLA Law School in 1996.

25. Upon graduating from law school in 1996, I worked for a boutique law firm practicing general litigation which included employment law matters. Since 2000 (that is, the last 25 years) my practice has been exclusively focused on labor and employment matters including handling wage and hour class, collective and representative actions (including the California Private Attorneys General Act, or "PAGA"), including in the international law firms of Morgan, Lewis & Bockius LLP (where I was a senior associate), Foley & Lardner LLP (where I was a partner and a national Vice Chair of the Labor and Employment Group), Norton Rose Fulbright LLP (where I was a partner) and Seyfarth Shaw (where I was a partner and member of the Wage and Hour Practice Group). During my time at these law firms, I was the primary attorney or took a major leading role in defending employers on numerous wage and hour class, collective and representative actions.

26. In late June 2022, I left Seyfarth Shaw and joined my current firm, The Wilshire Law Firm, PLC, to represent plaintiff employees. I have been and am handling many wage and hour class and representative actions litigating such matters on behalf of plaintiff employees in numerous Superior Courts and District Courts. From matters representing both plaintiffs and defendants, I have successfully mediated the resolution of many wage and hour class, collective,

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and representative actions. Just since starting to settle cases in late April 2023 I have already successfully mediated matters in which I have been counsel or co-counsel resulting in **over $100 million** in settlements which are in the process of being finalized, and with numerous upcoming mediations scheduled. In those and numerous other matters, I have managed and assisted with the litigation and settlement of many wage and hour PAGA and class actions. In those actions, I performed similar tasks as those performed in the course of prosecuting this action.

27. I have received numerous awards for my legal work. For example, from 2015 to 2018, I was listed in Los Angeles Super Lawyers for Employment Litigation (Thomson Reuters). have also served on numerous prominent boards and in other leadership positions, including currently serving as Southern California Regional President for the Hispanic National Bar Association and on the board of directors of the Mexican American Bar Foundation. I also previously served on the 5-member Los Angeles Civil Service Commission, which generally oversees the personnel decisions for the City of Angeles.

28. I have also published numerous blogs on labor and employment issues including on wage and hour issues. For example, I published "Headline News: Wal-Mart v. Dukes-Impact on Class Action Litigation" (while a partner with Foley & Lardner LLP) and "Are You Really Protected From Wage-and-Hour Successor Liability in an Asset Purchase" (while a partner with Seyfarth Shaw LLP). I have also been a presenter at numerous conferences, including being a presenter involving the "Employment Law Update" at a National Employment Law Council conference.

29. Samantha A. Smith is a Senior Attorney at WLF where her practice is focused on managing wage and hour class action and PAGA settlements. Ms. Smith was admitted to the California Bar in December of 2004, and received a J.D. from University of California, Hastings College of the Law and a B.A. from University of California, Davis. Ms. Smith has dedicated her 21-year career to plaintiffs'-side class action litigation. Her wealth of experience includes successful work on all stages of class action litigation, including class action appeals, class certification motions, and class settlements. See, e.g., *Blue Diamond Growers Product Labeling Cases*, JCCP No. 4822 (Los Angeles County Superior Court) (false advertising of Blue Diamond

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food products); *Adam vs. eHealth, Inc.*, Case No. 17CV309050 (Santa Clara Superior Court) (employee data breach*); Overton v. Armour-Eckrich Meats, LLC*, Case No. CIVDS1501325 (San Bernardino County Superior Court) (unpaid wages, meal period and rest break claims, and PAGA violations for nonexempt employees); *DeLeon et al. v. Westlake Services, LLC*, Case No. BC 526750 (Los Angeles County Superior Court) (unpaid overtime, meal period and rest break claims for call center employees); *Sawyer v. Retail Data, LLC*, Case No. 30-2014-00753767-CU-OE-CXC (Orange County Superior Court) (unpaid wage and rest break claims for piece rate workers*); Nguyen v. Pharmerica Corporation et al.*, Case No. 30-2014-00716072-CU-OE-CXC (Orange County Superior Court) (unpaid wages and unreimbursed expenses for pharmacists); *Laumea v. Performance Food Group, Inc.*, Case No. CIVDS1407509 (San Bernardino Superior Court) (unpaid wages, meal and rest break claims for non-exempt employees); *Durroh v. East West Bank*, Case No. BC528860 (Los Angeles Superior Court) (overtime claims for failure to include bonuses in regular rate of pay for bank workers); *Gonzalez et al. v. SFFI Company, Inc. et al.*, Case No. CIVDS1504287 (San Bernardino Superior Court) (unpaid wages, meal period and rest break claims for non-exempt employees).

30. Eugene Zinovyev is a Junior Partner at WLF. He graduated from the University of California-Berkeley with a Bachelor of Arts in Political Economy of Industrial Societies, and received his Juris Doctor from the University of California, San Francisco School of Law in 2009. He has practiced employment and wage and hour law since on both the plaintiff and defense sides. Mr. Zinovyev has tried multiple jury cases to verdict as well as numerous bench trials. He has also briefed published appellate court decisions in both state and federal court. Mr. Zinovyev is admitted to practice before all Federal District Courts in California as well as the 9th Circuit Court of Appeals. He is also a member of the California Employment Lawyers Association. He has mediated and settled dozens of class and representative actions as well as individual civil matters.

31. John Brown is an Associate Attorney at Wilshire Law firm, PLC. He was admitted to practice law in the State of California in 2004. John graduated from UC Berkeley with a Bachelor of Arts and received his Juris Doctor from The UCLA School of Law. His current practice has been focused on class action employment law. He has participated in dozens of settlements totaling

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tens of millions of dollars, from the memorandum of understanding and settlement agreement drafting stage through to final approvals from the court.

32. Lisa B. Iturriaga is a fourth-year Associate Attorney at Wilshire Law Firm, PLC. She was admitted to practice law in the State of California in November 2021. Lisa graduated from University of South Florida with a Bachelor of Science in Finance and a Bachelor of Arts in Marketing. She received her Juris Doctor from Chapman University Dale E. Fowler School of Law. Since graduating, her practice has been in insurance defense (previously) and employment law (currently). Since 2023, she has exclusively worked on Plaintiff-side wage and hour cases.

Plaintiff's Adequacy as the Class Representative

33. Plaintiff's interests are coextensive with Class Members' interests. Plaintiff has demonstrated an ability to advocate for the interests of Class Members by initiating this lawsuit, maintaining regular contact with her attorneys, gathering documents and information, being available on the day of mediation to answer questions, meeting with her attorneys to understand the claims and theories of liability at issue, assisting her attorneys in preparation for mediation, and reviewing the proposed Settlement.

34. 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.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 3, 2025 at Los Angeles, California.

John G. Yslas

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3055 Wilshire Blvd, 12th Floor
Los Angeles, CA 90010-1137