John G. Yslas (SBN 187324)
jyslas@wilshirelawfirm.com
William M. Pao (SBN 219846)
william.pao@wilshirelawfirm.com
Refugio Ortega-Carrillo (SBN 346933)
refugio.ortegacarrillo@wilshirelawfirm.com
Emily K. Borman (SBN 303180)
emily.borman@wilshirelawfirm.com
Courtney M. Miller (SBN 327850)
courtney.miller@wilshirelawfirm.com
WILSHIRE LAW FIRM, PLC
660 S. Figueroa Street, Sky Lobby
Los Angeles, California 90017
Telephone: (213) 381-9988
Facsimile: (213) 381-9989

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

JUSTIN ESPINOSA-HINELINE, individually, and on behalf of all others similarly situated,

Plaintiff,

v.

HAROLD A. STEUBER ENTERPRISES, INC., a California corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 24CV081059

[Related Case No.: 25CV109856]

[Assigned for All Purposes to the Hon. Patrick McKinney, Dept. 18]

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES

Preliminary Approval Hearing:
Date: December 23, 2025
Time: 1:30 p.m.
Dept: 18

Reservation ID: 428587161399

Action Filed: June 24, 2024

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that at the date and time indicated above, or as soon thereafter as the matter may be heard in Department 18 of the Superior Court of California, County of Alameda, René C. Davidson Courthouse, located at 1225 Fallon Street Oakland, California 94612, Plaintiff Justin Espinosa-Hineline ("Plaintiff") will and hereby does move this Court for an Order:

1. Granting preliminary approval of the proposed Class Action Settlement Agreement and Release ("Settlement");
2. Conditionally certifying the proposed Class for settlement purposes only;
3. Appointing Plaintiff Justin Espinosa-Hineline as the class representative;
4. Appointing John G. Yslas, William M. Pao, Refugio Ortega-Carrillo, Emily K. Borman, and Courtney M. Miller of Wilshire Law Firm, PLC as Class Counsel;
5. Appointing ILYM Group, Inc. as the Settlement Administrator; and
6. Setting a final approval hearing date.

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

This Motion is based on this Notice of Motion, the accompanying Memorandum of Points and Authorities, the Declaration of John G. Yslas, the Declaration of Justin Espinosa-Hineline, 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: December 1, 2025 **WILSHIRE LAW FIRM, PLC**

By: /s/ Courtney M. Miller
Courtney M. Miller
Attorneys for Plaintiff Justin Espinosa-Hineline

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

<u>**MEMORANDUM OF POINTS AND AUTHORITIES**</u>

I. INTRODUCTION

Pursuant to California Rules of Court, Rule 3.769(d) and (e), Plaintiff Justin Espinosa-Hineline ("Plaintiff") seeks preliminary approval of a class action settlement of wage and hour claims, including representative claims brought under the Private Attorneys General Act of 2004 ("PAGA"), against Defendant Harold A. Steuber Enterprises, Inc. DBA Associated Services Company ("Defendant"). The proposed Class is defined as all persons who are employed or have been employed by Defendant as a non-exempt employee in the State of California ("Class Members") during the during the period from June 24, 2020, through the earlier of the date the Court grants Preliminary Approval or the date triggered by Paragraph 20 of the Settlement Agreement ("Class Period"). The main terms of the Settlement are as follows:

1. A Gross Settlement Amount of $675,000.00, which includes the Settlement Awards to be distributed to approximately 282 Class Members on a pro rata basis according to the total Workweeks worked by each Class Member during the Class Period;
2. Attorneys' fees of up to one third (1/3) of the Gross Settlement Amount (currently estimated to be $225,000.00) and reimbursement of litigation costs [1] to Plaintiff's Counsel,
3. A Service Award of up to $10,000.00 to Plaintiff;
4. Costs of settlement administration of up to $7,850.00; and
5. Allocation of $20,000.00 to PAGA penalties, sixty-five percent (65%) of which ($13,000.00) will be paid to the Labor and Workforce Development Agency ("LWDA"), and thirty-five percent (35%) of which ($7,000.00) will be paid to all persons who are employed or have been employed by Defendant as a non-exempt employee in the State of California ("Aggrieved Employees") at any time during the period from December 3, 2023 through the date Court grants Preliminary Approval. ("PAGA Period").

[1] Plaintiff seeks reimbursement of litigation costs not to exceed $23,000.00.

The Settlement meets all criteria for preliminary approval and falls within the range of reasonableness given the risks and expenses of further litigation. The Settlement was reached through informed, arm's length bargaining between experienced attorneys with the assistance of an experienced neutral. As such, Plaintiff requests that the Court grant preliminary approval of the Settlement, conditionally certify the Class for settlement purposes only, appoint Plaintiff as the class representative, appoint Plaintiff's Counsel as Class Counsel, appoint ILYM Group, Inc. as the Settlement Administrator, authorize the Settlement Administrator to administer notice of the Settlement to the Class, and set a final approval hearing date.

II. PROCEDURAL HISTORY

On June 24, 2024, Plaintiff filed this putative class action against Defendant Harold A. Steuber Enterprises, Inc. DBA Associated Services Company ("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 produced requested employment records; and (9) unfair business practices ("Class Action"). Declaration of John G. Yslas in Support of Motion for Preliminary Approval of Class Action and PAGA Settlement ("Yslas Decl.") at ¶ 3.

On June 20, 2024, Plaintiff provided written notice to the LWDA and Defendant of the specific provisions the Labor Code alleged to have been violated, including the facts and theories in support ("PAGA Notice"). Yslas Decl. at ¶ 4. On July 25, 2024, Defendant submitted a Cure Notice to the LWDA and on July 26, 2024, Plaintiff submitted a Cure Dispute to the LWDA. *Id*. On August 12, 2024, the LWDA provided Plaintiff and Defendant with the LWDA's Decision on Cure Dispute. *Id*. The LWDA did not notify Plaintiff that it intended to investigate within 65 days of filing and serving the PAGA Notice. *Id*. Therefore, on February 6, 2025, Plaintiff filed a separate action against Defendant for civil penalties under PAGA, Alameda Superior Court Case No. 25CV109856 ("PAGA Action"). *Id*. On March 11, 2025, the Court deemed the Class Action and PAGA Action related, with the Class Action being the lead case. *Id*. at ¶ 5. With this motion, the Parties are concurrently submitting a joint stipulation to consolidate the Class Action and PAGA

Action for settlement purposes. *Id*.

On December 10, 2024, the Court denied Defendant's Motion to Compel Arbitration in the Class Action. Yslas Decl. at ¶ 5. On February 6, 2025, Defendant filed a Notice of Appeal with respect to the Court's ruling on Defendant's Motion to Compel Arbitration in the Class Action. *Id*. Defendant's appeal is pending in the First Appellate District in the Court of Appeal of the State of California, Case No. A172631. *Id*.

The Parties participated in a private full-day mediation with mediator Steve Cerveris ("Mr. Cerveris") on March 25, 2025. Yslas Decl. at ¶ 6. With the help of Mr. Cerveris, the Parties were able to reach an agreement on general settlement terms. *Id.* at ¶ 7, Exhibit 2 ("Settlement Agreement" or "Settlement"). On November 19, 2025, Plaintiff submitted a copy of the Settlement Agreement to the LWDA. *Id.* at ¶ 8, Exhibit 3.

III. SUMMARY OF THE SETTLEMENT TERMS

A. Terms of the Proposed Settlement

The parties have agreed to settle the claims alleged in this class action and PAGA action for a Gross Settlement Amount of $675,000.00. Settlement Agreement at § r. Subject to Court approval, the Gross Settlement Amount includes: (1) a Service Award of up to $10,000.00 to Plaintiff; (2) a Fee Award for attorneys' fees of up to one third (1/3) of the Gross Settlement Amount (currently $225,000.00) and a Costs Award for reimbursement of litigation costs to Plaintiff's Counsel; (3) Settlement Administrator Costs of up to $7,850.00 to ILYM Group, Inc.; (4) individual class payments to Participating Individuals; and (5) a PAGA Payment for PAGA penalties in the amount of $20,000.00, which will be allocated 65% to the LWDA ($13,000.00) and 35% to Aggrieved Employees ($7,000.00). *Id.* at §§ r, n, dd, ff, and 29.c. For the Costs Award, Plaintiff seeks reimbursement of litigation costs not to exceed $23,000.00. The "Net Settlement Amount" means the Gross Settlement Amount less: (i) Named Plaintiff's Service Award; (ii) Class Counsel's Fee Award; (iii) Class Counsel's Costs Award; (iv) Settlement Administrator Costs; and (v) the PAGA Payment. *Id*. at § u. After all requested deductions are made, the remaining Net Settlement Amount is currently estimated to be $389,150.00.

Settlement Awards for individual class payments will be calculated based on the number of workweeks worked by each Class Member during the Class Period who did not timely request exclusion. *Id*. at § 33.a. For tax purposes, Settlement Awards for individual class payments will be allocated 20% to wages and 80% to penalties and interest. *Id*. at § 36. Defendant will separately pay any and all employer payroll taxes owed on the wage positions of the individual class payments separate from the Gross Settlement Amount. *Id*. at r.

Individual PAGA payments to Aggrieved Employees from the Net PAGA Amount will be calculated based on the number of workweeks worked by each Aggrieved Employee during the PAGA Period. *Id*. at § 33.b. For tax purposes, the Settlement Awards for individual PAGA payments will be allocated 100% to penalties. *Id*. at § 36.

Any deductions not approved by the Court will be retained by the Settlement Administrator in the Net Settlement Amount. *Id.* at §§ r and u. After the 180-day check cashing deadline, funds from checks that are returned as undeliverable or are not negotiated, shall be canceled and the funds associated with such checks shall be transmitted to Legal Services for Children. *Id.* at § 42. None of the Gross Settlement Amount will revert to Defendant. *Id*. at § r.

B. Proposed Settlement Administration

The parties' proposed Settlement Notice complies with the requirements of California Rules of Court, Rule 3.766(d). *See* Exhibit 1 to Settlement Agreement. It provides information regarding the nature of this lawsuit, a summary of the settlement terms, the formula used for calculating individual class and PAGA payments and instructions to dispute the calculations, instructions on how to opt-out of or object to the Settlement, the date, time, and location of the final approval hearing, and the amounts sought for the service award, attorneys' fees and litigation costs, and settlement administration costs. *See generally, id*. The Settlement 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 Settlement Notice by first-class mail. Settlement Agreement at § f.

If a Settlement Notice is returned as undeliverable, the Settlement Administrator will re-mail the Class Notice within three (3) business days to the forwarding address provided by the U.S. Postal Service. *Id*. at § f. If no forwarding address is provided, the Settlement Administrator shall promptly attempt to determine a correct address using a skip-trace, or other search using the name, address and/or Social Security number of the Class Member involved and shall re-mail the Settlement Notice. *Id.* Such re-mailing shall not extend the Notice Deadline. *Id*.

C. Proposed Releases

In exchange for the consideration set forth in the Settlement Agreement, Named Plaintiff, on behalf of the LWDA and Participating Individuals, agrees to release all claims against the Released Parties as set forth:

Released Class Claims:

> Upon Final Approval of this Settlement Agreement, Named Plaintiff on his own behalf and as the class representative, all Class Members who did not opt out of this lawsuit by filing a timely, valid request for exclusion from the settlement pursuant to Paragraph 23, and all persons purporting to act on their behalf, including, but not limited to, their dependents, attorneys, heirs and assigns, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, personal representatives, and successors-in interest, whether individual, class, representative, legal, equitable, direct or indirect, or any other type or in any other capacity (collectively, the "Releasing Parties") shall and hereby do release and discharge all Released Parties, finally, irrevocably, forever, and with prejudice, from all claims, rights, damages, liquidated damages, premiums, wages, compensation, reimbursement, punitive damages, statutory damages, penalties, liabilities, costs, expenses, attorneys' fees, interest, restitution, equitable relief, injunctive relief, declaratory relief, accounting, losses, or causes of action alleged in the Actions and/or that could have been alleged in the Actions, under the laws of any jurisdiction, including federal law, state law, and common law, whether at law or equity, arising out of, or reasonably relating to, the claims, facts, and allegations pled in the Actions, including but not limited to the Operative Complaint, during the Class Period. This shall include any claims during the Class Period for the purported payment or nonpayment of compensation (including, but not limited to, wages, minimum wages, straight time, overtime (including double time), and/or premium pay); failure to pay for all hours worked (including, but not limited to, off-the-clock, donning and doffing, meal and rest periods, rounding/time shaving, editing and/or manipulation of time entries, and auto-deduction of meal periods); failure to pay overtime, double time, premium, sick pay, on-call pay, and other compensation at the accurate rate (including but not limited to failure to include non-discretionary bonuses, incentive compensation, and shift differentials in the regular rate); failure to timely pay wages during employment; failure to pay wages at termination/resignation; failure to provide meal and rest breaks (including but not limited to otherwise requiring on-duty/on-call meal and rest periods); failure to accurately record time including all time worked (including but not limited to off-the-clock, meal periods, rounding, editing and/or manipulation of time entries, and auto-deduction of meal periods); failure to provide timely and compliant wage statements; failure to maintain and provide required records; failure to reimburse for all reasonable business expenses (including but not limited to cell phones, internet, home office, uniforms, required clothing, equipment, vehicle usage, mileage, travel expenses); failure to pay paid time off and vacation time and other compensation owed (during employment and upon separation); failure to pay sick pay (including but not limited to paid sick leave and COVID Supplemental Paid Sick Leave); failure to pay reporting time wages, paying wages lower than contract or statute, failure to provide safe working conditions; failure to place an adequate number of seats in reasonable proximity to the work area and/or permit employees to use such seats; failure to provide potable water; failure to comply with

Labor Code sections 432.5 and 432.6; engaging in unlawful agreements (including but not limited to background checks, credit checks, applications, separation agreements, offer letters, confidentiality agreements, and PAGA waivers); conducting unlawful background checks in violation of Labor Code sections 432.7 and 1024.5, Civil Code section 1786, et seq. at 15 U.S.C. section 1681, and Government Code section 12952; relying on the salary history information on an application for employment in violation of Labor Code section 432.3; prohibiting employees from using or disclosing skills, knowledge, offers, wages, and experience; whistleblower violations; failure to comply with Business and Professions Code section 17200 et seq.; failure to comply with the Wage Theft Protection Act; and failing to comply with California Labor Code; applicable wage orders, and Civil Code section 3287(b) and 3289, Government Code section 12952; related premiums, statutory penalties, waiting time penalties, liquidated damages, interest, punitive damages, costs, attorneys' fees, equitable relief, injunctive relief, declaratory relief, or accounting, whether such causes of action are in tort, contract, or pursuant to a statutory remedy (collectively, "Class Released Claims").

Settlement Agreement at § 15.

Released PAGA Claims:

Upon final approval of this Settlement Agreement, Plaintiff, on behalf of the LWDA and the State of California, and Aggrieved Employees, shall and hereby do release and discharge all Released Parties, finally, forever and with prejudice, from any and all claims and rights to recover civil penalties, costs, expenses, attorneys' fees, interest, injunctive relief, declaratory relief, and/or accounting, against the Released Parties from any and all causes of action under the Private Attorneys General Act ("PAGA") arising out of, or reasonably relating to, the claims, facts and allegations pled in the Actions, including but not limited to those alleged in any of the complaints filed in the Actions, as well as and any and all related letters to the LWDA and any amended letters, during the PAGA Period. This shall include any claims during the PAGA Period for civil penalties pursuant to PAGA for the purported payment or nonpayment of compensation (including, but not limited to, wages, minimum wages, straight time, overtime (including double time), and/or premium pay); failure to pay for all hours worked (including, but not limited to, off-the-clock, donning and doffing, meal and rest periods, rounding/time shaving, editing and/or manipulation of time entries, and auto-deduction of meal periods); failure to pay overtime, double time, premium, sick pay, on-call pay, and other compensation at the accurate rate (including but not limited to failure to include non-discretionary bonuses, incentive compensation, and shift differentials in the regular rate); failure to timely pay wages during employment; failure to pay wages at termination/resignation; failure to provide meal and rest breaks (including but not limited to otherwise requiring on-duty/on-call meal and rest periods); failure to accurately record time including all time worked (including but not limited to off-the-clock, meal periods, rounding, editing and/or manipulation of time entries, and auto-deduction of meal periods); failure to provide timely and compliant wage statements; failure to maintain and provide required records; failure to reimburse for all reasonable business expenses (including but not limited to cell phones, internet, home office, uniforms, required clothing, equipment, vehicle usage, mileage, travel expenses); failure to pay paid time off and vacation time and other compensation owed (during employment and upon separation); failure to pay sick pay (including but not limited to paid sick leave and COVID Supplemental Paid Sick Leave); failure to pay reporting time wages, paying wages lower than contract or statute, failure to provide safe working conditions; failure to place an adequate number of seats in reasonable proximity to the work area and/or permit employees to use such seats; failure to provide potable water; failure to comply with Labor Code sections 432.5 and 432.6; engaging in unlawful agreements (including but not limited to background checks, credit checks, applications, separation agreements, offer letters, confidentiality agreements, and PAGA waivers); conducting unlawful

> background checks in violation of Labor Code sections 432.7 and 1024.5, Civil Code section 1786, et seq. at 15 U.S.C. section 1681, and Government Code section 12952; relying on the salary history information on an application for employment in violation of Labor Code section 432.3; prohibiting employees from using or disclosing skills, knowledge, offers, wages, and experience; whistleblower violations; failure to comply with the Wage Theft Protection Act; and failing to comply with California Labor Code, applicable wage orders, and Civil Code section 3287(b) and 3289; related premiums, statutory penalties, waiting time penalties, or civil penalties; costs; attorneys' fees; equitable relief; injunctive relief; declaratory relief; or accounting (collectively, "PAGA Released Claims"). The Parties agree that there shall be no right for any Aggrieved Employees to opt out or otherwise exclude themselves from the release of PAGA claims. The Parties intend and agree that the Final Approval Order and the Judgment entered as a result of this Settlement shall have res judicata and preclusive effect to the fullest extent allowed by law and shall also be effective to adjudicate and release the claims and/or rights of the LWDA to recover civil penalties against the Released Parties on behalf of the Aggrieved Employees for any PAGA Released Claims (i.e., the Judgment on this Settlement will have res judicata effect as to those claims of Aggrieved Employees, the LWDA, and State of the California, whether pursued directly by the LWDA or by a representative pursuant to PAGA).

Settlement Agreement at § 16.

"Released Parties" means Defendant and any of its past, present, and future parents, affiliates, subsidiaries, communities, divisions, joint employers, predecessors, successors, and assigns, and each of their current of former officers, directors, board members, trustees, owners, shareholders, employees, agents, attorneys, auditors, accountants, experts, contractors, stockholders, representatives, partners, insurers, reinsurers, and other persons acting on their behalf, as well as any individual or entity that could be liable for any of the Released Claims. Settlement Agreement at § cc.

Only Plaintiff will agree to a general release and a waiver of Civil Code § 1542. Settlement Agreement at § 17.

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

A. Provisional Certification of the Class is Appropriate

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

1. The Proposed Class is Numerous and Ascertainable

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

The Class here consists of all persons who are employed or have been employed by Defendant as a non-exempt employee in the State of California during the Class Period. *See* Settlement Agreement at §§ d and h. Plaintiff contends the Class is also readily ascertainable from Defendant's business records, because all Class Members are or were employees of Defendant. *Id*. Defendant's records show there are approximately 282 Class Members, making joinder of all Class Members impracticable. Yslas Decl. at ¶ 10.

2. A Well-Defined Community of Interest Exists

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

a. Common Questions Predominate

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

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

b. Plaintiff is Typical of the Class

Typicality does not require that the representative plaintiff's claims and those of the class members be identical or perfectly aligned. *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 228 (2001), disapproved on other grounds by *Hernandez v. Restoration Hardware, Inc.*, 4 Cal.5th 260, 269-280 (2018). Typicality does not require that a plaintiff's claims be identical to those of other class members, only that their claims and the defenses applicable to them are sufficiently similar to those of other class members that a named plaintiff is able to adequately represent the class and focus on common issues. *Medrazo v. Honda of North Hollywood*, 166 Cal.App.4th 89, 99 (2008).

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

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

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

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

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

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

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

B. The Settlement Meets the Standards for Preliminary Approval

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

1. The Settlement is Entitled to a Presumption of Fairness

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

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

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

b. Sufficient Investigation and Discovery Have Been Conducted

Prior to attending mediation, Plaintiff's Counsel thoroughly investigated the claims, applicable law, and potential defenses. *Id.* at ¶ 9. Defendant denies all the allegations in the Actions and denies that it has committed any misconduct, statutory or regulatory violation, wrongdoing, or any other actionable conduct. *Id*. Plaintiff's Counsel assessed the value to the class claims using the documents and data Defendant produced in informal discovery. The data and documents produced by Defendant included the number of Class Members, the number of Class Members currently and formerly employed during the Class Period, the number of workweeks in the Class Period, and the number of pay periods in the PAGA Period, the average hourly rate of pay, job titles, documents concerning Plaintiff available to Defendant, employment handbooks and wage-and-hour policies, and a sampling of Class Members' time and payroll records. *Id.*

c. Plaintiff's Counsel is Experienced in Similar Litigation

Plaintiff is represented by Wilshire Law Firm, PLC. *Id.* at ¶ 1. Plaintiff's Counsel has extensive experience litigating wage-and-hour class actions on behalf of employees. *See id.* at ¶¶ 22-32. Plaintiff's Counsel has been involved as counsel in numerous class actions that have resulted in millions of dollars in recovery. *See id.*

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

A settlement does not have to provide 100% of the damages sought to be considered fair and reasonable. *See Rebney v. Wells Fargo Bank*, 220 Cal.App.3d 1117, 1139 (1991). Although the exposure Plaintiff's Counsel calculated is substantial, the various risks at succeeding at class certification and through trial affected the valuation of the claims for settlement purposes. Yslas Decl. at ¶ 12. Based on an analysis of the facts and legal contentions in this case, documents and information from Defendant, Plaintiff's Counsel evaluated Defendant's maximum exposure. *Id*. Plaintiff's Counsel took into account the risk of not having the claims certified and the risk of not prevailing at trial, even if the claims are certified. *Id*. After using the data Defendant provided, including class member timekeeping and payroll records, as well as class member demographics, with the assistance of a statistics expert, Plaintiff's Counsel created a damages model to evaluate the realistic range of potential recovery for the class. *Id*.

<u>Minimum and Overtime Wages</u>: Plaintiff's unpaid minimum and overtime wage claims were based on the allegation that Defendant required Class Members to routinely perform work duties off the clock. Yslas Decl. at ¶ 13. For example, Plaintiff alleges that Defendant required him and other Class Members to clock out but continue working, without compensation. *Id*. Based on these allegations, Plaintiff's Counsel conservatively estimated that Class Members worked one (1) hour off the clock per week as overtime in calculating potential exposure to be approximately $760,203.69 for these claims (21,214 workweeks x $23.89 hourly rate x 1.5 overtime rate of pay x 1.00 hour of unpaid work per workweek). *Id*. Because this claim would have relied heavily on Class Member testimony and would not be evidenced in Defendant's time and payroll records, the risk of succeeding at class certification was substantial. *Id*. Accordingly, Plaintiff's Counsel applied a risk discount based on a 40% chance of succeeding at class certification and a 40% chance of succeeding at trial on the merits, yielding a realistic damage estimate of approximately $121,632.59 ($760,203.69 x 40% x 40%). *Id.*

<u>Meal Periods</u>: Plaintiff's meal period claim was based on the allegation that Defendant failed to provide Class Members with legally compliant meal periods or pay meal period premiums in lieu thereof. Yslas Decl. at ¶ 14. For example, Plaintiff alleges that Defendant required him and other Class Members to work through their meal periods or otherwise failed to provide timely meal periods due to understaffing and a heavy workload. *Id*. Plaintiff's Counsel's expert found a violation rate of approximately 78.7% in Defendant's time and payroll records for shifts greater than five (5) hours. *Id*. Therefore, potential liability for the meal period claims is approximately $2,286,423.10 (121,609 shifts greater than 5.00 hours x $23.89 hourly rate x 78.7% violation rate). *Id*. However, the claim that Class Members worked through their recorded meal periods would have relied heavily on Class Member testimony and would not be evidenced in Defendant's time and payroll records. *Id*. Accordingly, Plaintiff's Counsel applied a risk discount based on a 50% chance of succeeding at class certification and a 40% chance of succeeding at trial on the merits, yielding a realistic damage estimate of approximately $457,284.62 ($2,286,423.10 x 50% x 40%). *Id*.

Rest Periods: Plaintiff's rest period claim was based on the allegation that Defendant failed to provide Class Members with legally compliant rest periods or pay rest period premiums in lieu thereof. Yslas Decl. at ¶ 15. For example, Plaintiff alleges that he and the other Class Members regularly experienced missed, late, short, and/or interrupted rest periods while working for Defendant due to high workloads, understaffing, and supervisor needs and directives. *Id*. Based on these allegations, Plaintiff's Counsel applied a 100% violation rate to all shifts of 3.5 hours or longer. *Id*. Therefore, potential liability for the rest period claims is approximately $2,926,883.35 (122,515 shifts of 3.5 hours or longer x $23.89 hourly rate x 100% violation rate). *Id*. However, Plaintiff's Counsel discounted this figure to account for the difficulty of certifying and proving rest period claims, particularly because rest periods do not have to be recorded, and to account for the possibility of Class Members voluntarily choosing to forego a rest period. *Id*. Because this claim would have relied exclusively on Class Member testimony, Plaintiff's Counsel discounted this claim based on a 30% chance of succeeding at class certification and a 20% chance of succeeding at trial, yielding a realistic damage estimate of approximately $175,613.00 ($2,926,883.35 x 30% x 20%). *Id.*

Reimbursement: Plaintiff's reimbursement claim was based on the allegation that Defendant failed to indemnify Class Members for expenses incurred as a direct result of performing their job duties for Defendant. Yslas Decl. at ¶ 16. For example, Plaintiff alleges that Defendant required him and other Class Members to use their personal cell phones to clock in and out through an application, use their cell phones to input orders, and communicate with their managers regarding work-related matters, without compensation for this expense. *Id*. For purposes of calculating Defendant's liability based on a best-case scenario for Plaintiff and the Class, Plaintiff's Counsel estimated that Defendant was liable to each class member for $30 per month, or $7.50 per workweek, in unreimbursed expenses, for a total amount of approximately $159,105.00 ($7.50 x 21,214 workweeks). *Id*. Plaintiff's Counsel discounted this figure based on an evaluation of a 30% chance of succeeding at class certification and a 30% chance of succeeding at trial to account for the difficulty of certifying and proving expense reimbursement claims, yielding a realistic damage estimate of approximately $14,319.45 ($159,105.00 x 30% x 30%). *Id.*

17. In sum, Plaintiff's Counsel estimated that Plaintiff's maximum recovery for the off-the-clock claim, meal period violations, and rest period violations (i.e., wage claims) is approximately $5.97 million, but after factoring in the risk and uncertainty of prevailing at certification and trial, Plaintiff's Counsel estimates that Plaintiff's realistic estimated recovery for the non-penalty wage claims is approximately $754,530.21. Yslas Decl. at ¶ 17.

Derivative Penalties: Plaintiff alleged that as a result of Defendant's failure to pay all wages owed, Defendant owed waiting time penalties and wage statement penalties. Yslas Decl. at ¶ 18. With respect to Plaintiff's derivative claims for statutory penalties, Plaintiff's Counsel estimated that Defendant's realistic potential liability is approximately $66,051.43. *Id*. Defendant's maximum potential liability for waiting time penalties is approximately $619,157.13 ([106 employees x $23.89 hourly rate x 8.00 hours/day x 30 days] + [106 employees x $23.89 hourly rate x 0.10 hour overtime x 1.5 overtime rate of pay x 30 days) based on approximately 106 formerly employed class members during the 3-year statute of limitations period. *Id*. Defendant's maximum potential liability for inaccurate wage statements is approximately $481,700.00 ([214 employees x 1 initial violation/employee x $50 for an initial violation] + [(4,924 pay periods - 214 initial violations) x $100 for each subsequent violation]) based on approximately 214 class members who worked during the 1-year statute of limitations period and approximately 4,924 pay periods in the statutory timeframe. *Id*. In light of the foregoing, Plaintiff's Counsel believes that it would be unrealistic to expect the Court to award the full $1,100,857.13 in penalties given Defendant's defenses, the contested nature of Plaintiff's claims, the challenges of establishing willfulness as applicable, and the discretionary nature of penalties. *Id*. Considering that the underlying wage claims are realistically estimated to be approximately $754,530.21, such a disproportionate award would also raise due process concerns. *Id*. As such, Plaintiff's counsel discounted these figures to account for the risk and uncertainty of prevailing at trial, resulting in a realistic evaluation of approximately $37,149.43 ($619,157.13 x 30% x 20%) for waiting time penalty claims, and approximately $28,902.00 ($481,700.00 x 30% x 20%) for wage statement penalty claims, or approximately $66,051.43 total for statutory penalties. *Id.*

PAGA: For the PAGA claim, Plaintiff's Counsel determined that Defendant's potential exposure could potentially reach $495,500.00, assuming the initial $100 penalty would apply for each of the 4,955 pay periods in the PAGA Period. Yslas Decl. at ¶ 19. However, even assuming success on the merits of each claim, PAGA gives the Court discretion to reduce penalties for a variety of reasons, including where to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory. *Id*. As such, Plaintiff's counsel discounted this figure to account for the risk and uncertainty of prevailing at trial, resulting in a realistic evaluation of approximately $49,550.00 ($495,500.00 x 10%) for PAGA penalties. *Id*. The settlement allocates $20,000.00 of the Gross Settlement Amount to PAGA, therefore the PAGA allocation amounts to approximately 40% of the realistic maximum damages for PAGA penalties ($20,000.00 / $49,550.00). *Id.*

Using these estimated figures, Plaintiff's Counsel predicted that the realistic maximum recovery for all claims, including penalties, would be approximately $884,451.09. Yslas Decl. at ¶ 20. This means that the $675,000.00 gross settlement figure represents approximately 76% of the total realistic maximum recovery ($675,000.00/$884,451.09). *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*.

The Net Settlement Amount available for class settlement payments is currently estimated to be $389,150.00 for approximately 282 Class Members. Yslas Decl. at ¶ 21. As a result, each Settlement Class Member would be eligible to receive an average net benefit of approximately $1,379.96. *Id*.

C. The Requested Service Payment is Reasonable

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

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

D. The Requested Attorneys' Fees and Costs Are Reasonable

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

Plaintiff seeks appointment of Wilshire Law Firm, PLC as Class Counsel. The attorneys performed significant work and expended litigation costs in prosecuting this matter with no guarantee of payment. Yslas Decl. at ¶ 22. Plaintiff's Counsel seeks preliminary approval of up to one third (1/3) of the Gross Settlement Amount, currently estimated to be $225,000.00, and up to $23,000.00 in reimbursement of litigation costs. Given the work performed in this matter, the extensive information exchange, and the substantial recovery obtained on behalf of the Class, Plaintiff's Counsel achieved a settlement through efficient and diligent work. *See generally*, Yslas Decl. At final approval, Plaintiff's Counsel will fully brief the merits of its request for the award of attorneys' fees and litigation costs.

E. The Administration Costs are Reasonable

The Parties have agreed upon using ILYM Group, Inc. to administer this Settlement. Settlement Agreement at § ee. Plaintiff seeks preliminary approval of $7,850.00 for ILYM Group, Inc. to administer this Settlement pursuant to ILYM Group, Inc.'s will-not-exceed bid. *Id*. at § ff; *see* Yslas Decl. at ¶ 35, Exhibit 4. The services covered by this payment are extensive and necessary to carry out the Settlement administration. *Id*.

V. CONCLUSION

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

Respectfully submitted,

Dated: December 1, 2025 **WILSHIRE LAW FIRM, PLC**

By: /s/ Courtney M. Miller
Courtney M. Miller
Attorneys for Plaintiff Justin Espinosa-Hineline