WILSHIRE LAW FIRM, PLC
Benjamin H. Haber (SBN 315664)
benjamin.haber@wilshirelawfirm.com
Talar DerOhannessian (SBN 311687)
talar.derohannessian@wilshirelawfirm.com
Samantha J. Costa (SBN 346526)
samantha.costa@wilshirelawfirm.com
Alan Wilcox, Esq. (SBN 287476)
alan.wilcox@wilshirelawfirm.com
Conor J.D. Gomez, Esq. (SBN 337395)
conor.gomez@wilshirelawfirm.com
660 South Figueroa Street, Sky Lobby
Los Angeles, California 90017
Telephone: (213) 381-9988
Facsimile: (213) 381-9989

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

GUILLERMO PUGA, individually, and on behalf of all others similarly situated, the State of California, and other aggrieved persons, *Plaintiff*, v. CA DISTRIBUTION RESOURCES, LLC, a limited liability company; and DOES 1 through 10, inclusive, *Defendants*.	Case No. 24CV432298 Assigned to Hon. Beth McGowen, Dept. 22 Complaint Filed: March 4, 2024 FAC Filed: July 29, 2024 Trial date: Not set **CLASS & REPRESENTATIVE ACTION** **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** PRELIMINARY APPROVAL HEARING Date: February 4, 2027 Time: 1:30 p.m. Dept: 22

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

PLEASE TAKE NOTICE that on February 4, 2027 at 1:30 p.m., in Department 22 of the Santa Clara County Superior Court, located at 191 North First Street San Jose, CA 95113, pursuant to Code of Civil Procedure § 382 and California Rules of Court 3.769, *et seq*., Plaintiff Guillermo Puga ("Plaintiff" or "Class Representative") will move the Court for an Order granting preliminary approval of the proposed $215,000.00 (the "Maximum Settlement Amount") Class Action and PAGA Settlement Agreement (the "Settlement") between Plaintiff and Defendant CA Distribution Resources LLC ("Defendant," and together with Plaintiff, the "Parties") to resolve the wage and hour class action and Private Attorneys General Act (Cal. Lab. Code §§ 2699, *et seq.*) ("PAGA") representative action between Plaintiff, on behalf of the Class (defined below), and Defendant (the "Action"). Plaintiff further moves the Court for an Order:

1. Granting preliminary approval of the Settlement;
2. Certifying the Class, defined as "all persons who performed work for Defendant in California during the Class Period, including current and former employees." The Class Period is the period September 6, 2019, through October 12, 2025 (the "Class Period");
3. Approving the proposed class notice (the "Class Notice") and the plan for distribution of the Class Notice. A true and correct copy of the Class Notice is attached to the Settlement as **Exhibit A**;
4. Appointing Plaintiff Guillermo Puga as "Class Representative" for settlement purposes;
5. Appointing Plaintiff's Counsel, Benjamin H. Haber, Talar DerOhannessian, Samantha J. Costa, Alan Wilcox, and Conor J.D. Gomez of Wilshire Law Firm, PLC ("WLF") as "Class Counsel" for settlement purposes;
6. Appointing ILYM Group, Inc. as the "Administrator"; and
7. Scheduling a final approval hearing.

The motion will be based upon this notice, the attached memorandum of points and authorities, the Declarations of Conor J.D. Gomez (the "Class Counsel Declaration") and Guillermo Puga, filed concurrently herewith, the records and files in the Action, and any other further evidence or argument that the Court may properly receive at or before the hearing (the "Motion").

Respectfully submitted,

Dated: June 19, 2026

WILSHIRE LAW FIRM, PLC

By: Conor Gomez

Benjamin H. Haber
Talar DerOhannessian
Samantha J. Costa
Alan Wilcox
Conor J.D. Gomez

Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff seeks preliminary approval of a proposed Settlement entered into between Plaintiff (on behalf of the Class) and Defendant. The Settlement will provide substantial monetary payments to approximately 380 Class Members. And, as set forth more fully below, the proposed Settlement satisfies all the criteria for settlement approval under California law. The negotiations were at arms-length and after extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiff's claims and Defendant's defenses, the Parties executed the Settlement on May 6, 2026. Accordingly, Plaintiff requests that the Court preliminarily approve the proposed Settlement, certify the Class, approve the proposed Class Notice, and set a final approval hearing.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiff's Claims and Procedural History

Plaintiff alleges that Defendant's payroll, timekeeping, and wage and hour practices resulted in Labor Code violations. (Class Counsel Decl.¶ 3.) Plaintiff alleges that Defendant failed to pay for all hours worked. (*Id.*) Specifically, Plaintiff alleges that Defendant failed to pay for all hours worked, failure to provide meal periods, failure to authorize and permit rest periods, failure to timely pay final wages, failure to furnish accurate wage statements, failure to indemnify employees for expenditures and failure to produce requested employment records (*Id.*)

Based on these allegations, on March 4, 2024, Plaintiff filed a putative wage and hour class action complaint against Defendant for: (1) failure to pay minimum and straight time wages (Labor Code §§ 204, 1194, 1194.2, and 1197); (2) failure to pay overtime wages (Labor Code §§ 1194 and 1198); (3) failure to provide meal periods (Labor Code §§ 226.7 and 512); (4) failure to authorize and permit rest periods (Labor Code § 226.7); (5) failure to timely pay final wages at termination (Labor Code §§ 201-203); (6) failure to provide accurate itemized wage statements (Labor Code § 226); (7) failure to indemnify employees for expenditures (Labor Code § 2802); (8) failure to produce requested employment records (Labor Code §§ 226 and 1198.5); and (9) unfair business practices (Business and Professions Code §§ 17200, et seq.). (Class Counsel Decl.¶ 4.) Plaintiff sent a notice to Defendant and the California Labor & Workforce Development Agency ("LWDA") alleging similar wage and hour violations pursuant to the PAGA on March 26, 2024. (*Id.*) On July 29, 2024, Plaintiff filed a first amended complaint against Defendant adding a cause of action for PAGA civil penalties (the "Operative Complaint"). (*Id.*)

B. <u>Discovery and Investigation</u>

Following the filing of the Action, the Parties exchanged information, data, and documents, and reviewed the same before going to mediation. (Class Counsel Decl.¶ 5.) Defendant produced a sample of time and pay records for Class Members. (*Id.*) Defendant also provided documents setting forth its wage and hour policies and practices during the Class Period, information regarding the total number of current and former employees in its informal discovery responses, and financial records. (*Id.*) The Parties have engaged in sufficient informal discovery and investigation to assess the relative merits of the claims and contentions of the Parties. (*Id.*)

After reviewing documents regarding Defendant's wage and hour policies and practices and analyzing Defendant's timekeeping and payroll records, Class Counsel was able to evaluate the probability of class certification, success on the merits, and Defendant's maximum monetary exposure for all claims. (Class Counsel Decl.¶ 6.) Class Counsel also investigated the applicable law regarding the claims and defenses asserted in the Action. (*Id*.) Class Counsel reviewed these records and prepared a damage analysis prior to mediation. (*Id*.) This extensive investigation and discovery allowed Class Counsel to act intelligently and effectively in negotiating the Settlement. (*Id*.)

C. <u>Settlement Negotiations</u>

On May 28, 2025, the Parties participated in private mediation with experienced class action mediator Gig Kyriacou, Esq. (Class Counsel Decl.¶ 7.) The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. (*Id*.) After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiff's claims and Defendant's defenses, the Parties reached the Settlement, the material terms of which are encompassed within the Settlement. (*Id.* ¶ 8, Ex. 1, Settlement.)

Class Counsel has conducted a thorough investigation into the facts of this case. (Class Counsel Decl.¶ 14.) Based on the foregoing discovery and their own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement is fair, just, reasonable, and adequate and is in the best interests of the Class Members in light of all known facts and circumstances, the risk of significant delay, the defenses that could be asserted by Defendant both to certification and on the merits, trial risk, and appellate risk. (*Id.*)

Indeed, the Maximum Settlement Amount represents approximately **69.8%** of the **realistic maximum recovery** of $308,007.86. (Class Counsel Decl. ¶ 23.) Although Class Counsel estimated that Defendant's maximum potential liability for all claims was approximately $2.4 million, when the risk of prevailing at certification and trial are factored into the equation, Class Counsel believes that Defendant's realistic exposure was $308,007.86, meaning the Settlement achieves a significant recovery. (*Id.* ¶¶ 14-27.) Considering the risk and uncertainty of prevailing at class certification and at trial, this is an excellent result for the Class. (*Id.* ¶ 27.) Indeed, because of the proposed Settlement, Class Members will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment. (*Id.* ¶ 23.)

D. Key Terms of the Proposed Settlement

The Settlement's key terms include:

1. Class Period: "means the period from September 6, 2019, through October 12, 2025 ("Class Period")." (Settlement, § 1.12.)

2. Class: "means all persons who performed work for Defendant in California during the Class Period, including current and former employees ("Class Member(s)")." (Settlement, § 1.5.)

3. Aggrieved Employee: "means all persons who performed work for Defendant in California during the PAGA Period for remuneration, as more fully defined in Labor Code section 2775, et seq., including current and former employees ("Aggrieved Employee(s)")." (Settlement, § 1.4.)

4. PAGA Period: "means the period from March 26, 2023, through October 12, 2025 ("PAGA Period")." (Settlement, § 1.32.)

5. Maximum Settlement Amount: "means $215,000.00 which is the total amount Defendant agrees to pay under the Settlement, except as provided in Paragraph 8 [of the Settlement], Escalator Clause." (Settlement, § 1.22.)

6. Uncashed Checks: "Within twenty-one (21) days after the deadline for Class Members to cash their checks as reflected in Section 4.4.1. above 8 [of the Settlement], for any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and canceled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384(b)." (Settlement, § 4.4.3.)

7. Released Class Claims: "Upon the full and complete funding by Defendant of the Maximum Settlement Amount and all employer payroll taxes owed on the Wage Portion of Class Payments, all Participating Class Members will release all claims under state, federal and local law that were or could have been asserted based on the facts and allegations made in the Action, and any amendments thereto, as to the Class Members, including without limitation, California Labor Code sections 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 2800, and 2802, California Industrial Commission Wage Orders, Cal. Code Regs., Title. 8, sections 11040, et seq., and Business and Professions Code sections 17200, et seq., California Code of Civil Procedure section 1021.5, such as all claims for or related to alleged unpaid wages, minimum wages, hours worked, overtime or double time wages, regular rate of pay, bonus and incentive pay, timely payment of wages during employment, timely payment of wages at separation, wage statements, payroll records and recordkeeping, unreimbursed business expenses, meal periods and meal period premiums, rest breaks and rest break premiums, unfair competition, unfair business practices, unlawful business practices, fraudulent business practices, penalties for the claims asserted (including but not limited to civil penalties, and waiting time penalties), interest, fees, costs, as well as all other claims and allegations

alleged in the Action (collectively "Released Class Claims"), from September 6, 2019 through October 12, 2025 (collectively, "Released Class Claims"), during the Class Period. Expressly excluded from the release are claims for retaliation, discrimination, unemployment insurance, disability, workers compensation, and claims outside the Released Class Claims. The Released Class Claims are those that accrued during the Class Period." (Settlement, § 5.2.)

8. Released PAGA Claims: "Upon the full and complete funding by Defendant of the Maximum Settlement Amount and all employer payroll taxes owed on the Wage Portion of Class Payments, all Aggrieved Employees will release all claims arising during the PAGA Period seeking civil penalties under PAGA, that Plaintiff as proxy for the State of California and/or the LWDA, to the maximum extent permitted by law, and as a private attorney general acting on behalf of Plaintiff and the PAGA Members, asserted or could reasonably have asserted based on the facts alleged in the Actions and/or the LWDA letters, including but not limited to all claims arising under the California Labor Code including, but not limited to sections 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 2800, 2802, and 2698, et seq. California Industrial Commission Wage Orders, California Code of Regulations, Title. 8, sections 1040. et seq., and Business and Professions Code sections 17200, et seq., and California Code of Civil Procedure section 1021.5 based on the facts alleged in the Action (collectively "Released PAGA Claims"). The Settlement shall release and bar all Released PAGA Claims by or on behalf of Plaintiff and all PAGA Members from March 26, 2023, through October 12, 2025 ("PAGA Release Period"), regardless of whether Plaintiff and/or a PAGA Member negotiates (cashes) their/his/her settlement checks sent pursuant to this Settlement. PAGA Members cannot, and do not have the right, to opt out as a PAGA Member and/or release of their Released PAGA Claims against the Released Parties. As such, an individual opting out of the Settlement Class has no impact as to his/her standing and/or inclusion as a PAGA Member assuming they/he/she qualifies as a PAGA Member. The Released PAGA Claims are those that accrued during the PAGA Period." (Settlement, § 5.3.)

9. No Reversion: "The Maximum Settlement Amount is non-reversionary and does not include employer payroll taxes owed on the wage portions of the Individual Class Payments, which Defendant will pay separately." (Settlement, § 3.1.)

10. PAGA Penalties: "means the total amount of PAGA civil penalties to be paid from the Maximum Settlement Amount ($12,000.00), allocated 25% to the Aggrieved Employees ($3,000.00) and 75% to LWDA ($9,000.00) in settlement of PAGA claims." (Settlement, § 1.35.) Class Counsel submitted the proposed settlement to the LWDA before filing this Motion for Preliminary Approval. (Class Counsel Decl. ¶ 9.)

11. Net Settlement Amount: "means the Maximum Settlement Amount, less the following payments in the amounts approved by the Court: PAGA Penalties payment, Enhancement, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Costs. The remainder is to be paid to Participating Class Members as Individual Class Payments." (Settlement, § 1.28.)

12. Distribution Formula: As to Class: "An Individual Class Payment is calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period, and (b) multiplying the result by each individual Participating Class Member's Workweeks." (Settlement, § 3.2.4.) As to PAGA: "The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties ($3,000.00) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period, and (b) multiplying the result by each individual Aggrieved Employee's PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment." (Settlement, § 3.2.5.1.)

13. Tax Allocation of Individual Class Payments: "Twenty percent (20%) of each Participating Class Member's Individual Class Payment will be allocated to the settlement of alleged wage claims (the "Wage Portion"). The Wage Portion is subject to applicable payroll tax withholdings and will be reported on an IRS Form W-2. Sixty percent (60%) of each Participating Class Member's Individual Class Payment will be allocated to the settlement of alleged penalty

claims, and twenty percent (20%) will be allocated to the settlement of alleged interest claims (collectively, the "Non-Wage Portion"). The Non-Wage Portion is not subject to payroll tax withholdings and will be reported on IRS Forms 1099. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment." (Settlement, § 3.2.4.1.)

14. Class Representative Service Payment or Enhancement Award: "A payment for the Enhancement Award to Plaintiff of $7,500.00 in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member. Defendant will not oppose Plaintiff's request for an Enhancement Award that does not exceed this amount." (Settlement, § 3.2.1.)

15. Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment: "A Class Counsel Fees Payment of up to one-third (1/3) of the Maximum Settlement Amount, which is currently estimated to be $71,666.67, and a Class Counsel Litigation Expenses Payment for actual costs. Defendant will not oppose requests for these payments provided that they do not exceed these amounts." (Settlement, § 3.2.2.)

16. Administrator: "means ILYM Group, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement." (Settlement, § 1.2.)

17. Administration Costs: "An Administrator Costs for actual costs, not to exceed $12,000.00 except for a showing of good cause and as approved by the Court." (Settlement, § 3.2.3) In its bid, the Administrator agreed to cap its costs at $8,750.00 for 400 Class Members. (Class Counsel Decl. ¶ 10, Ex. 2 [Settlement Administrator Bid].)

18. Notice of Proposed Class Action Settlement: The Class Notice sets forth in plain terms, a statement of the Action, the terms of the Settlement, the approximate amount of the Class Counsel Fees, Class Counsel Costs, and Class Representative Service Award being sought, and an explanation of how the Settlement allocations are calculated. (Settlement, Ex. A, Class Notice.) Class Members will be notified by first-class mail of the Settlement. (Settlement, § 7.4.2.) The Settlement Administrator will undertake its best efforts to ensure that the Class Notice is provided to the current addresses of Class Members, including conducting a national change of address

search and re-mailing the Class Notice to updated addresses. (*Id.*; Class Counsel Decl. ¶ 10, Ex. 2 [Settlement Administrator Bid].)

III. <u>DISCUSSION</u>

To prevent fraud, collusion, or unfairness to the class, the settlement of a class action requires court approval. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800-01.) This Court has wide discretion to determine whether the proposed Settlement is fair. (*Mallick v. Super. Ct.* (1979) 89 Cal.App.3d 434, 438.)

A. <u>A Presumption of Fairness Exists Over The Settlement</u>

Fairness is presumed when: (1) the settlement is reached through arm's-length bargaining; (2) investigation is 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* at p. 1800.)

1. The Settlement Is the Product of Arm's-Length Negotiations

Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered. No evidence to the contrary has been offered here; thus, there is a presumption that the negotiations were conducted in good faith. (Conte & Newberg, *Newberg on Class Actions* (3rd Ed.) § 11.51.)

As stated above, on May 28, 2025, the Parties participated in an arm's-length mediation with Gig Kyriacou, Esq. (Class Counsel Decl.¶ 7.)

2. The Parties Conducted Sufficient Investigation

As outlined above, Class Counsel conducted extensive informal discovery concerning the claims set forth in the Action, and Class Counsel investigated the applicable law regarding the claims and defenses asserted in the Action. (Class Counsel Decl.¶¶ 5-6.) Thus, Plaintiff and Class Counsel were able to act intelligently and effectively in negotiating the proposed Settlement. (*Id.*)

3. Class Counsel Has Extensive Experience in Class Action Litigation

The settlement negotiations were conducted by highly capable and experienced counsel. Class Counsel have a strong record of vigorous and effective advocacy for their clients and are experienced in handling complex wage and hour class action litigation. (*Id.* ¶¶ 37-51.) Although Plaintiff and Class Counsel were prepared to litigate the claims alleged in the Action, they believe the proposed Settlement is in the best interests of the Class.

4. The Percentage of Objectors Is Small

This factor cannot yet be determined unless and until the Court preliminarily approves the Motion and the Class Notice. This factor will be properly addressed in Class Counsel's Motion for Final Approval of Class Action Settlement, should this Court grant the instant Motion.

B. <u>The Settlement Is Fair, Just, Reasonable, and Adequate</u>

In considering whether a settlement is fair, just, reasonable, and adequate the trial court should consider relevant factors, which may include the strength of plaintiff's 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, … and the reaction of the class members to the proposed settlement. (*Kullar v. Foot Locker Retail, Inc*. (2008) 168 Cal.App.4th 116, 128.) Settlement is favored, and settlement agreements are realistically assessed. (*Stamburgh v. Super. Ct.* (1976) 62 Cal.App.3d 231, 236.)

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

1. Plaintiff's Strengths and Risks of Continued Litigation

Based on Plaintiff's discovery and investigation, Class Counsel reached the conclusion that Defendant had a policy and practice of: requiring its employees to work "off-the-clock" prior to clocking in for the workday, during meal periods, and after clocking out for the workday, time which it did not pay for; not providing its employees with California compliant meal and rest periods, which it did not pay appropriate premiums for; and failing to reimburse its employees for business-related expenses. (Class Counsel Decl. ¶ 16.) Defendant denies these claims.

While Plaintiff is confident in the merits of their claims, a legitimate controversy exists as to each cause of action. (Class Counsel Decl. ¶ 24.) Plaintiff recognizes that proving the amount of wages due to each class member would be an expensive, time-consuming, and uncertain proposition. (*Id*.) Although the Parties had engaged in significant amount of investigation, informal discovery and Class-wide data analysis, the Parties had not yet completed formal written discovery. (*Id.* ¶ 25.) Plaintiff intended to depose corporate officers and managers of Defendant. (*Id.*) Moreover, preparation for a class certification and a trial remained for the Parties as well as the prospect of appeals in the wake of a disputed class certification ruling for Plaintiffs and/or adverse summary judgment ruling. (*Id.*) Had the Court certified any claims, Defendant could move to decertify the claims. (*Id.*) As a result, the Parties would incur considerably more attorneys' fees and costs through trial. (*Id.*) This Settlement avoids the risks and the accompanying expense of further litigation. (*Id.*)

Balancing the strengths of Plaintiff's claims against the risks of continued litigation of the Action, Plaintiff and Class Counsel determined that the proposed Settlement was in the best interests of the Class.

2. The Maximum Settlement Amount Is Reasonable

In order to approve a class action settlement, the Court must satisfy itself that the class settlement is within the "ballpark" of reasonableness. (*Kullar*, at 133.) The fact that a plaintiff might have received more if the case had been fully litigated is no reason not to approve the settlement. (*Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447.) The record need not contain an explicit statement of the maximum theoretical recovery. (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408-9 [holding that *Kullar* does not require "an explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims", but instead, only an "understanding of the amount that is in controversy and the realistic range of outcomes of the litigation."].)

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

The proposed Maximum Settlement Amount represents a substantial recovery when compared to Plaintiff's reasonably forecasted recovery. (Class Counsel Decl. at ¶¶ 14-27.) Because of the proposed Settlement, Class Members will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment. (*Id.*) When considering the risks of litigation, the uncertainties involved in achieving class certification, the burdens of proof necessary to establish liability, the probability of appeal of a favorable judgment, it is clear that the Settlement is within the "ballpark" of reasonableness, and preliminary settlement approval is appropriate. (*Id.*) ***Indeed, each Class Member is eligible to receive an average net benefit of approximately $237.06.*** (*Id.* ¶ 27.)

C. <u>The Proposed Attorneys' Fees and Costs Are Reasonable</u>

Under the Settlement, subject to the Court's approval, Defendant agrees to pay Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment. These amounts are disclosed to all Class Members in the proposed Class Notice and are reasonable. (Class Counsel Decl. Ex. 1, Ex. A.)

1. Class Counsel Request an Award of the Attorneys' Fees and Costs Based on the "Common Fund" Method

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

Class Counsel seeks approval of the Class Counsel Fees based on the "percentage of recovery/common fund" theory. The purpose of this approach is to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." (*Vincent v. Hughes Air West, Inc*. (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn v. State of California* (1995) 15 Cal.3d 162, the California Supreme Court stated: "[O]ne who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs." (*Id.* p. 167.) Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court recognized that the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share." (*Id.* p. 110.)

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

2. The Requested Attorneys' Fees and Costs Are in Line with Typical Cases

According to a leading treatise on class actions, "[n]o general rule can be articulated on what is a reasonable percentage of a common fund. Usually, 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented." (*See* Conte & Newberg, Newberg on Class Actions (3rd Ed.) § 14.03.) Attorneys' fees that are fifty percent of the fund are typically considered the upper limit, with thirty to forty percent commonly awarded in cases where the settlement is relatively small. (*Id.*; *see also Van Vranken v. Atlantic Richfield Company* (N.D. Cal. 1995) 901 F. Supp. 294 [stating that most cases where 30-50 percent was awarded involved "smaller" settlement funds of under $10 million].)

Here, the Class Counsel Fees Payment is equal to one-third (1/3) of the Maximum

Settlement Amount, which is in line with the prevailing guidelines established in California case law and academic literature and is consistent with awards in California. (*See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 ["Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."].) Accordingly, Plaintiff respectfully requests that the Court approve the attorneys' fees as negotiated by the Parties and requested herein.

3. This Matter Involves A "Fee-Shifting" Provision of the Labor Code

Labor Code § 1194 (a) provides for the recovery of "minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit." Under this section, Plaintiff would be permitted to recover their actual attorneys' fees, even if those fees were larger than the total Class recovery at the conclusion of this Action should it proceed. The Settlement is beneficial in that it limits the risk of continued expenses and consumption of time, energy, and resources facing Defendant while at the same time rewarding Class Counsel for their decision to assume risk by taking on this Action. In fact, prosecution of this Action involved significant financial risk for Class Counsel. (Class Counsel Decl. ¶¶ 35-36.) Class Counsel undertook this matter solely on a contingent basis, with no guarantee of recovery. (*Id.*) Once Class Counsel undertook this Action on behalf of the Class, Class Counsel committed to pursue it to its conclusion, placing its fiduciary duty to the Class ahead of all other concerns. (*Id.*)

4. The Experience, Reputation and Ability of Class Counsel Support the Requested Attorneys' Fees and Costs

As demonstrated by their past experience in pursuing class actions on behalf of consumers and employees, Class Counsel possess considerable expertise in litigating class actions. (Class Counsel Decl. ¶¶ 37-51.) Class Counsel has been involved as lead counsel or co-counsel in several class actions that resulted in millions in recovery. (*Id.*) Because it is reasonable to compensate class counsel commensurate with their skill, reputation and experience, Class Counsel's requested fee award is supported here.

Class Counsel's experience in wage and hour class actions was integral in evaluating the strengths and weaknesses of the case against Defendant and the reasonableness of the Settlement.

Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive law (state and federal), as well as the procedural law of class action litigation. Based on these and other factors, Class Counsel has frequently received fee awards of this percentage from the gross recovery for the class. Therefore, the requested Class Counsel Fees are reasonable and fair.

D. <u>The PAGA Allocation is Reasonable</u>

Where settlements negotiate a good faith amount for PAGA penalties and there is no indication that this amount was the result of self-interest at the expense of other class members, such amounts are generally considered reasonable. Courts have approved amounts for PAGA penalties in the range of zero to two percent of the total maximum amount of the Settlement. (*See Jack v. Hartford Fire Ins. Co.* (S.D. Cal. Oct. 13, 2011) 2011 WL 4899942 at *6 [approving a PAGA payment of 0.25%]; *McKenzie v. Fed. Express Corp*. (C.D. Cal. Jan. 23, 2012) 2012 WL 12882124 at *5 [acknowledging that courts approve PAGA claim settlements in the range of zero to two percent of the total settlement].)

Here, the PAGA Amount is larger than many other PAGA settlement amounts approved by the courts where seemingly nominal amounts were allocated for such claims. (*See, e.g., Zubia v. Shamrock Foods Co*. (C.D. Cal. Dec. 21, 2017) No. CV1603128ABAGRX, 2017 WL 10541431, at *14 [approving a PAGA settlement of 0.1%]; *Hopson, supra*, 2008 WL 3385452, at *1 [approving a PAGA settlement of 0.3% or $1,500]; *Garcia v. Gordon Trucking, Inc*. (E.D. Cal. Oct. 31, 2012) No. 1:10-CV-0324 AWI SKO, 2012 WL 5364575, at *3 [approving a PAGA settlement of 0.27%].) The Parties negotiated the PAGA Penalties, 25% to the Aggrieved Employees ($3,000.00) and 75% to LWDA ($9,000.00) in settlement of PAGA claims. (Settlement, § 1.35.) The PAGA Amount equates to approximately 5.6% of the Maximum Settlement Amount, which far exceeds amounts that are routinely approved. The Parties negotiated to allocate 5.6% of the Maximum Settlement Amount to PAGA Penalties in good faith and this amount is reasonable. (Class Counsel Decl. ¶ 22.)

E. <u>The Class Representative Service Payment Is Reasonable</u>

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

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

Under the Settlement, subject to the Court's approval, Defendant agreed to pay the Class Representative Service Payment in the amount of $7,500.00 to Plaintiff. Courts routinely approve service awards of $10,000.00 for plaintiffs represented by counsel. (*See, e.g., Moreno v. Pretium Packaging, L.L.C.* (C.D. Cal. Aug. 6, 2021) 2021 WL 3673845, *3 ["The Court concludes a $10,000 incentive award is appropriate."]; *Suarez v. Bank of America, National Association* (N.D. Cal., Jan. 11, 2024, No. 18-CV-01202-LB) 2024 WL 150721, at *4 ["The court approves awards of $10,000 for each class representative."].)

A **<u>2006</u>** study examining the average incentive award given to class action plaintiffs from **<u>1993 to 2002</u>** found that the "average award per class representative was $15,992 and the median award per class representative was $4,357." (Eisenberg & Miller, *Incentive Awards to Class Action*

Plaintiffs: An Empirical Study (2006) 53 UCLA L.Rev. 1303, 1308.) That same study found that named plaintiffs in employment discrimination class actions received an average award of $69,850 and a median award of $31,081, while named plaintiffs in other employment class actions received an average award of $12,121 and a median award of $13,059. (*Id.* p. 1334.) The authors of the study found that higher awards in employment cases reflected the "courts' wish to make representative plaintiffs whole by compensating them for the high costs of their service to the class, including risks of stigmatization or retaliation on the job." (*Id.* p. 1308.)

Class Counsel represents that Plaintiff devoted a great deal of time and work assisting Class Counsel litigate the Action, and Plaintiff communicated with Class Counsel during the mediation and the preparation leading up to mediation. (*See generally* Plaintiff's declaration; Class Counsel Decl. ¶¶ 28-32.) The Class Representative Service Award is reasonable particularly in light of the substantial benefits Plaintiff generated for all Class Members and as compared to similarly situated plaintiffs in other employment class and representative actions. (*Id*.)

IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED

A. Legal Standard

The proposed Class is well suited for class certification. All of the claims derive from a core set of alleged violations of California's wage and hour laws and regulations. For the reasons set forth more fully below, for purposes of settlement only, the Class satisfies the prerequisites for certification under Code of Civil Procedure § 382. Section 382 provides: "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all." (Code Civ. Proc., § 382). There are three requirements to section 382: Class certification requires proof (1) of a sufficiently numerous, ascertainable class, (2) of a well-defined community of interest, and (3) that certification will provide substantial benefits to litigants and the courts, i.e., that proceeding as a class is ***superior*** to other methods. (*In re Tobacco II Cases*, (2009) 46 Cal.App.4th 298, 313.)

The California Supreme Court has looked to Federal Rule of Civil Procedure 23 to further explain that the community-of-interest requirement itself embodies three factors: "(1) predominant 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." (*Richmond v. Dart Indus., Inc*. (1981) 29 Cal. 3d 462, 470.)

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

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

1. The Class is Ascertainable and Numerous

A class is ascertainable if a plaintiff supplies a reasonable means of identifying potential class members and the class is defined in terms of objective characteristics and common facts sufficient to allow a class member to identify himself or herself as having a right to recover based on that description. (*ABM Industries Overtime Cases*, (2017) 19 Cal.App.5th 277, 303.) Courts also consider the size or numerosity of the class when determining whether or not it is ascertainable. (*Id.* at 302).

a) *Class Definition*

When defining a class, the terminology used must convey "sufficient meaning to enables persons hearing to determine whether they are members of the class" and if the proposed class definition offers an objective way to identify those who will be bound by the results of the litigation. (*Id.* 302-303.) Courts have routinely certified classes defined using language to that here. (*Faulkinbury v. Boyd & Associates, Inc.* (2013) 216 Cal.App.4th 220, 227; *see also Brinker* at 1017-1018, 1019, defining several subclasses such as employees "who worked one or more work periods in excess of three and a half hours without receiving a paid 10 minute break" and those "who worked 'off-the-clock' or without pay.")

Here, the Class definition (as stated above) is objective as it is limited in scope to a specific time frame (during the Class Period) and is limited to the potential class members' employment classification (hourly, non-exempt employees). Further, there are common facts that exist here (such as those employees who worked without pay, were not given proper meal or rest periods, etc.) that are encapsulated by the causes of action alleged in the Action. This definition therefore provides sufficiently clear information to allow current and former employees to readily and reasonably determine whether or not they are a putative Class Member in this Action based upon this definition. (*ABM* at 304, stating "As long as the potential class members may be identified without unreasonable expense or time and given notice of the litigation, and the proposed class definition offers an objective means of identifying the persons who will be bound by the results of the litigation, the ascertainability requirement is met.") Thus, the proposed Class that Plaintiff seeks to represent is easily ascertainable and includes approximately former and current 380 employees of Defendant.

b) *Numerosity*

"The requirement of Code of Civil Procedure section 382 that there be 'many' parties to a class action suit is indefinite and has been construed liberally." (*Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934.) "Where a question is of common interest to 'many' persons, an action may be maintained as a class action even where the parties are numerous and it is in fact practicable to join them all." (*Id.*) "No set number is required as a matter of law for the maintenance of a class action." (*Id.*) "Thus, our Supreme Court has upheld a class representing the 10 beneficiaries of a trust in an action for removal of the trustees." (*Id.*, citing *Bowles v. Super. Ct.* (1955) 44 Cal.2d 574; *see also Collins v. Rocha* (1972) 7 Cal.3d 232 [upholding a 35 member class.]) If even as little as 10 persons can constitute a class, then certainly the 380 Class Members here satisfy the numerosity requirement.

2. There is a Well-Defined Community of Interest in the Questions of Law and Fact

The community-of-interest requirement itself embodies three factors: "(1) predominant 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." (*Richmond* at 470.)

a) *There are Many Common Issues of Law and Fact Which Predominate*

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

Here, the employment practices at issue are: whether Defendant had legally compliant policies and practices for all hours worked, including overtime wages; whether Defendant had legally compliant policies and practices to provide employees with meal periods; whether Defendant had legally compliant policies and practices authorizing and permitting its employees to take rest periods; whether Defendant reimbursed employees for business expenses; whether payment of wages during employed was timely; whether final payment of wages was untimely and excluded unpaid wages, including meal and rest period premium wages; whether wage statements were consequently non-compliant; and whether Defendant failed to keep requisite payroll records. Plaintiff contends that the factual and legal issues are the same for all the identified Class Members, including Plaintiff. Further, all Class Members suffered from, and seek redress for, the same alleged injuries.

b) *Plaintiff's Claims Are Typical of the Claims of the Class*

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

c) *Plaintiff and Class Counsel Meet the Adequacy Requirement*

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

All of these requirements are met here for settlement purposes. Plaintiff retained Class Counsel, whom have extensive experience in prosecuting complex class actions, including similar class actions that previously settled. (Class Counsel Decl. ¶¶ 37-51.) Class Counsel unquestionably is "qualified, experienced and generally able to conduct the proposed litigation." (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 875.) In addition, Plaintiff has no conflicts, and Plaintiff has, with Class Counsel, litigated this Action and diligently reviewed the Settlement terms, showing their dedication. Plaintiff's willingness to serve as Class Representative and to sacrifice the value of their own individual claims by executing a general release broader than that of the other Class Members so that the Class may benefit from this Settlement demonstrates Plaintiff's serious commitment to bringing about the best results possible for the Class, thereby also demonstrating that Plaintiff's interests are aligned with those of the Class and no conflict exists. (*McGhee*, *supra,* 60 Cal.App.3d at p. 451.)

3. A Class Action is Superior to a Multiplicity of Litigation

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

V. THE PROPOSED CLASS NOTICE IS CONSTITUTIONALLY SOUND

A. The Proposed Class Notice Plan Satisfies Due Process

Notice requirements are set forth in the California Rules of Court. (Cal. Rules of Court, Rule 3.766 (e), (f).) California law vests the Court with broad discretion in fashioning an appropriate notice program. (*Cartt v. Super Ct.* (1975) 50 Cal.App.3d 960, 973-74.) There is no statutory or due process requirement that all class members receive actual notice, but in this Action, the Class Notice will be disseminated through direct U.S. first class mail to the last known address for each Class Member. As the Court of Appeals has explained, "[t]he notice given should have a reasonable chance of reaching a substantial percentage of the class members . . . ." (*Id.* p. 974.) In this Action the Class Notice will be provided by direct mailing, which is the best possible form of notice as it provides the most reasonable chance of reaching a substantial percentage of the Class.

B. The Class Notice is Accurate and Informative

The proposed Class Notice is informative. It informs the Class Members of the terms of the Settlement and their right to be excluded from the Settlement. If there are Class Members who wish to object to this proposed Settlement, they will have the opportunity to file their objections and be heard at the Final Approval Hearing.

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

C. The Proposed Class Notice of Settlement Should Be Approved

The proposed Class Notice, in the form attached as **Exhibit A** to the Settlement, should be approved for dissemination to the Class. The Class Notice informs the Class of the terms of the Settlement and of their rights to be excluded from the Settlement. And if there are Class Members who wish to object to the Settlement, they will have the opportunity to file their objections and be heard at the final approval hearing. Accordingly, the proposed Class Notice meets all the requirements of Rule 3.769(f) of the California Rules of Court and should be approved.

VI. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the proposed Settlement and set a final approval hearing on or after June 14, 2027.

Respectfully submitted,

Dated: June 19, 2026

WILSHIRE LAW FIRM, PLC

By: ______________________________

Benjamin H. Haber
Talar DerOhannessian
Samantha J. Costa
Alan Wilcox
Conor J.D. Gomez

Attorneys for Plaintiff