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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

JOE ARCIAGA, individually, on behalf of himself, all others similarly situated, the State of California, and other aggrieved persons,

Plaintiff,

vs.

EK HEALTH SERVICES, INC., a California corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 24CV440274

[Assigned for All Purposes to the Honorable Beth McGowen, Dept. 22]

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: June 17, 2027
Time: 1:30 p.m.
Dept.: 22

Action Filed: May 31, 2024
FAC Filed: August 19, 2024
Trial Date: Not Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on June 17, 2027, at 1:30 p.m., or as soon thereafter as the matter may be heard in Department 22 of the Superior Court of California, County of Santa Clara, located at 191 North First Street, San Jose, CA 95113, Plaintiff Joe Arciaga ("Plaintiff") will and hereby does move this Court for an Order:

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

Pursuant to Code of Civil Procedure § 382 and California Rules of Court 3.769, *et seq*., 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 ("MPA"), the Declaration of Benjamin H. Haber, the Declaration of Joe Arciaga, 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: November 17, 2026

WILSHIRE LAW FIRM, PLC

By: _____

Benjamin H. Haber
Daniel J. Kramer
Chase M. Stern
Giancarlo A. Recinos
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to Code of Civil Procedure § 382 and California Rules of Court 3.769, *et seq*., Plaintiff seeks preliminary approval of a class action settlement of wage and hour claims, including representative claims brought under the Labor Code Private Attorneys General Act of 2004 ("PAGA"), against Defendant EK Health Services, Inc. ("Defendant"). The proposed Class is defined as all current and formerly hourly or non-exempt employees of EK Health who worked for EK Health in California ("Class Members") during the period from May 31, 2020, though September 21, 2025 ("Class Period"). The main terms of the Settlement are as follows:

1. A Gross Settlement Amount of $425,000.00, from which the Net Settlement Amount will be distributed to approximately 182 Class Members on a pro rata basis according to the total workweeks worked by each Class Member during the Class Period;
2. Class Counsel Fees Payment of up to 33.33% of the Gross Settlement Amount (currently $141,666.67) and Class Counsel Litigation Expenses Payment up to $20,000.00 in costs for actual litigation expenses to Plaintiff's Counsel;
3. A Class Representative Service Payment of up to $10,000.00 to Plaintiff;
4. Administration Expenses Payment of up to $15,000.00; and
5. Allocation of $21,250.00 to PAGA penalties, seventy-five percent (75%) of which ($15,937.50) will be paid to the Labor and Workforce Development Agency ("LWDA"), and twenty-five percent (25%) of which ($5,312.50) will be paid to all current and former hourly or non-exempt employees of EK Health who worked for EK Health in California ("Aggrieved Employees") at any time during the period from June 13, 2023, through September 21, 2025 ("PAGA Period").

The Settlement meets all criteria for preliminary approval and falls within the range of reasonableness given the risks and expenses of further litigation. The Settlement was reached through informed, arm's length bargaining between experienced attorneys with the assistance of an experienced neutral. As such, Plaintiff requests that the Court grant preliminary approval of the

Settlement, conditionally certify the Class for settlement purposes only, appoint Plaintiff as the Class Representative, appoint Plaintiff's Counsel as Class Counsel, appoint ILYM Group, Inc. ("ILYM") as the Administrator, authorize the Administrator to administer notice of the Settlement to the Class, and set a final approval hearing date.

II. PROCEDURAL HISTORY

On May 31, 2024, Plaintiff filed this 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; and (8) unfair business practices (the "Class Action"). Declaration of Benjamin H. Haber in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement ("Haber Decl.") at ¶ 3.

On June 13, 2024, Plaintiff provided written notice to the LWDA and Defendant of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories in support. Haber Decl. at ¶ 4, Exhibit 1. The LWDA did not notify Plaintiff that it intended to investigate within 65 days of this written notice. *Id*. Therefore, on August 19, 2024, Plaintiff filed a First Amended Complaint in this Class Action adding a cause of action for civil penalties under PAGA. *Id.*

On June 24, 2025, the Parties participated in a private mediation with Phillip Cha, Esq. *Id.* at ¶ 5. While the initial mediation did not resolve the matter, after continued discussions, the mediator made a proposal, which was accepted by the Parties. *Id.* The Parties negotiated the terms of the Settlement over the next year, which was finalized on September 21, 2026. *Id.* at ¶ 6, Exhibit 2. On November 4, 2026, Plaintiff submitted a copy of the Settlement Agreement to the LWDA. *Id.* at ¶ 7, 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 case for a Gross Settlement Amount of $425,000.00. Settlement Agreement at § 3.1. Subject to Court approval, the following

payments will be deducted from the Gross Settlement Amount: (1) a Class Representative Service Payment of up to $10,000.00 to Plaintiff; (2) Class Counsel Fees Payment of up to 33.33% of the Gross Settlement Amount (currently $141,666.67) and Class Counsel Litigation Expenses Payment of up to $20,000.00 in costs for actual litigation expenses incurred by Plaintiff's Counsel; (3) Administration Expenses Payment of up to $15,000.00 to ILYM; (4) Individual Class Payments to Class Members; and (5) PAGA Penalties in the amount of $21,250.00, which will be allocated 75% to the LWDA ($15,937.50) and 25% to Aggrieved Employees ($5,312.50). *Id.* at § 3.2 *et seq*. After all requested deductions are made, the remaining Net Settlement Amount is currently estimated to be $217,083.33.

Individual Class Payments will be 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 Participating Class Member's Workweeks. *Id*. at § 3.2.4. For tax purposes, the Individual Class Payments will be allocated 33.33% to wages and 66.67% to interest and penalties. *Id*. at § 3.2.4.1. Defendant will separately pay employer payroll taxes owed on the wage portions of the individual class payments separate from the Gross Settlement Amount. *Id*. at § 3.1.

Individual PAGA Payments to Aggrieved Employees will be calculated by (a) dividing the amount of the Aggrieved Employees' 25% share of the PAGA Penalties ($5,312.50) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. *Id*. at § 3.2.5.1. 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 Administrator in the Net Settlement Amount. *Id.* at §§ 3.2.1, 3.2.2, 3.2.3, 3.2.5. For any Class Member whose Individual Class Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such a check to the California Controller's Unclaimed Property Fund in the name of the Class Member. *Id.* at § 4.3.3. None of the Gross Settlement Amount will revert to EK Health. *Id*. at § 3.1.

/ / /

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*.

No later than three (3) business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. Settlement Agreement at § 7.4.3. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search and re-mail the Class Notice to the most current address obtained. *Id.* Class Members to whom Class Notices are resent after having been returned undeliverable to the Administrator shall have their deadline extended an additional 14 days beyond the Response Deadline. *Id*. at § 7.4.4.

C. Proposed Release

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

Release by Participating Class Members:

> All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, administrators, successors and assigns, release Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the facts and allegations in the Operative Complaint that are alleged to have occurred during the Class Period. The Release includes without limitation, the Labor Code violations that were alleged in the Action which include but is not limited to the alleged violations of Labor Code sections 201, 202, 203, 204, 210, 218.5, 218.6,226, 226.3, 226.7, 510, 512, 558, 558.1, 1194, 1197, 1197.1, 2802, Cal. Code Civ. Proc. Section 1021.5, and

> Business and Professions Code section 17200-17208 during the Class Period. Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, or workers' compensation or claims based on events occurring outside the Class Period.

Settlement Agreement at § 5.2.

> Release by Aggrieved Employees:
>
> All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, administrators, successors and assigns, the Released Parties from all claims for PAGA Penalties that were alleged, or reasonably could have been alleged, based on the facts and allegations in the Operative Complaint and the PAGA Notice that are alleged to have occurred during the PAGA Period [including, e.g., "(a) any and all claims involving any alleged failure to pay minimum wage; etc.]. The Release includes without limitation, the Labor Code violations that were alleged in the Action which include but is not limited to the alleged violations of Labor Code sections 200, 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1194, 1197, 1197.1, and 2802, during the PAGA Period.

Settlement Agreement at § 5.3.

Only Plaintiff will agree to a general release and a waiver of Civil Code § 1542. Settlement Agreement at §§ 5.1, 5.1.1., 5.1.2.

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 current and formerly hourly or non-exempt employees of EK Health who worked for EK Health in California during the Class Period. *See* Settlement Agreement at § 1.5, 1.12. 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 182 Class Members, making joinder of all Class Members impracticable. Haber Decl. at ¶ 9.

2. A Well-Defined Community of Interest Exists

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

a. Common Questions Predominate

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

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

upon separation of employment. Haber Decl. at ¶ 10. 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. *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 (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, and reimbursement policies. *See* Haber Decl. at ¶ 10. Through informal discovery, Plaintiff confirmed that these challenged policies and practices applied to Plaintiff and Class Members alike. *See id.* at ¶ 8. 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 Joe Arciaga in Support of Plaintiff's MPA ("Arciaga Decl.") at ¶ 6. Plaintiff has demonstrated an ability to advocate for the interests of Class Members by initiating this lawsuit, providing information to his attorneys, meeting with his attorneys regarding the claims, making himself available the day of mediation to answer questions, and reviewing the proposed Settlement. *Id.* at ¶ 11.

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

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

Courts have held that class treatment of wage and hour claims is clearly "superior to the other available methods for the fair and efficient adjudication of the controversy." *Dean Witter Reynolds, Inc. v. Superior Court*, 211 Cal.App.3d 758, 772-773 (1989). This is so because "[p]ublic policy has long favored the 'full and prompt payment of wages due an employee.'" *Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal.4th 319, 340 (2004). Here, a class action is superior to a multitude of individual lawsuits. Given the size and amount of each Class Member's 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. Haber Decl. at ¶ 9. Therefore, a class action is the superior method for seeking relief.

B. The Settlement Meets the Standards for Preliminary Approval

The moving party must demonstrate that "the settlement is fair, adequate and reasonable." *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 126 (2008). "In determining whether a class settlement is fair, adequate, and reasonable, the trial court should consider relevant factors, such as the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further

litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement." *Wershba*, 91 Cal.App.4th at 244-245 (internal quotations and citations omitted).

1. The Settlement is Entitled to a Presumption of Fairness

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

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

Courts have recognized that the involvement of a respected mediator provides a high degree of assurance that the settlement is the result of arm's length bargaining. *See Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 52-53 (2008). The Settlement in this matter was the product of a full-day mediation session with a respected mediator. Haber 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, Plaintiff's Counsel thoroughly investigated the claims, applicable law, and potential defenses. Haber Decl. at ¶ 8. Plaintiff's Counsel assessed the value to the class claims using the data and documents that Defendant produced in informal discovery, including class data providing the number of Class Members, the number of workweeks in the Class Period, and the number of pay periods in the PAGA Period, Plaintiff's personnel file and documents concerning Plaintiff, Defendant's employee handbooks, Defendant's written wage-and-hour policies, job descriptions, and a random sampling of time and payroll records. *Id.*

c. *Plaintiff's Counsel is Experienced in Similar Litigation*

Plaintiff is represented by Wilshire Law Firm, PLC. Haber Decl. at ¶ 21. Plaintiff's Counsel has extensive experience litigating wage and hour class actions on behalf of employees. *See id.* at ¶¶ 22-30. 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. Haber Decl. at ¶ 12.

Minimum and Overtime Wages: Plaintiff's unpaid minimum and overtime wage claims were based on the allegation that Defendant required Class Members to perform work duties while off the clock, without compensation. Haber Decl. at ¶ 12. For example, Plaintiff alleged that Defendant required him and other Class Members to perform work related duties before clocking in and after clocking out. *Id*. For purposes of calculating Defendant's liability based on a best-case scenario for Plaintiff and the Class, Plaintiff's Counsel assumed that all unpaid worktime should have been paid at the overtime rate of pay and conservatively estimated that Defendant is liable for one (1) hour of unpaid worktime per workweek. *Id*. This results in potential exposure for this claim of approximately $1,036,138.13 (22,835 workweeks x $30.25 average hourly rate of pay x 1 hour/workweek x 1.5 overtime rate). 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 and trial was substantial. 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 $207,227.63 ($1,036,138.13 x 50% x 40%). *Id*.

Meal Periods: Plaintiff's meal period claim was based on the allegation that Defendant

failed to provide Class Members with legally compliant meal periods or pay meal period premiums in lieu thereof. Haber Decl. at ¶ 13. For example, Plaintiff alleged that Defendant required him and other Class Members to miss or take short or interrupted meal breaks. *Id*. Additionally, Plaintiff's Counsel's expert consultant determined there was a 24.5% meal period violation rate (for shifts over 6 hours that are not waivable) from the sampling of Defendant's time and payroll records excluding premiums paid, where meal periods were short, late, or missed. *Id*. Therefore, potential liability for the meal period claim is approximately $754,820.99 (101,848 shifts over 6 hours x $30.25 average hourly rate x 24.5% violation rate). *Id*. After taking into account the difficulty of certifying and proving meal period claims, as well as Defendant's contention that the claim lacks merit, Plaintiff's Counsel discounted this figure 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 $45,289.26 ($754,820.99 x 30% x 20%). *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. Haber Decl. at ¶ 14. For example, Plaintiff alleged that Defendant required him and other Class Members to work through their rest periods. *Id*. Based on Plaintiff's allegations and Plaintiff's and other Class Members' experience working for Defendant, Plaintiff's Counsel applied a 60% violation rate to all qualifying shifts during the Class Period. Therefore, Defendant's potential liability for the rest period claim is approximately 1,989,802.65 (109,631 shifts of 3.5 hours or longer x $30.25 average hourly rate x 60% violation rate). 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 20% chance of succeeding at class certification and a 10% chance of succeeding at trial, yielding a realistic damage estimate of approximately $119,388.16 ($1,989,802.65 x 30% x 20%). *Id*.

In sum, Plaintiff's Counsel estimated that Plaintiff's maximum recovery for the off-the-clock claim, meal period violations, rest period violations, (i.e., the wage claims), is approximately

$ 3,780,761.77. Haber Decl. at ¶ 15. However, after factoring in the risk and uncertainty of prevailing at certification and trial, Plaintiff's Counsel estimates that Plaintiff's realistic estimated recovery for these non-penalty wage claims is approximately $ 371,905.05. *Id*.

Reimbursements: 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, such as use of his personal cell phone for work purposes. Haber Decl. at ¶ 16. 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 $12.50 per workweek in unreimbursed expenses, for a total amount of approximately $285,437.50 ($12.50 x 22,835 workweeks). *Id*. However, Defendant argued that these expenses were not required by Defendant, and that it could not have known that these expenses were being incurred. *Id*. Accordingly, Plaintiff's Counsel discounted this claim based on a 50% chance of succeeding at class certification and a 40% chance of succeeding at trial, yielding a realistic damage estimate of approximately $57,087.50 ($285,437.50 x 50% x 40%). *Id*.

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. Haber Decl. at ¶ 17. With respect to Plaintiff's derivative claims for statutory penalties, Plaintiff's Counsel estimated that Defendant's maximum potential liability is approximately $923,990.00. *Id*. Defendant's maximum potential liability for waiting time penalties is approximately $537,240.00 ([80 employees x $30.25 average hourly rate of pay x 7.4 hours/day x 30 days] based on approximately 80 formerly employed Class Members during the 3-year statute of limitations period and an average shift length of 7.4 hours. *Id*. Defendant's maximum potential liability for inaccurate wage statements is approximately $386,750.00 ([99 employees x 1 initial violation/employee x $50 for an initial violation] + [3,917 pay periods - 99 initial violations) x $100 for each subsequent violation]). *Id*. In light of the foregoing, Plaintiff's Counsel believes that it would be unrealistic to expect the Court to award the full $923,990.00 in statutory penalties given Defendant's defenses, the contested nature of Plaintiff's claims, the challenges of establishing willfulness as applicable, and the discretionary nature of penalties. *Id*. Considering that the underlying wage claims are

realistically estimated to be approximately $371,905.05, 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 obtaining class certification and prevailing at trial, resulting in a realistic evaluation of approximately $32,234.40 for waiting time penalty claims ($537,240.00 x 30% x 20%), and approximately $46,410.00 for wage statement penalty claims ($386,750.00 x 40% x 30%), or approximately $78,644.40 total for statutory penalties. *Id.*

PAGA: For the PAGA claim, Plaintiff's Counsel determined that Defendant's potential exposure could reach $865,500.00 assuming the initial $100 penalty would apply for each of the 8,655 pay periods in the PAGA Period. Haber Decl. at ¶ 18. 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 $86,550.00 for PAGA penalties ($865,500.00 x 10%). *Id*. The settlement allocates $21,250.00 of the Gross Settlement Amount to PAGA, therefore the PAGA allocation amounts to 5% of the Gross Settlement Amount and approximately 25% of the realistic PAGA allocation estimate for PAGA penalties ($21,250.00 / $86,550.00). *Id.*

Using these estimated figures, Plaintiff's Counsel predicted that the realistic maximum recovery for all claims, including penalties, would be approximately $594,186.95. This means that the gross settlement amount represents approximately 72% of the realistic maximum recovery ($425,000.00/ $594,186.95). Considering the risk and uncertainty of prevailing at class certification and at trial, this is an excellent result for the Class. Indeed, because of the proposed Settlement, Class Members will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment. *Id*.

Based on the figures in the Settlement Agreement, the Net Settlement Amount available for class settlement payments is currently estimated to be $217,083.33 for approximately 182 Class Members. As a result, each Settlement Class Member would be eligible to receive an average net benefit of approximately $1,192.77. *Id*.

C. The Requested Service Payment is Reasonable

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

Throughout this case, Plaintiff assisted counsel in providing information necessary to prosecute the claims, meeting with counsel regarding the claims, maintaining regular contact with counsel, making himself available the day of mediation to answer questions, and reviewing the Settlement to ensure it was fair to the Class. Arciaga Decl. at ¶ 11. No action would likely have been taken by Class Members individually and no compensation would have been recovered for them, but for Plaintiff's services on behalf of the Class. By actively pursuing this action, Plaintiff furthered the California public policy goal of enforcing the State's wage-and-hour laws. *See Sav-On*, 34 Cal.4th at 340. The requested Class Representative Service Payment 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. Haber Decl. at ¶ 21. Plaintiff's Counsel seeks preliminary approval for up

to one-third (1/3) of the Gross Settlement Amount for the Class Counsel Fees Payment, currently estimated to be $141,666.67, and a Class Counsel Litigation Expenses Payment up to $20,000.00 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*, Haber 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 to administer this Settlement. Settlement Agreement at §§ 1.2, 7.1. Plaintiff seeks preliminary approval of Administration Expenses Payment of $15,000.00 for ILYM to administer this Settlement pursuant to ILYM's will-not-exceed bid. *See* Haber Decl. at ¶ 33, Exhibit 4. The services covered by this payment are extensive and necessary to carry out the Settlement administration.

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: November 17, 2026

WILSHIRE LAW FIRM, PLC

By: _____

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