Tyler J. Woods (SBN 232464)
tyler.woods@wilshirelawfirm.com
James Yoo (SBN 310680)
james.yoo@wilshirelawfirm.com
Giancarlo Recinos (SBN 282836)
giancarlo.recinos@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 Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

ARTURO ORTIZ, individually, and on behalf of all other members of the general public similarly situated, JORGE VALERO, individually, and on behalf of other members of the general public similarly situated, ANGEL SANCHEZ, individually, and on behalf of other members of the general public similarly situated,

Plaintiffs,

v.

HOLLYWOOD DELIVERY SERVICE, INC., a California corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.: CIVSB2432874

[Assigned for All Purposes to the Honorable Stephanie Tañada, Dept. S33]

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

Preliminary Approval Hearing:
Date: January 27, 2027
Time: 8:30 a.m.
Dept.: S33

Action Filed: October 30, 2024

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on January 27, 2027, at 8:30 a.m., or as soon thereafter as the matter may be heard in Department S33 of the Superior Court of California, County of San Bernardino, located at 247 West Third Street, San Bernardino, CA 92415, Plaintiffs Arturo Ortiz, Jorge Valero, and Angel Sanchez (collectively, the "Plaintiffs") will and hereby does move this Court for an Order:

1. Granting preliminary approval of the proposed Class Action and PAGA Settlement Agreement and Amendment ("Settlement Agreement");
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 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 Plaintiffs and Plaintiffs' Counsel will fairly and adequately represent the Class. Checklist at ¶ 3.

This Motion is based on this Notice of Motion, the accompanying Memorandum of Points and Authorities ("MPA"), the Declaration of Tyler J. Woods, the Declaration of Arturo Ortiz, the Declaration of Jorge Valero, the Declaration of Angel Sanchez, 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 19, 2026

WILSHIRE LAW FIRM, PLC

By: _____
Tyler J. Woods
Attorneys for Plaintiffs

TABLE OF CONTENTS

I. INTRODUCTION 4

II. PROCEDURAL HISTORY 5

III. SUMMARY OF THE SETTLEMENT TERMS 8

A. Terms of the Proposed Settlement 8

B. Proposed Settlement Administration 9

C. Proposed Release 10

IV. THE PROPOSED SETTLEMENT AGREEMENT MEETS ALL CRITERIA FOR PRELIMINARY APPROVAL 11

A. Provisional Certification of the Class is Appropriate 11

1. The Proposed Class is Numerous and Ascertainable 11

2. A Well-Defined Community of Interest Exists 12

a. Common Questions Predominate 12

b. Plaintiffs are Typical of the Class 13

c. Plaintiffs and Plaintiffs' Counsel Will Adequately Represent the Class 13

3. A Class Action is Superior to a Multitude of Individual Lawsuits 14

B. The Settlement Meets the Standards for Preliminary Approval 14

1. The Settlement is Entitled to a Presumption of Fairness 15

a. The Settlement is the Result of Arm's Length Negotiation 15

b. Sufficient Investigation and Discovery Have Been Conducted 15

c. Plaintiffs' Counsel is Experienced in Similar Litigation 15

2. The Settlement is Reasonable Given the Strengths of Plaintiffs' Claims and the Risks and Expense of Further Litigation 16

C. The Requested Service Payments are Reasonable 20

D. The Requested Attorneys' Fees and Costs Are Reasonable 21

E. The Administration Costs Are Reasonable 21

V. CONCLUSION 22

TABLE OF AUTHORITIES

CASES

Ayala v. Antelope Valley Newspapers, Inc., 59 Cal.4th 522 (2014) 12

Bell v. Farmers Ins. Exch., 115 Cal.App.4th 715 (2004) 20

Brinker Restaurant Corp. v. Superior Court, 53 Cal.4th 1004 (2012) 11, 12

Cellphone Termination Fee Cases, 186 Cal.App.4th 1380 (2010) 20

Chavez v. Netflix, Inc., 162 Cal.App.4th 43 (2008) 15, 21

Dean Witter Reynolds, Inc. v. Superior Court, 211 Cal.App.3d 758 (1989) 14

Dunk v. Ford Motor Co., 48 Cal.App.4th 1794 (1996) 15

Duran v. U.S. Bank Nat'l Ass'n, 59 Cal.4th 1 (2014) 12

Global Minerals & Metals Corp. v. Superior Court, 113 Cal.App.4th 836 (2003) 11

Hendershot v. Ready to Roll Transp., Inc., 228 Cal.App.4th 1213 (2014) 11

Hernandez v. Restoration Hardware, Inc., 4 Cal.5th 260 (2018) 13

Kullar v. Foot Locker Retail, Inc., 168 Cal.App.4th 116 (2008) 14

Medrazo v. Honda of North Hollywood, 166 Cal.App.4th 89 (2008) 13

Nat'l Solar Equip. Owners' Ass'n v. Grumman Corp., 235 Cal.App.3d 1273 (1991) 13

Noel v. Thrifty Payless, Inc., 7 Cal.5th 955 (2019) 11

Rebney v. Wells Fargo Bank, 220 Cal.App.3d 1117 (1991) 16

Richmond v. Dart Industries, 29 Cal.3d 462 (1981) 13

Rose v. City of Hayward, 126 Cal.App.3d 926 (1981) 11

Sav-On Drug Stores, Inc. v. Superior Court, 34 Cal.4th 319 (2004) 14, 20

Wershba v. Apple Computer, Inc., 91 Cal.App.4th 224 (2001) 13, 14

STATUTES

Cal. Code Civ. Proc. § 382 13

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to Code of Civil Procedure § 382 and California Rules of Court 3.769, *et seq*., Plaintiffs seek 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 Hollywood Delivery Service, Inc. ("Defendant"). The proposed Class is defined as all individuals who, for one or more hours during the Class Period, provided labor or services for Defendant in California for remuneration, as more fully defined in Labor Code section 2775, et seq., including current and former employees. All current and former employees who previously signed Pick-Up Stix Settlement Agreements are specifically excluded from definition of Class Members. ("Class Member" or "Settlement Class Member"). Checklist for Approval of Class Action Settlement ("Checklist") at ¶ 4. Class Period means the period from October 30, 2020, through the earlier of June 30, 2026, or the day the Court grants preliminary approval of the Settlement ("Class Period" or "Settlement Class Period"). Checklist at ¶ 4. The class period does not exceed the statute of limitations. *Id.* The main terms of the Settlement are as follows:

1. A Gross Settlement Amount of $300,000.00, from which the Net Settlement Amount will be distributed to approximately 193 Class Members on a pro rata basis according to the total workweeks worked by each Class Member during the Class Period Checklist at ¶ ¶ 1, 4.;
2. Class Counsel Fees Payment not to exceed twenty percent (20%) of the Gross Settlement Amount (currently $60,000.00) and Class Counsel Litigation Expenses Payment not to exceed $7,500.00; Checklist at ¶ 1.
3. Class Representative Service Payments not to exceed $2,500.00 to each named Plaintiff; Checklist at ¶ 1
4. Administration Costs not to exceed $6,990.00; Checklist at ¶ 1; and
5. Allocation of $45,000.00 to PAGA penalties, sixty-five percent (65%) of which ($29,250.00) will be paid to the Labor and Workforce Development Agency

("LWDA"), and thirty-five percent (35%) of which ($15,750.00) will be paid to all 119Aggrieved Employees defined as all individuals who, for one or more hours during the PAGA Period, provided labor or services for Defendant in California for remuneration, as more fully defined in Labor Code section 2775, et seq., including current and former employees inclusive of the current and former employees who previously signed Pick-Up Stix Settlement Agreements. Settlement Agreement at § 1.4, 1.13., Checklist at ¶ 4. The PAGA Period is the period from October 28, 2023, through the earlier of June 30, 2026, or the day the Court grants preliminary approval of the Settlement. ("PAGA Period"). Checklist at ¶ 1, 4. The PAGA Period does not exceed the statute of limitations. Checklist at ¶ 4.

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. Checklist at ¶ 3. As such, Plaintiffs requests that the Court grant preliminary approval of the Settlement, conditionally certify the Class for settlement purposes only, appoint Plaintiffs as the Class Representative, appoint Plaintiffs' Counsel as Class Counsel, appoint Apex Class Action Administration ("Apex") 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 October 30, 2024, Plaintiffs 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 provide accurate itemized wage statements; (6) failure to indemnify employees for expenditures; (7) failure to timely pay final wages at termination; (8) failure to provide paid sick leave; and (9) unfair business practices ("Class Action"). Declaration of Tyler J. Woods in Support of Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement ("Woods Decl.") at ¶ 3. Checklist at ¶ 5.

On October 28, 2024, Plaintiffs jointly submitted a single written notice to the LWDA and Defendant, identifying the specific provisions of the Labor Code alleged to have been violated and the facts and theories in support thereof, which notice was separately filed by each Plaintiff and accordingly assigned three distinct LWDA case numbers: LWDA-CM-1058717-24 as to Plaintiff Ortiz, LWDA-CM-1058723-24 as to Plaintiff Valero, and LWDA-CM-1058726-24 as to Plaintiff Sanchez. Woods Decl. at ¶ 4, Exhibit 2., Checklist at ¶ 5. The 65-day period for the LWDA to provide notice of its intent to investigate expired on January 1, 2025, without any such notice, entitling Plaintiffs to commence a civil action pursuant to Labor Code section 2699.3, subdivision (a)(2)(A). *Id.* On March 19, 2025, Plaintiffs filed a separate action in the Superior Court of San Bernardino, for civil penalties under PAGA, Case No. CIVSB2510024, (the "PAGA Action"). *Id.* On July 16, 2026, Plaintiffs filed a First Amended Complaint to consolidate the Class Action and PAGA Action. Concurrently with the filing of this Motion, Plaintiffs are filing a Joint Stipulation for Leave to File a Second Amended Complaint, with the proposed Second Amended Complaint lodged as Exhibit A, that, pursuant to the Court's May 18, 2026 Order Continuing Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement and Order for Revisions, (a) conforms the Labor Code sections alleged under the PAGA cause of action to those identified in Plaintiffs' PAGA Notice to the LWDA, and (b) voluntarily dismisses, without prejudice and pursuant to the Parties' Joint Stipulation and California Rule of Court 3.770, the Eighth Cause of Action for failure to provide paid sick leave. Upon entry of the Court's order on the Joint Stipulation, the Second Amended Complaint will be the operative complaint in this Action. *Id.* at ¶ 5., Checklist at ¶ 5. On December 30, 2025, the Parties participated in a private, full-day mediation with Michael Mandel. *Id.* at ¶ 6, Checklist at ¶ 3. The negotiations were adversarial, conducted at arm's length, and tempered by the efforts of both sides to serve the interests of their clients. Woods Decl., ¶ 6, Checklist at ¶ 3. The mediator made a proposal, which was accepted by the Parties and executed a Memorandum of Understanding thereafter. *Id,* Checklist at ¶ 3.

The parties negotiated the terms of the Settlement over the next several months, which was finalized on February 12, 2026. *Id.* at ¶ 7, Checklist at ¶ 2, 3. The parties executed an Amendment to the Settlement Agreement on November 13, 2026, which amends the Class Release language in

Section 5.2 and the PAGA Release language in Section 5.3. *Id.* at ¶ 7, Exhibit 3.

On March 26, 2026, Plaintiffs submitted a copy of the Settlement Agreement to the LWDA. *Id.* at ¶ 8, Exhibit 4., Checklist at ¶ 3.

Plaintiffs conducted multiple diligent and reasonable searches for matters in all jurisdictions throughout California through sources such as the Court's Access Portal for filings in San Bernardino County, Google, Westlaw, Trellis, and the LWDA's PAGA filings website to determine whether there were any other matters which might be affected by this Settlement. (*See* Woods Decl., ¶ 39.) Through that search, Plaintiffs identified the following case: *Timothy Denzler v. Hollywood Delivery Service, Inc.*, San Bernardino Case No. CIVSB2613584 ("*Denzler*"). *Id.* Denzler was filed on or about May 4, 2026, as a putative class action on behalf oof California drivers alleged to have been misclassified as independent contractors, asserting claims for failure to pay all wages, failure to reimburse business expenses, inaccurate wage statements, and unfair competition. (*Id,* Exhibit 7 [Denzler Complaint] ¶¶ 13, 24-30). The *Denzler* complaint does not assert a PAGA claim, although the plaintiff submitted a PAGA notice to the LWDA on or about May 1, 2026. *Id.*, Exhibit 8. Plaintiff's action was filed on October 30, 2024, and the Settlement was finalized on or about February 12, 2026, both before *Denzler* was filed. *Id.;* Section II, supra. The Second Amended Complaint in this action does not allege that Class Members were misclassified as independent contractors. The Settlement would affect *Denzler* only to the extent the *Denzler* plaintiff or putative class members are Class Members or Aggrieved Employees and their claims fall within the Released Class Claims or Released PAGA Claims and the applicable Class Period or PAGA Period. Settlement Agreement §§ 5.2, 5.3. Whether they are class members will be determined from Defendant's records. Class Members will receive notice and may opt out or object. Claims outside the scope or periods of the releases, including any claims for willful misclassification penalties under Labor Code § 226.8, which are not among the Released PAGA Claims, and the claims of any person who opts out, would not be affected. Checklist at ¶ 14.

Additionally, in or about May 2025, Defendant obtained a total of forty-five (45) settlement and limited release agreements from current and former employees. Woods Decl. at ¶ 40. As set forth in the Settlement, all employees who signed settlement and limited release agreements are

included in the definition of Aggrieved Employees and specifically excluded from the definition of Class Members. *Id.* ("All current and former employees who previously signed Pick-Up Stix Settlement Agreements are specifically excluded from definition of Class Members.") *Id.*, Settlement Agreement at § 1.4, 1.5., Checklist at ¶ 5.

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 $300,000.00. Settlement Agreement at § 3.1. Subject to Court approval, the following payments will be deducted from the Gross Settlement Amount: (1) Class Representative Service Payments not to exceed $2,500.00 to each named Plaintiff; (2) Class Counsel Fees Payment not to exceed twenty percent (20%) of the Gross Settlement Amount (currently $60,000.00) and reimbursement of litigation costs not to exceed $7,500.00 to Plaintiffs' Counsel; (3) Administration Costs not to exceed $6,990.00 to Apex; (4) Individual Class Payments to Class Members; and (5) PAGA Penalties in the amount of $45,000.00, which will be allocated 65% to the LWDA ($29,250.00) and 35% to Aggrieved Employees ($15,750.00). *Id.* at § 3.2 *et seq*. After all requested deductions are made, the remaining Net Settlement Amount is currently estimated to be $173,010.00. Checklist at ¶ 1.

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 individual Participating Class Member's Workweeks. *Id*. at § 3.2.4. For tax purposes, the Individual Class Payments will be allocated 20% to wages and 80% to interest and penalties. *Id*. at § 3.2.4.1. The Gross Settlement Amount is non-reversionary and does not include employer payroll taxes owed on the wage portions of the Individual Class Payments, which Defendant will pay separately. *Id*. at § 3.1, Checklist at ¶ 6, 13

The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 35% share of PAGA Penalties ($15,750.00) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period, and (b) multiplying the result by each individual Aggrieved Employee's PAGA Pay

Periods. *Id*. at § 3.2.5.1. The lowest potential PAGA Payment is $2.68. Checklist at ¶8. The highest potential PAGA Payment is $139.36. *Id.* The average Individual PAGA Payment is $132.35. *Id.* The estimated number of PAGA pay periods is 5,880. *Id.* The estimated PAGA Pay Period value is $2.68 ($15,750/5,880). *Id.* Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. *Id*.

Any deductions not approved by the Court will be retained by the Settlement Administrator in the Net Settlement Amount. *Id.* at §§ 3.2.1, 3.2.2, 3.2.3, 3.2.5. any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and canceled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). *Id.* at § 4.4.3. Thus, there will be no cy pres distribution. Checklist at ¶ 7.

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 payments, 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 Administrator will mail Class Members the Class Notice by first-class mail in English and in Spanish. Settlement Agreement at § 7.4.2. Checklist at ¶ ¶ 8, 15, 16. Notice by first-class mail is the best means available to reach the greatest number of Class Members because Defendant's records contain their physical addresses, ensuring direct delivery rather than relying on email or publication. Checklist at ¶ 16.

If a Class Notice is returned as undeliverable, the Administrator will re-mail the Class Notice within five (5) calendar days to the forwarding address provided by the U.S. Postal Service.

Settlement Agreement at § 7.4.3., Checklist at ¶ 15. 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 fourteen (14) days for all Class Members whose Class Notice was remailed. *Id*. at § 7.4.4. Class notice and receipt of any objections or opt-outs will not be handled by anyone other than the third-party administrator. *Id.*at § 7.7.2, Checklist at ¶ 18. No claim form is being used in this matter. Checklist at ¶ 19.

C. Proposed Release

Effective on the date when Defendant fully funds the Gross Settlement Amount and all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiffs, Class Members, and Class Counsel will release claims against all Released Parties as follows:

Released Class Claims:

> All Class Members who do not timely submit a valid request for exclusion will waive and release the Released Parties from all claims asserted in the Second Amended Complaint filed in the Class Action, or that could have been based on the factual allegations asserted in the Second Amended Complaint filed in the Class Action, during the Class Period, including but not limited to claims under the following causes of action and statutes: (1) failure to pay minimum and straight time wages (Labor Code §§ 1194, 1194.2, and 1197); (2) failure to pay overtime wages (Labor Code §§ 1194 and 1198); (3) failure to provide meal periods (Labor Code §§ 226.7 and 512); (4) failure to authorize and permit rest periods (Labor Code § 226.7); (5) failure to provide accurate itemized wage statements (Labor Code §226); (6) failure to indemnify employees for necessary business expenditures (Labor Code §2802); (7) failure to timely pay all wages due upon separation of employment (Labor Code §§ 201-203); and (8) violation of California's Unfair Competition Law (Business and Professions Code § 17200, et seq.), based on the alleged violations of the California Labor Code listed above (collectively "the "Released Class Claims"").

Settlement Agreement at § 5.2., Checklist at ¶ 11.

Released PAGA Claims:

> The claims released by Aggrieved Employees, including Non-Participating Class Members who are Aggrieved Employees, are all claims for civil penalties under PAGA arising during the PAGA Period that were alleged in Plaintiffs' PAGA Notice to the LWDA and the PAGA claims included in the Action, or that could have been based on the facts asserted in the PAGA Notice and the PAGA claims included in the Action against Released Parties, including claims for unpaid wages, unpaid overtime, failure to pay minimum wages, failure to provide meal periods, failure to provide rest periods, failure to timely pay all wages due upon separation of employment, inaccurate wage statements, failure to reimburse business expenses, failure to provide paid sick leave, and claims and claims under the following

> statutes: California Labor Code §§ 201, 202, 203, 204, 210, 213(d), 216, 221, 223, 225.5, 226, 226 (a), 226 (e), 226.7, 226.7 (c), 234, 245.5, 246 (i), 246.5, 510, 512, 558, 558.1, 1174, 1174 (d), 1174.5, 1194, 1197, 1197.1, 1198, 2698, 2699, 2699 (a), 2699 (f), 2699 (f)(2), 2699 (k), 2699 (k)(1), 2699 (m), 2699.3 (d), 2775, 2802, and the applicable IWC Wage Order(s) including but not limited to Section 7(A)(3) (collectively the "Released PAGA Claims").

Settlement Agreement at § 5.3., Checklist at ¶ 11.

Only Plaintiffs will agree to a general release and a waiver of Civil Code § 1542. Settlement Agreement at §§ 5.1, 5.1.1., Checklist at ¶ 11.

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 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 193 Class Members, making joinder of all Class Members impracticable. Woods Decl. at ¶ 10., Checklist at ¶ ¶ 4, 5, 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.*

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. Woods 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. Checklist at ¶ 10.

/ / /

b. *Plaintiffs are 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).

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* Woods Decl. at ¶ 11. Through informal discovery, Plaintiffs confirmed that these challenged policies and practices applied to Plaintiffs and Class Members alike. *See id.* at ¶ 9, Checklist at ¶ 3, 5. Therefore, Plaintiffs' claims and Class Members' claims arise from the same challenged employment policies and practices and are based on the same legal theories. *Id.* ¶ 10.

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 representative Plaintiffs and proposed Class Counsel present no such conflict.

Plaintiffs' interests are coextensive with Class Members' interests. Declaration of Arturo Ortiz in Support of Plaintiffs' MPA ("Ortiz Decl.") at ¶¶ 3-5,16., Declaration of Jorge Valero in Support of Plaintiffs' MPA ("Valero Decl.") at ¶ 6., Declaration of Angel Sanchez in Support of Plaintiffs' MPA ("Sanchez Decl.") at ¶ 6., Checklist at ¶ 10. Plaintiffs have demonstrated an ability to advocate for the interests of Class Members by initiating this lawsuit, providing information to

their attorneys, meeting with their attorneys regarding the claims, making themselves available the day of mediation to answer questions, and reviewing the proposed Settlement. *Id.* at ¶ ¶ 4-9, d15., Checklist at ¶ 10.

Likewise, Wilshire Law Firm has expended considerable time and effort on this case and will continue to do so through final approval. *See generally*, Woods 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 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. Woods 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 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 the product of a full-day mediation session with a respected mediator. Woods Decl. at ¶ 6., Checklist at ¶ 3. 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.* Checklist at ¶ 3.

b. *Sufficient Investigation and Discovery Have Been Conducted*

Prior to attending mediation, Plaintiffs' Counsel thoroughly investigated the claims, applicable law, and potential defenses. Woods Decl. at ¶ 9. Plaintiffs' 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, Plaintiffs' pay statements and timecards, Defendant's employee handbooks, Defendant's written wage-and-hour policies, job descriptions, and a random sampling of time and payroll records. *Id*., Checklist at ¶ ¶ 3, 5, 10.

c. *Plaintiffs' Counsel is Experienced in Similar Litigation*

Plaintiffs are represented by Wilshire Law Firm, PLC. Woods Decl. at ¶ 22. Plaintiffs' Counsel has extensive experience litigating wage and hour class actions on behalf of employees. *See id.* at ¶¶ 22-36., Checklist at ¶ 10. Plaintiffs' Counsel has been involved as counsel in numerous class actions that have resulted in millions of dollars in recovery. *See id,* Checklist at ¶ 10

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

Minimum and Overtime Wages: Plaintiffs' 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. Woods Decl. at ¶ 13. For example, Plaintiffs alleged that Defendant required them and other Class Members to arrive early or respond to work-related calls and communications outside of scheduled hours. *Id*. For purposes of calculating Defendant's liability based on a best-case scenario for Plaintiffs and the Class, Plaintiffs' 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 $213,199.83 (7,617 workweeks x $18.66 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, Plaintiffs' 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 $34,111.97 ($213,199.8 x 40% x 40%). *Id*.

Meal Periods: Plaintiffs' 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. Woods Decl. at ¶ 14. For example, Plaintiffs alleged that Defendant required them and other Class Members to work through their meal periods or take untimely or shortened meal periods because of understaffing and operational demands. *Id*. Additionally, Plaintiffs' Counsel's consultant determined there was a 57.7% meal period violation rate from the sampling of

Defendant's time and payroll records, where meal periods were short, late, or missed. *Id*. Therefore, potential liability for the meal period claim is approximately $483,257.95 (shifts over 5 hours x $18.66 average hourly rate x 57.7% 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 and that a 57.7% violation rate is unrealistic, Plaintiffs' Counsel discounted this figure 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 $96,651.59 ($483,257.95 x 50% x 40%). *Id*.

Rest Periods: Plaintiffs' 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. Woods Decl. at ¶ 15. For example, Plaintiffs alleged that Defendant required them and other Class Members to work through their rest periods or take interrupted rest periods because of the nature of dock operations during peak delivery times, which made it impractical or impossible for them to step away from their duties. *Id*. Based on Plaintiffs' allegations and Plaintiffs' and other Class Members' experience working for Defendant, Plaintiffs' Counsel applied a 100% violation rate to all qualifying shifts during the Class Period. Therefore, Defendant's potential liability for the rest period claim is approximately $971,066.40 (52,040 shifts of 3.5 hours or longer x $18.66 average hourly rate x 100% violation rate). However, Plaintiffs' 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, Plaintiffs' Counsel discounted this claim based on a 40% chance of succeeding at class certification and a 30% chance of succeeding at trial, yielding a realistic damage estimate of approximately $116,527.97 ($971,066.40 x 40% x 30%). *Id*.

In sum, Plaintiffs' Counsel estimated that Plaintiffs' maximum recovery for the off-the-clock claim, meal period violations, and rest period violations (i.e., the wage claims) is approximately $1,667,524.18. Woods Decl. at ¶ 16. However, after factoring in the risk and uncertainty of prevailing at certification and trial, Plaintiffs' Counsel estimates that Plaintiffs'

realistic estimated recovery for these non-penalty wage claims is approximately $247,291.53. *Id*.

Reimbursements: Plaintiffs' 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 the required purchase of steel-toed boots, work uniforms, rental fees, and the use of personal cell phones for work purposes. Woods Decl. at ¶ 17. For purposes of calculating Defendant's liability based on a best-case scenario for Plaintiffs and the Class, Plaintiffs' Counsel estimated that Defendant was liable to each Class Member for $7.50 per workweek in unreimbursed expenses, for a total amount of approximately $57,127.50 ($7.50 x 7,617 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, Plaintiffs' Counsel discounted this claim based on a 30% chance of succeeding at class certification and a 30% chance of succeeding at trial, yielding a realistic damage estimate of approximately $5,141.48 ($57,127.50 x 30% x 30%). *Id*.

Derivative Penalties: Plaintiffs alleged that as a result of Defendant's failure to pay all wages owed, Defendant owed waiting time penalties and wage statement penalties. Woods Decl. at ¶ 18. With respect to Plaintiffs' derivative claims for statutory penalties, Plaintiffs' Counsel estimated that Defendant's maximum potential liability is approximately $747,738.32. *Id*. Defendant's maximum potential liability for waiting time penalties is approximately $463,738.32 ([109 employees x $18.66 average hourly rate of pay x 7.6 hours/day x 30 days] based on approximately 109 formerly employed Class Members during the 3-year statute of limitations period and an average shift length of 7.6 hours. *Id*. Defendant's maximum potential liability for inaccurate wage statements is approximately $284,000 (71 employees x $4,000.00 statutory maximum) based on approximately 71 Class Members who worked during the 1-year statute of limitations period and approximately 3,512 pay periods in that statutory timeframe. *Id*. In light of the foregoing, Plaintiffs' Counsel believes that it would be unrealistic to expect the Court to award the full $747,738.32 in statutory penalties given Defendant's defenses, the contested nature of Plaintiffs' 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 $247,291.53, such a disproportionate award would also raise due process concerns. *Id*. As such, Plaintiffs' 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 $27,824.30 for waiting time penalty claims ($463,738.32 x 30% x 20%), and approximately $17,040.00 for wage statement penalty claims ($284,000.00 x 30% x 20%), or approximately $44,864.30 for statutory penalties. *Id.*

PAGA: For the PAGA claim, Plaintiffs' Counsel determined that Defendant's potential exposure could reach $588,000.00, assuming the initial $100 penalty would apply for each of the 5,880 pay periods in the PAGA Period. Woods 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, Plaintiffs' counsel discounted this figure to account for the risk and uncertainty of prevailing at trial, resulting in a realistic evaluation of approximately $58,800.00 for PAGA penalties ($588,000.00 x 10%). *Id*. The settlement allocates $45,000.00 of the Gross Settlement Amount to PAGA, therefore the PAGA allocation amounts to 15% of the Gross Settlement Amount and approximately 77% of the realistic PAGA allocation estimate for PAGA penalties ($45,000.00 / $58,800.00). *Id.*

Using these estimated figures, Plaintiffs' Counsel predicted that the realistic maximum recovery for all claims, including penalties, would be approximately $356,097.31. Checklist at ¶ 5, Woods Decl. at ¶ 20. This means that the gross settlement amount represents approximately 84% of the realistic maximum recovery ($300,000/ $356,097.31). *Id*. Considering the risk and uncertainty of prevailing at class certification and at trial, this is an excellent result for the Class. *Id*., Checklist at ¶ 5 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 $173,010.00 for approximately 193 Class Members. As a result, each Settlement Class Member would be eligible to receive an average net benefit of approximately $896.42. Checklist at ¶ ¶ 4, 8. The highest potential payment to a

Settlement Class Member is $6,722.16. *Id.* The lowest potential payment to a Settlement Class Member is $22.71. *Id.* Twenty percent (20%) of each Participating Class Member's Individual Class Payment will be allocated to the Settlement of wage claims (the "wage Portion"). Settlement Agreement at § 3.2.4.1. The Wage Portion is subject to tax withholding and will be reported on an IRS W-2 Form. *Id.* The remaining eighty (80%) of each Participating Class Member's Individual Class Payment will be allocated to the settlement of claims for interest and penalties (the "Non-Wage Portion"). *Id.* The Non-Wage Portions are not subject to wage withholdings and will be reported to IRS 1099 Forms. *Id.* Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment. *Id,* Checklist at ¶ ¶ 12, 13. Based on the estimated Net Settlement Amount available for individual class payments and there being approximately 7,617 workweeks in the Class Period, the estimated weekly valuation for Individual Class Payments is $22.71 ($173,010.00/ 7,617 workweeks) Checklist at ¶ 8.

C. The Requested Service Payments are Reasonable

Plaintiffs seek Class Representative Service Payments not to exceed $2,500.00 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 at § 3.2.1., Checklist at ¶ 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, Plaintiffs assisted counsel in providing information necessary to prosecute the claims, meeting with counsel regarding the claims, maintaining regular contact with counsel, making themselves available the day of mediation to answer questions, and reviewing the Settlement to ensure it was fair to the Class. Valero Decl. at ¶ ¶ 6-9,15., Ortiz Decl. at ¶¶ 6-9,15., Sanchez Decl. at ¶¶ 6-9,15., Checklist at ¶ 10. 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 Payments are reasonable and should be preliminarily approved. Plaintiffs provided declarations 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. Woods Decl. at ¶ 22, Checklist at ¶ 9. Plaintiffs' Counsel seeks preliminary approval of twenty percent (20%) of the Gross Settlement Amount for Class Counsel Fees Payment not to exceed $60,000.00, and Class Counsel Litigation Expenses Payment not to exceed $7,500.00. Checklist at ¶ ¶ 1, 9. 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*, Woods Decl. The proposed attorney's fee award and costs will be paid directly from the settlement proceeds. Checklist at ¶ 9. At final approval, Plaintiffs' Counsel will fully brief the merits of its request for the award of attorneys' fees and litigation costs. Checklist at ¶ 9.

E. The Administration Costs Are Reasonable

The Parties have agreed upon using Apex to administer this Settlement. Settlement Agreement at §§ 1.2, 7.1. Plaintiffs seek preliminary approval of Administration Costs not to exceed $6,990.00 for Apex to administer this Settlement pursuant to Apex's will-not-exceed bid. *See* Woods Decl. at ¶ 41, Exhibit 5. The Administrator's bid accounts for serving the class notice in **English and Spanish**. Checklist at ¶ 15. The services covered by this payment are extensive and necessary to carry out the Settlement administration.

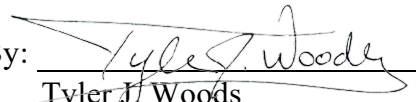
V. CONCLUSION

The Parties have negotiated a fair and reasonable settlement of the class claims in light of the risks presented in this case. Plaintiffs have 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 19, 2026

WILSHIRE LAW FIRM, PLC

By: 

Tyler J. Woods
Attorneys for Plaintiffs