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ELECTRONICALLY FILED
Superior Court of California
County of Sacramento
04/24/2025
By: A. Gray Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

AARON ALVAREZ and MICHAEL ARMOUR, individually, and on behalf of all others similarly situated,

Plaintiffs,

v.

AMAROK LLC, a Delaware limited liability company; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 24CV008395 (Lead Case)
Case No.: 24CV013383

Assigned for all purposes to:
Hon. Jill H. Talley
Dept. 23

NOTICE OF MOTION AND PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT

Date: May 16, 2025
Time: 9:00 a.m.
Dept.: 23

Reservation # A-08395-001

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on May 16, 2025 at 9:00 a.m., or as soon thereafter as the matter may be heard in Department 23 of the above-entitled Court, located at 720 9th Street, Sacramento, CA 95814, Plaintiffs Aaron Alvarez and Michael Armour ("Plaintiffs") will and hereby do move this Court for an Order:

1. Granting preliminary approval of the proposed Class Action and PAGA Settlement Agreement ("Settlement");
2. Conditionally certifying the proposed Class for settlement purposes only;
3. Appointing Plaintiffs as the Class Representatives;
4. Appointing Wilshire Law Firm, PLC as Class Counsel;
5. Appointing APEX Class Action Administration as the Settlement Administrator; and
6. Setting a final approval hearing date.

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

This Motion is based on this Notice of Motion, the accompanying Memorandum of Points and Authorities, the Declaration of John G. Yslas, the Declaration of Aaron Alvarez, the Declaration of Michael Armour, 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.

Respectfully submitted,

Dated: April 24, 2025 **WILSHIRE LAW FIRM, PLC**

By: Samantha Smith

Samantha A. Smith
Attorneys for Plaintiffs

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I. INTRODUCTION

Pursuant to California Rules of Court, Rule 3.769(d) and (e), Plaintiffs seek preliminary approval of the Parties' Class Action and PAGA Settlement Agreement ("Settlement Agreement"), resolving the wage and hour claims, including a representative claim brought under the Private Attorneys' General Act of 2004 ("PAGA"), brought against Defendant Amarok LLC ("Defendant"). The proposed Class is defined as current and former non-exempt employees of Defendant in California ("Class Members") during the Class Period of April 30, 2020 through the date of the Preliminary Approval Order ("Class Period"). Settlement Agreement, art. I, § f; art. I, § i. The main terms of the Settlement are as follows:

1. A Gross Settlement Amount of $100,000.00, which will be distributed to approximately 39 Class Members on a pro rata basis according to the total workweeks worked by each Class Member during the Class Period (*id*. at art. I, § t; art. IV, § 4.06(a);
2. Attorneys' fees of up to one-third of the Gross Settlement Amount (currently $33,333.33) and in reimbursement of litigation costs to Plaintiffs' Counsel up to $15,000.00 (*id*. at art. I, § c-d; art. IV, § 4.06(b)-(c));
3. A Class Representative Service Payment of up to $5,000.00 to each Plaintiff (*id*. at art. I, § u; art. IV, § 4.06(e));
4. Costs of settlement administration of up to $3,500.00 (*id*. at art. I, § nn; art. IV, § 4.06(d)); and
5. Allocation of $10,000.00 to PAGA penalties, seventy-five percent (75%) of which ($7,500.00) will be paid to the Labor and Workforce Development Agency ("LWDA"), and twenty-five percent (25%) of which ($2,500.00) will be paid to all current and former non-exempt employees of Defendant employed in the State of California during the PAGA Period of April 30, 2023 through the date of the Preliminary Approval Order ("Aggrieved Employees")(*id*. at art. I, § dd-ff; art. IV, § 4.06(f)).

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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, Plaintiffs request that the Court grant preliminary approval of the Settlement, conditionally certify the Class for settlement purposes only, appoint Plaintiffs as the Class Representatives, appoint Plaintiffs' Counsel as Class Counsel, appoint APEX Class Action Administrator ("APEX") as the Settlement Administrator, authorize the Settlement Administrator to administer notice of the Settlement to the Class, and set a final approval hearing date.

II. PROCEDURAL HISTORY

On April 30, 2024, Plaintiffs filed this action as a putative class action against Defendant alleging: (1) failure to pay minimum and straight time wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to timely pay final wages at termination; (6) failure to provide accurate itemized wage statements; (7) failure to indemnify employees for expenditures; (8) failure to produce requested employment records; and (9) unfair business practices. Settlement Agreement, art. II, § a; Declaration of John G. Yslas in Support of Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement ("Yslas Decl.") at ¶ 3.

On the same date, April 30, 2024, Plaintiffs provided written notice to the LWDA and Defendant of their intention to file a PAGA claim. Settlement Agreement, art. II, § b; Yslas Decl. at ¶ 4. The LWDA did not notify Plaintiffs that it intended to investigate within 65 days of this written notice. Yslas Decl. at ¶ 4. Therefore, on July 5, 2024, Plaintiffs filed a PAGA Action Complaint seeking civil penalties pursuant to Labor Code § 2699, *et seq*. Settlement Agreement, art. II, § c; Yslas Decl. at ¶ 4.

The Parties subsequently participated in a private mediation with mediator Hon. William McCurine, Jr. (Ret.), on November 25, 2024. Settlement Agreement, art. II, § d; Yslas Decl. at ¶ 5. The Parties did not reach an agreement to settle that day. Yslas Decl. at ¶ 5. However, following mediation, the Parties continued to negotiate in good faith and with the help of Judge McCurine were able to reach an agreement on general settlement terms. Settlement Agreement, art. II, § d;

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Yslas Decl. at ¶ 5. The negotiations were adversarial, conducted at arm's length, and tempered by the efforts of both sides to serve the interests of their clients. *Id.* The Parties negotiated the terms of the Settlement over the next several months, which was finalized on April 18, 2025. Yslas Decl. at ¶ 6, **Exhibit 1** ("Settlement Agreement"). On April 24, 2025, Plaintiffs submitted a copy of the Settlement Agreement to the LWDA. Yslas Decl. at ¶ 8, Exhibit 2.

III. SUMMARY OF THE SETTLEMENT TERMS

A. Terms of the Proposed Settlement

The Parties have agreed to settle the claims alleged in this case for a Gross Settlement Amount of $100,000.00. Settlement Agreement, art. I, § t. Subject to Court approval, the following payments will be deducted from the Gross Settlement Amount: (1) a class representative service payment of up to $5,000.00 to each Plaintiff; (2) attorneys' fees of up to one-third (1/3) of the Gross Settlement Amount (currently $33,333.33) and reimbursement of actual litigation costs to Plaintiffs' Counsel currently estimated not to exceed $15,000.00; (3) costs of settlement administration of up to $3,500.00 to APEX; and (4) PAGA penalties in the amount of $10,000.00, which will be allocated 75% to the LWDA ($7,500.00) and 25% to Aggrieved Employees ($2,500.00). *Id.* at art. IV, § 4.06(b)-(f). After all requested deductions are made, the remaining Net Settlement Amount is currently estimated to be $28,166.67, which is an average of $722.20 per Class Member. Yslas Decl., ¶ 7.

Individual Class Payments will be calculated based on dividing the Net Settlement Amount by the total number of Qualifying Workweeks worked by all Settlement Class Members. Settlement Agreement, art. IV, § 4.06(g)(i)-(iii). Each Settlement Class Member shall receive a gross Individual Settlement Payment equal to his or her Qualifying Workweeks multiplied by the value of a single Qualifying Workweek. *Id*. For tax purposes, the individual class payments will be allocated 20% to wages and 80% to penalties, interest, and reimbursement of expenses. Settlement Agreement, art. IV, § 4.06(l)(i). Defendant will separately pay any and all employer payroll taxes owed on the wage portions of the Individual Class Payments separate from the Gross Settlement Amount. Settlement Agreement, art. I, § t; art. IV, § 4.06(h).

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Individual PAGA Payments to Aggrieved employees will be calculated by dividing the Net PAGA Distribution Amount (the Aggrieved Employees' 25% share of PAGA Penalties of $2,500.00) by the total number of Qualifying PAGA Pay Periods by all PAGA Members. Settlement Agreement, art. IV, § 4.06(f)(i)-(iii). Each PAGA Member shall receive an Individual PAGA Payment equal to his or her individual Qualifying PAGA Periods multiplied by the value of a single Qualifying PAGA Pay Period. *Id*. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. Settlement Agreement, art. IV, § 4.06(l)(i)-(vi). For tax purposes, the individual PAGA payments will be allocated 100% to penalties. *Id*.

Any deductions not approved by the Court will be retained by the Settlement Administrator in the Net Settlement Amount. Funds from any uncashed checks will be transmitted by the Settlement Administrator to the Katherine and George Alexander Community Law Center at the Santa Clara University School of Law, a non-profit organization, thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). Settlement Agreement, art. IV, § 4.06(i)(vi). None of the Gross Settlement Amount will revert to Defendant.

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, art. IV, § 4.03(b)(ii).

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If a Class Notice is returned as undeliverable, the Settlement Administrator will re-mail the Class Notice on or before the Response Deadline to the forwarding address provided by the U.S. Postal Service. *Id*. at art. IV, § 4.03(c). If no forwarding address is provided, the Settlement Administrator will conduct a Class Member Address Search and re-mail the Class Notice to the most current address obtained. *Id.* The deadline to opt-out of the Settlement or to submit an objection or dispute will be extended by an additional five (5) days for all Class Members whose Class Notice was remailed. *Id*. at art. I, § kk.

C. Proposed Release

Release of Settled Class Claims: Named Plaintiffs and all Settlement Class Members shall be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged any and all Settled Class Claims against any and all Released Parties. The Settlement includes a release of all Settled Class Claims during the Class Period by Settlement Class Members. The Parties agree for settlement purposes only that, because the Class Members are so numerous, it is impossible or impracticable to have each Class Member execute this Agreement. Accordingly, the Class Notice will advise all Class Members of the binding nature of the Class Settlement as to Settlement Class Members and the binding nature of the PAGA Settlement as to the State of California and all PAGA Members, and such notice shall have the same force and effect as if the Agreement were executed by each Class Member. The Parties agree that this is a settlement of disputed claims not involving undisputed wages, and that Labor Code Section 206.5 is therefore inapplicable. Settlement Agreement at art. I, § oo; art. V, § 5.01.

Release of Settled PAGA Claims: The State of California, with respect to Named Plaintiffs and all PAGA Members, shall be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged any and all of the Released Parties of and from any and all Settled PAGA Claims. The Parties agree that it is their intent that the terms set forth in this Agreement will release any further attempt, by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind, by each and every PAGA Member to obtain any recovery based on the Settled PAGA Claims. *Id.* at art. I, § pp; art. V, § 5.02.

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

A. Provisional Certification of the Class is Appropriate

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

1. The Proposed Class is Numerous and Ascertainable

"Ascertainability" is determined by examining the class definition and the size of the class, and may also involve examining the means available to identify class members. *Noel v. Thrifty Payless, Inc.*, 7 Cal.5th 955, 980-981, 985-986 (2019). As the settlement eliminates the need for trial, "the case management issues inherent in the ascertainable class determination need not be confronted." *Global Minerals*, 113 Cal.App.4th at 859. Further, under California law, there is no minimum number of class members for maintenance of a class action. *Hendershot v. Ready to Roll Transp., Inc.*, 228 Cal.App.4th 1213, 1222 (2014). Class sizes as small as 10 have been permitted. *Rose v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981), disapproved on other grounds by *Noel*, 7 Cal.5th at 986.

The Class here consists of current and former non-exempt employees of Defendant in California during the Class Period of April 30, 2020 through the date of the Preliminary Approval Order. *See* Settlement Agreement, art. I, § f; art. I, § i. The Class is also readily ascertainable from Defendant's business records, because all Class Members are or were employees of Defendant. Yslas Decl. at ¶ 10. Defendant's records show there are approximately 39 Class Members, making joinder of all Class Members impracticable. *Id*; Settlement Agreement, art. IV, § 4.06(a).

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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. <u>Common Questions Predominate</u>

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

Plaintiffs have alleged that Defendant maintained common employment policies and/or practices that unlawfully deprived Class Members of wages, meal periods, rest periods, reimbursements for business expenses, accurate wage statements, and timely payment of wages upon separation of employment. Yslas Decl. at ¶ 11. These allegations present common factual and legal questions of, *inter alia*, whether Defendant applied the same scheduling, timekeeping, pay, meal period, rest period, and reimbursement policies to all Class Members, whether these policies and practices resulted in Labor Code violations, whether Defendant's conduct was intentional, and whether Class Members are entitled to damages and/or penalties. *Id*. 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. <u>Plaintiffs are Typical of the Class</u>

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

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

Plaintiffs have alleged that they and Class Members were employed by the same Defendant and injured by Defendant's common wage and hour policies and practices, including Defendant's scheduling, timekeeping, pay, meal period, rest period, and reimbursement policies. *See* Yslas Decl. at ¶ 11. Through informal discovery, including the production of documents by Defendant, Plaintiffs confirmed that these challenged policies and practices applied to Plaintiffs as well as Class Members. *See id.* at ¶ 9. Therefore, Plaintiffs' claims and Class Members' claims arise from the same challenged employment policies and practices and are based on the same legal theories.

c. *Plaintiffs and Plaintiffs' 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 class representatives and proposed Class Counsel present no such conflict.

Plaintiffs' interests are coextensive with Class Members' interests. Declaration of Aaron Alvarez in Support of Plaintiffs' Motion for Preliminary Approval ("Alvarez Decl.") at ¶ 6; Declaration of Michael Armour in Support of Motion for Plaintiffs' Preliminary Approval ("Armour Decl.") at ¶ 6. Plaintiffs have demonstrated an ability to advocate for the interests of Class Members by initiating this lawsuit, gathering documents and information, keeping in regular contact with their attorneys, making themselves available on the day of mediation and meeting with their attorneys to understand the claims and theories of liability at issue, and reviewing the proposed Settlement. Alvarez Decl., ¶ 7; Armour Decl., ¶ 7.

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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, Plaintiffs should be appointed Class Representatives, and their 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 outweighs 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

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percentage of objectors is small." *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996). The Settlement here satisfies the first three factors. Plaintiffs will analyze the fourth factor at final approval after Class Members have been notified of the Settlement and provided with an opportunity to object.

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

Courts have recognized that the involvement of a respected mediator provides a high degree of assurance that the settlement is the result of arm's length bargaining. *See Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 52-53 (2008). The Settlement in this matter was achieved with the assistance of a respected mediator following a full day of mediation. Yslas Decl. at ¶ 5. The negotiations were adversarial, conducted at arm's length, and tempered by the efforts of both sides to serve the interests of their clients. *Id.*

b. Sufficient Investigation and Discovery Have Been Conducted

Prior to attending mediation, Plaintiffs' Counsel thoroughly investigated the claims, applicable laws, and potential defenses. *Id.* at ¶ 9. Plaintiffs' 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, Plaintiffs' personnel file, employment handbooks and policies, job descriptions, and a random sampling of time and payroll records. *Id.*

c. Plaintiffs' Counsel is Experienced in Similar Litigation

Plaintiffs are represented by Wilshire Law Firm, PLC. *Id.* at ¶ 21. Plaintiffs' Counsel has extensive experience litigating wage and hour class actions on behalf of employees. *See id.* at ¶¶ 22-33. Plaintiffs' Counsel have been involved as counsel in numerous class actions that have resulted in millions of dollars in recovery. *See id.*

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

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

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certification and through trial affected the valuation of the claims for settlement purposes. Yslas Decl. at ¶ 12.

Minimum and Overtime Wages: Plaintiffs' unpaid minimum and overtime wage claims were based on the allegation that Defendant failed to pay Class Members for all hours worked by requiring them to perform work duties while off-the-clock. *Id.* at ¶ 13. For purposes of calculating Defendant's liability based on a best-case scenario for Plaintiffs and the Class, we estimate 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. *Id*. This results in an estimate of $143,346.63. *Id*. Since liability depends on whether Defendant knew or should have known that class members were working off-the-clock, we applied a risk discount based on a 50% chance of succeeding at class certification and a 40% chance of succeeding at trial to reach a settlement value of approximately $28,669.33. *Id*.

Meal Periods: Plaintiffs allege that Defendant required them and similarly situated class members to either work in lieu of taking meal periods, or their meal periods were untimely or interrupted. *Id*. at ¶ 14. Based on our investigation, we assumed that 100% of all shifts over 5 hours had a meal period violation. *Id*. Potential liability for the meal period claims is $464,353.70. *Id.* However, we discounted this figure based on a 30% chance of succeeding at class certification and a 20% chance of succeeding at trial, as well as Defendant's contention that the claim lacks merit and a 100% violation rate is unrealistic, resulting in a risk discount to reach a settlement value of approximately $27,861.22. *Id.*

Rest Breaks: Plaintiffs' rest period claim was based on the allegation that Defendant maintained a policy that required class members to work in lieu of taking rest periods, or their rest periods were untimely or interrupted. *Id.* at ¶ 15. Plaintiffs' Counsel applied a 100% violation rate to all shifts over 3.5 hours and calculated a potential exposure of $464,353.70 for this claim. *Id.* 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. *Id.* Because this claim

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would have relied exclusively on Class Member testimony, Plaintiffs' 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 $27,861.22. *Id.* at ¶ 15.

Reimbursements: Plaintiffs' reimbursement claim was based on the allegation that Defendant required Class Members to use their personal cellular phones for work related purposes and required to provide their own tools. *Id.* at ¶ 16. Assuming a very conservative $10/per month per employee for unpaid reimbursements, this results in a damage estimate of $31,220.00. *Id.* However, after discounting this figure based on an evaluation of a 50% chance of succeeding at class certification 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 $6,244.00. *Id.*

Derivative Penalties: Plaintiffs alleged that as a result of Defendant's alleged failure to pay all wages and meal and rest period premiums owed, Defendant owed waiting time penalties and wage statement penalties. *Id.* at ¶ 18. However, Defendant argued that it had good faith defenses that made the imposition of these penalties unwarranted. *Id.* Moreover, Plaintiffs could not recover these penalties if they failed to prove the underlying claims. *Id.* Plaintiffs' Counsel calculated that potential exposure for the waiting time penalty claim was approximately $73,464.00 and approximately $68,050.00 for the wage statement penalty claim. *Id.* However, considering that the underlying claims are realistically estimated to be $90,635.77[1], such a disproportionate award would also raise due process concerns. *Id*. As such, Plaintiffs discounted the figure to account for the risk and uncertainty of prevailing at trial, resulting in a realistic evaluation of $4,407.84 for waiting time penalty claims and $4,083.00 for wage statement penalty claims. *Id*.

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[1] In sum, we estimated that Plaintiffs' maximum recovery for the off-the-clock claim, meal period violations, rest period violations, and failure to reimburse business expenses is $1,103,274.03 ($143,346.63 in unpaid overtime + $464,353.70 for meal period violations + $464,353.70 for rest break violations + $31,220.00 for unpaid reimbursements), but after factoring in the risk and uncertainty of prevailing at certification and trial, we estimate that Plaintiffs' realistic estimated recovery for the non-penalty claims is $90,635.77 ($28,669.33 in unpaid overtime + $27,861.22 for meal period violations + $27,861.22 for rest break violations + $6,244.00 for unpaid reimbursements). Yslas Decl., ¶ 17.

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PAGA: For the PAGA claim, Plaintiffs' Counsel determined that Defendant's potential exposure could potentially reach $61,600.00, assuming the initial $100 penalty would apply for each of the 616 pay periods in the PAGA Period. *Id.* 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 the amount of the award would be unjust, arbitrary and oppressive, or confiscatory. *Id.* As such, Plaintiffs could not place a high value on the PAGA Penalties and therefore allocated $10,000.00 of the Gross Settlement Amount to settle the PAGA claims, which amounts to approximately $16.23 per pay period. *Id.*

Using the estimated figures, above, Plaintiffs predicted that the realistic maximum recovery for all claims, including penalties, would be **$109,126.61** ($90,635.77 in damages for violations + $18,490.84 (inclusive of wage statement penalties, waiting time penalties, and PAGA penalties) in statutory and civil penalties). *Id*. at ¶ 20. This means that the **$100,000.00** settlement figure represents **91.6%** of the realistic maximum recovery. *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*

C. The Requested Service Payment is Reasonable

Plaintiffs seek a Class Representative Service Payment of up to $5,000.00 each for accepting the responsibilities of representing the interests of the Class and potential costs that were not borne by any other Class Member. Settlement Agreement, art. IV, § 4.06(e). A named plaintiff is eligible for payment that reasonably compensates her for undertaking and fulfilling a fiduciary duty to represent absent class members. *See Cellphone Termination Fee Cases*, 186 Cal.App.4th 1380, 1393 (2010); *Bell v. Farmers Ins. Exch.*, 115 Cal.App.4th 715, 726 (2004).

Throughout this case, Plaintiffs assisted counsel in gathering evidence necessary to prosecute the claims, maintained regular contact with counsel, and reviewed the Settlement to ensure it was fair to the Class. Alvarez Decl. at ¶ 7; Armour Decl. at ¶ 7. No action would likely have been taken by Class Members individually and no compensation would have been recovered for them, but for Plaintiffs' services on behalf of the Class. By actively pursuing this action, Plaintiffs furthered the California public policy goal of enforcing the State's wage and hour laws. *See Sav-On*, 34 Cal.4th at 340. The requested Class Representative Service Payment is reasonable and should be preliminarily approved. Plaintiffs have provided a declaration regarding their work performed to date and will provide additional information as requested or required by the Court at final approval.

D. The Requested Attorneys' Fees and Costs Are Reasonable

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

Plaintiffs seek appointment of Wilshire Law Firm, PLC as Class Counsel. The attorneys performed significant work and expended litigation costs in prosecuting this matter with no guarantee of payment. Yslas Decl. at ¶ 21. Plaintiffs' Counsel seeks preliminary approval for $33,333.33 in attorneys' fees, which is up to one-third (1/3) of the Gross Settlement Amount, and reimbursement of actual litigation costs not to exceed $15,000.00. Settlement Agreement, art. IV, § 4.06(b)-(c). Given the work performed in this matter, the extensive information exchange, and the substantial recovery obtained on behalf of the Class, Plaintiffs' Counsel achieved a settlement through efficient and diligent work. *See generally*, Yslas Decl. At final approval, Plaintiffs' Counsel will fully brief the merits of its request for the award of attorneys' fees and litigation costs.

V. CONCLUSION

The Parties have negotiated a fair and reasonable settlement of the class claims in light of the risks presented in this case. Plaintiffs have presented the materials and information necessary to demonstrate that the requirements for preliminary approval have been met, and therefore

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respectfully request that the Court preliminarily approve the Settlement and schedule a date for the final approval hearing.

Respectfully submitted,

Dated: April 24, 2025

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