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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

JENNY WOBROCK VIEIRA,
individually, and on behalf of other
members of the general public similarly
situated,

Plaintiff,

v.

ORLANDO BATHING SUIT, LLC, a
Florida limited liability company; and
DOES 1 through 10, inclusive,

Defendants.

Case No.: 24STCV30345

*[Assigned for all purposes to: Hon. Timothy P.
Dillon, Dept. 15]*

**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: November 19, 2026

Time: 10:00 a.m.

Dept.: 15

Complaint filed: November 18, 2024

Trial date: Not set

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on November 19, 2026, at 10:00 a.m., or as soon
3 thereafter as the matter may be heard in Department 15 of the Superior Court of California,
4 County of Los Angeles, located at 312 N Spring Street, Los Angeles, CA 90012, Plaintiff Jenny
5 Wobrock Vieira (“Plaintiff”) will and hereby does move this Court for an Order:

- 6 1. Granting preliminary approval of the proposed Class Action and PAGA Settlement
7 Agreement (“Settlement Agreement”);
8 2. Conditionally certifying the proposed Class for settlement purposes only;
9 3. Appointing Plaintiff as the Class Representative;
10 4. Appointing Wilshire Law Firm, PLC as Class Counsel;
11 5. Appointing Phoenix Class Action Administration. as the Administrator; and
12 6. Setting a final approval hearing date.

13 Pursuant to Code of Civil Procedure § 382 and California Rules of Court 3.769, *et seq.*,
14 this Motion is made on the grounds that the proposed Settlement satisfies all criteria for
15 preliminary approval and falls well within the range of reasonableness. The Settlement was
16 reached through informed, arm’s length bargaining between experienced attorneys with the
17 assistance of an experienced neutral, and Plaintiff and Plaintiff’s Counsel will fairly and
adequately represent the Class.

18 This Motion is based on this Notice of Motion, the accompanying Memorandum of
19 Points and Authorities (“MPA”), the Declaration of Thiago M. Coelho and the Declaration of
20 Jenny Wobrock Vieira, and on all records and documents on file, together with such oral and
21 documentary evidence that may be presented at the hearing on this matter.

22
23 Respectfully submitted,

24 Dated: September 23, 2026

WILSHIRE LAW FIRM, PLC

25 By: 

26 Thiago M. Coelho
27 Chumahan B. Bowen
28 Michael C. Forrest
Trenten N. Bilodeaux
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 Orlando Bathing Suit, LLC (“Defendant”). The proposed Class is defined as all current and former hourly, non-exempt employees 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.* (“Class Members”) These Class Members worked during the period from November 18, 2020 through the date on which the Court issues an order granting preliminary approval of this Settlement, inclusive, or, if applicable, the Alternate End Date (“Class Period”). The main terms of the Settlement are as follows:

1. A Gross Settlement Amount of \$236,000.00, from which the Net Settlement Amount will be distributed to approximately 237 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 \$78,666.67) and up to \$25,981.76 in reimbursement of actual litigation costs to Plaintiff’s Counsel;
3. A Class Representative Service Payment of up to \$10,000.00 to Plaintiff;
4. Costs of settlement administration of up to \$7,250.00; and
5. Allocation of \$11,850.00 to PAGA penalties, sixty-five percent (65%) of which (\$7,702.50) will be paid to the Labor and Workforce Development Agency (“LWDA”), and thirty-five percent (35%) of which (\$4,147.50) will be paid to all non-exempt former and current employees 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.* (“Aggrieved Employees”) These Aggrieved Employees worked during the period

1 from November 6, 2023 through the date on which the Court issues an order
2 granting preliminary approval of this Settlement, inclusive, or, if applicable, the
3 Alternate End Date. (“PAGA Period”)

4 The Settlement meets all criteria for preliminary approval and falls within the range of
5 reasonableness given the risks and expenses of further litigation. The Settlement was reached
6 through informed, arm’s length bargaining between experienced attorneys with the assistance of
7 an experienced neutral. As such, Plaintiff requests that the Court grant preliminary approval of the
8 Settlement, conditionally certify the Class for settlement purposes only, appoint Plaintiff as the
9 Class Representative, appoint Plaintiff’s Counsel as Class Counsel, appoint Phoenix Class Action
10 Administration (“Phoenix”) as the Administrator, authorize the Administrator to administer notice
11 of the Settlement to the Class, and set a final approval hearing date.

12 **II. PROCEDURAL HISTORY**

13 On November 18, 2024, Plaintiff filed this putative class action against Defendant alleging:
14 (1) failed to pay minimum and straight time wages; (2) failed to pay overtime wages; (3) failed to
15 provide meal periods; (4) failed to authorize and permit rest periods; (5) failed to indemnify
16 employees for expenditures; (6) failed to provide accurate itemized wage statements; (7) failed to
17 provide paid sick leave; (8) failed to timely pay final wages at termination; (9) failed to produce
18 requested employment records; and (10) violated California’s Unfair Competition Law, California
19 Business and Professions Code section 17200 et seq. Declaration of Thiago M. Coelho (“Coelho
20 Decl.”) at ¶ 3.

21 On November 6, 2024, Plaintiff provided written notice to the LWDA and Defendant of
22 the specific provisions of the Labor Code alleged to have been violated, including the facts and
23 theories in support. Coelho Decl. at ¶ 4, Exhibit 1. The LWDA did not notify Plaintiff that it
24 intended to investigate within 65 days of this written notice. *Id.* Therefore, on January 17, 2025,
25 Plaintiff filed a First Amended Complaint in this Class Action adding a cause of action for civil
26 penalties under PAGA (“Operative Complaint”). *Id.*

27 On October 31, 2025, the Parties participated in a private mediation with Steve Pearl, Esq.
28 *Id.* at ¶ 5. The mediator made a proposal, which was accepted by the Parties. *Id.* The Parties

1 negotiated the terms of the Settlement over the next several months, which was finalized on
2 September 17, 2026. *Id.* at ¶ 6, Exhibit 2. On September 22, 2026, Plaintiff submitted a copy of
3 the Settlement Agreement to the LWDA. *Id.* at ¶ 7, Exhibit 3.

4 **III. SUMMARY OF THE SETTLEMENT TERMS**

5 **A. Terms of the Proposed Settlement**

6 The Parties have agreed to settle the claims alleged in this case for a Gross Settlement
7 Amount of \$236,000.00. Settlement Agreement at § 3.1. Subject to Court approval, the following
8 payments will be deducted from the Gross Settlement Amount: (1) a Class Representative Service
9 Payment of up to \$10,000.00 to Plaintiff; (2) attorneys' fees of up to one-third (1/3) of the Gross
10 Settlement Amount (currently \$78,666.67) and reimbursement of actual litigation costs of up to
11 \$25,981.76 to Plaintiff's Counsel; (3) costs of settlement administration of up to \$7,250.00 to
12 Phoenix; (4) Individual Class Payments to Class Members; and (5) PAGA Penalties in the amount
13 of \$11,850.00, which will be allocated 65% to the LWDA (\$7,702.50) and 35% to Aggrieved
14 Employees (\$4,147.50). *Id.* at § 3.2 *et seq.* After all requested deductions are made, the remaining
15 Net Settlement Amount is currently estimated to be \$128,690.00.

16 An Individual Class Payment, which the Administrator shall calculate by (a) dividing the
17 Net Settlement Amount by the total number of Workweeks worked by all Participating Class
18 Members during the Class Period, and (b) multiplying the result by each individual Participating
19 Class Member's Workweeks. Settlement Agreement at § 3.2.4. For tax purposes, the Individual
20 Class Payments will be allocated 20% to wages and 80% to interest and penalties. *Id.* at § 3.2.4.1.
21 Defendant will separately pay employer payroll taxes owed on the wage portions of the individual
22 class payments separate from the Gross Settlement Amount. *Id.* at § 3.1.

23 The Administrator will calculate each Individual PAGA Payment by (a) dividing the
24 amount of the Aggrieved Employees' 35% share of PAGA Penalties (\$4,147.50) by the total
25 number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period, and
26 (b) multiplying the result by each individual Aggrieved Employee's PAGA Pay Periods.
27 Settlement Agreement at § 3.2.5.1 For tax purposes, the individual PAGA payments will be
28 allocated 100% to penalties. *Id.*

1 Any deductions not approved by the Court will be retained by the Settlement Administrator
2 in the Net Settlement Amount. Settlement Agreement at §§ 3.2.1, 3.2.2, 3.2.3, 3.2.5. Funds from
3 any uncashed checks will be transmitted by the Settlement Administrator to the to the Katherine
4 and George Alexander Community Law Center as the Cy Pres Recipient in the name of the
5 employee, thereby leaving no “unpaid residue,” subject to the requirements of California Code of
6 Civil Procedure section 384, subdivision (b) and the orders of the Court. *Id.* at § 4.4.3. None of the
7 Gross Settlement Amount will revert to Defendant. *Id.* at § 3.1.

8 **B. Proposed Settlement Administration**

9 The Parties’ proposed Class Notice complies with the requirements of California Rules of
10 Court, Rule 3.766(d). *See* Exhibit A to Settlement Agreement. It provides information regarding
11 the nature of this lawsuit, a summary of the settlement terms, the formula used for calculating
12 individual class and PAGA payments and instructions to dispute the calculations, instructions on
13 how to opt-out of or object to the Settlement, the date, time, and location of the final approval
14 hearing, and the amounts sought for the class representative service payment, attorneys’ fees and
15 litigation costs, and settlement administration costs. *See generally, id.* The Class Notice also
16 notifies Class Members that they do not need to submit a claim in order to participate in the
17 Settlement and receive a payment. *See id.* The Settlement Administrator will mail Class Members
18 the Class Notice by first-class United States Postal Service (“USPS”) mail in English and in
19 Spanish. Settlement Agreement at § 7.4.2.

20 If a Class Notice is returned as undeliverable, the Settlement Administrator will re-mail the
21 Class Notice within five (5) calendar days to the forwarding address provided by the USPS.
22 Settlement Agreement at § 7.4.3. If no forwarding address is provided, the Settlement
23 Administrator will conduct a Class Member Address Search and re-mail the Class Notice to the
24 most current address obtained. *Id.* The deadline to opt-out of the Settlement or to submit an
25 objection or dispute will be extended by fourteen (14) calendar days for all Class Members whose
26 Class Notice was remailed. *Id.* at §7.4.4.

27 **C. Proposed Release**

28 Effective on the date when Defendant fully funds the entire Gross Settlement Amount and

all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and Aggrieved Employees will release claims against all Released Parties as follows:

Release by Participating Class Claims:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, administrators, successors and assigns, waive and release the Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the facts and allegations in the Operative Complaint and that are alleged to have occurred during the Class Period (collectively the “Released Class Claims”).

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 Action that are alleged to have occurred during the PAGA Period and the PAGA Notice (collectively the “Released PAGA Claims”).

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.

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*, (2012) 53 Cal.4th 1004, 1021. 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*, (2003) 113 Cal.App.4th 836, 859

1 **1. The Proposed Class is Numerous and Ascertainable**

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

11 The Class here consists of all current and former hourly, non-exempt employees who, for
12 one or more hours during the Class Period, provided labor or services for Defendant in California
13 for remuneration, as more fully defined in Labor Code section 2775, et seq. *See Settlement*
14 *Agreement at § 1.5, 1.13.* The Class is also readily ascertainable from Defendant’s business
15 records, because all Class Members are or were employees of Defendant. *Id.* Defendant’s records
16 show there are approximately 237 Class Members, making joinder of all Class Members
17 impracticable. Coelho Decl. at ¶ 9.

18 **2. A Well-Defined Community of Interest Exists**

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

22 **a. Common Questions Predominate**

23 In determining whether common issues “predominate,” courts consider both plaintiff’s
24 legal theories and defendant’s affirmative defenses. *Duran v. U.S. Bank Nat’l Ass’n*, (2014) 59
25 Cal.4th 1, 28-29. The “predominate common questions” factor does not require that all class
26 members have identical claims. *Ayala v. Antelope Valley Newspapers, Inc.*, (2014) 59 Cal.4th 522,
27 530. Rather, the focus is on whether issues shared by the class members are sufficiently uniform
28 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. Coelho 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.*, (2001) 91 Cal.App.4th 224, 228, disapproved on other grounds by *Hernandez v. Restoration Hardware, Inc.*, (2018) 4 Cal.5th 260. 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. *Medraza v. Honda of North Hollywood*, (2008) 166 Cal.App.4th 89, 99.

Plaintiff has alleged that she 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* Coelho 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*, (1981) 29 Cal.3d 462, 470. Only conflicts that are “irreconcilable” can defeat adequacy. *Nat’l Solar Equip. Owners’ Ass’n v. Grumman Corp.*, (1991) 235 Cal.App.3d 1273, 1286. The proposed representative Plaintiff and proposed Class Counsel present no such conflict.

Plaintiff’s interests are coextensive with Class Members’ interests. Declaration of Jenny Wobrock Vieira in Support of Plaintiff’s MPA (“Vieira Decl.”) at ¶ 6. Plaintiff has demonstrated an ability to advocate for the interests of Class Members by initiating this lawsuit, providing information to her attorneys, meeting with her attorneys regarding the claims, making herself available the day of mediation to answer questions, and reviewing the proposed Settlement. *Id.* at ¶ 11. In addition, Plaintiff understands and has diligently fulfilled her fiduciary obligations to absent Class Members, including: (1) monitoring the litigation and conferring with counsel regarding strategy and settlement; (2) reviewing pleadings, discovery, and the proposed Settlement; (3) remaining available to assist with mediation and to answer counsel’s inquiries; and (4) committing to appear at hearings as needed. Plaintiff understands that her duties are to act in the best interests of the Class, to stay informed, and to consider the risks and benefits of settlement versus continued litigation, and she has performed these duties throughout the case. Vieira Decl. at ¶¶ 6, 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*, Coelho Decl. Class Counsel’s experience and a listing of all prior cases in which all named Class Counsel have been approved by a court to act as lead or co-counsel can be found in Coelho Decl. ¶¶ 20-29. Therefore, Plaintiff should be appointed Class Representative, and her 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

1 other available methods for the fair and efficient adjudication of the controversy.” *Dean Witter*
2 *Reynolds, Inc. v. Superior Court*, (1989) 211 Cal.App.3d 758, 772-773. This is so because “[p]ublic
3 policy has long favored the ‘full and prompt payment of wages due an employee.’” *Sav-On Drug*
4 *Stores, Inc. v. Superior Court*, (2004) 34 Cal.4th 319, 340. Here, a class action is superior to a
5 multitude of individual lawsuits. Given the size and amount of each Class Member’s claim, Class
6 Members have little incentive to litigate their claims on an individual basis because the out-of-
7 pocket expenses and personal commitment necessary to litigate each claim likely outweigh any
8 potential recovery. Coelho Decl. at ¶ 9. Therefore, a class action is the superior method for seeking
9 relief.

10 **B. The Settlement Meets the Standards for Preliminary Approval**

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

20 **1. The Settlement is Entitled to a Presumption of Fairness**

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

28 ///

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

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

8 b. Sufficient Investigation and Discovery Have Been Conducted

9 Prior to attending mediation, Plaintiff's Counsel thoroughly investigated the claims,
10 applicable law, and potential defenses. Coelho Decl. at ¶ 8. Plaintiff's Counsel assessed the value
11 to the class claims using the data and documents that Defendant produced in informal discovery,
12 including class data providing the number of Class Members, the number of workweeks in the
13 Class Period, and the number of pay periods in the PAGA Period, Plaintiff's personnel file and
14 documents concerning Plaintiff, Defendant's employee handbooks, Defendant's written wage-and-
15 hour policies, job descriptions, and a random sampling of time and payroll records. *Id.*

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

17 Plaintiff is represented by Wilshire Law Firm, PLC. Coelho Decl. at ¶ 20. Plaintiff's
18 Counsel has extensive experience litigating wage and hour class actions on behalf of employees.
19 *See id.* at ¶¶ 22-29. Plaintiff's Counsel has been involved as counsel in numerous class actions that
20 have resulted in millions of dollars in recovery. *See id.*

21 d. Allocation to Non-Class Claims (PAGA) Is Fair to Aggrieved
22 Employees:

23 Of the \$11,850.00 in PAGA civil penalties, sixty-five percent (65%), or \$7,702.50, will be
24 paid to the LWDA, and thirty-five percent (35%), or \$4,147.50, will be distributed to Aggrieved
25 Employees based on their PAGA Pay Periods during the PAGA Period, consistent with Labor Code
26 requirements and the Settlement's pro rata methodology. This allocation fairly reflects the
27 litigation risks, the discretionary nature of penalties, and the proportionality to the underlying
28 claims' realistic value, and ensures that Aggrieved Employees (who release only PAGA penalty

claims) receive a distribution calibrated to their pay periods without diluting the relief to Class Members for non-penalty claims. Settlement Agreement §§ 3.2.5, 3.2.5.1; *see also* § 3.2 (allocation mechanics).

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*, (1991) 220 Cal.App.3d 1117, 1139. 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. Coelho Decl. at ¶ 12.

Minimum and Overtime Wages: For purposes of calculating Defendant's liability based on a best-case scenario for Plaintiff and the Class, we estimate that Defendant's maximum potential exposure by assuming that all unpaid work time should have been paid at the overtime rate, not minimum or straight time wages and we assumed that Defendant is liable for 1 hour of unpaid worktime per workweek. Coelho Decl. at ¶ 12. This results in an estimate of \$375,631.43 (9,763 workweeks * \$25.65 hourly rate * 1.5 weighted overtime rate * 1 hour of unpaid work per workweek), but we discounted this figure by 60% to account for the difficulty of prevailing on a motion for class certification, and another 60% for the difficulty of prevailing at a trial on the merits because liability depends on whether Defendant knew or should have known that Class Members were working off-the-clock, and a review of Defendant's financial condition and Plaintiff's realistic ability to collect on any potential judgment, which together yielded a realistic damage estimate of \$60,101.03. *Id.*

Meal Periods: With respect to the meal period claim, Plaintiff alleges that Defendant required them and similarly situated Class Members to either work in lieu of taking meal periods, or their meal periods were untimely or interrupted. Coelho Decl. at ¶ 13. Our expert analyzed Defendant's timekeeping records and opined that approximately 26.3% of all meal breaks had violations of short, missed, or no meal periods (accounting for waivable shifts). Potential liability for the meal period claim is \$270,028.91 (9,763 workweeks * 4.1 average shifts per workweek *

1 \$25.65 * 26.3%). We discounted this figure by 80% to account for the difficulty of certifying and
2 proving meal period claims, as well as Defendant's contention that the claim lacks merit, and a
3 review of Defendant's financial condition and Plaintiff's realistic ability to collect on any potential
4 judgment, which together yielding a realistic damage estimate of \$54,005.78. *Id.*

5 Rest Periods: With respect to the rest period claim, Plaintiff alleges that Defendant required
6 them and similarly situated Class Members to work in lieu of taking rest periods, or their rest
7 periods were interrupted. Coelho Decl. at ¶ 14. Assuming a 100% violation rate for the Class
8 Period based on Plaintiff's and other Class Members' experience working for Defendant,
9 Defendant's potential liability for the rest period claim is \$1,026,725.90 (9,763 workweeks * 4.1
10 average shifts per workweek * \$25.65 * 100%); however, we discounted this figure by 91% to
11 account for the difficulty of certifying and proving rest period claims, particularly because rest
12 periods do not have to be recorded, to account for the possibility of Class Members voluntarily
13 choosing to forego a rest period, and after a review of Defendant's financial condition and
14 Plaintiff's realistic ability to collect on any potential judgment, yielding a realistic damage estimate
15 of \$92,405.33. *Id.*

16 Reimbursements: Plaintiff also alleges that Defendant failed to reimburse necessary
17 business expenses. Coelho Decl. at ¶ 15. Defendant's employees (including Plaintiff) were
18 frequently required to use their personal cell phones to communicate with their supervisors and
19 managers about work-related duties and were additionally required to use their personal vehicles
20 for work related purposes, for which they were not reimbursed. For purposes of calculating
21 Defendant's liability based on a best-case scenario for Plaintiff and the Class, we estimated that
22 Defendant was liable to each Class Member for \$7.50 per workweek, in unreimbursed expenses,
23 for a total amount of \$73,222.50 (\$7.50 * 9,763); however, we discounted this figure by 91% to
24 account for the difficulty of certifying and proving expense reimbursement claims, particularly in
25 light of written policies and practices providing a mechanism for Class Member's to seek
26 reimbursement, and after a review of Defendant's financial condition and Plaintiff's realistic
27 ability to collect on any potential judgment, yielding a realistic damage estimate of \$6,590.03. *Id.*

28 In sum, we estimated that Plaintiff's maximum recovery for the off-the-clock claim, meal

1 period violations, rest period violations, and failure to reimburse expenses is \$1,745,608.74, but,
2 after factoring in the risk and uncertainty of prevailing at certification and trial, we estimate that
3 Plaintiff's realistic estimated recovery for the non-penalty claims is \$213,102.17. Coelho Decl. at
4 ¶ 16.

5 Derivative and PAGA Penalties: With respect to Plaintiff's derivative claims for statutory
6 and civil penalties, Plaintiff estimated that Defendant's realistic potential liability is \$86,888.21.
7 Coelho Decl. at ¶ 17. While Defendant's maximum potential liability for: waiting time penalties
8 is \$856,453.50 based on approximately 159 terminated Class Members during the 3-year statute
9 of limitations period ($159 * \$25.65 * 7 \text{ hours} * 30 \text{ days}$); inaccurate wage statements is \$217,850.00
10 based on approximately 129 Class Members who worked approximately 2,243 pay periods within
11 the 1-year statute of limitations period ($(\$50 * 129) + \$100 * (2,243 - 129)$); and PAGA violations
12 is \$224,300.00 based on the Court assessing a \$100 penalty for initial violations for all 2,243 pay
13 periods within the 1-year statute of limitations period, we believe that it would be unrealistic to
14 expect the Court to award the full \$1,298,063.50 in penalties given Defendant's defenses, the
15 contested nature of Plaintiff's claims, and the discretionary nature of penalties. *Id.* Considering
16 that the underlying claims are realistically estimated to be \$213,102.17, such a disproportionate
17 award would also raise due process concerns. *Id.* Weighing these factors and applying a discount
18 of 93.3% to account for the risk and uncertainty of prevailing at trial and the Court's discretionary
19 ability to lower penalties, and after a review of Defendant's financial condition and Plaintiff's
20 realistic ability to collect on any potential judgment, we arrived at \$86,888.21 for statutory and
21 civil penalties. *Id.*

22 Using these estimated figures, Plaintiff predicted that the realistic maximum recovery for
23 all claims, including penalties, would be \$299,990.38. Coelho Decl. at ¶ 18. This means that the
24 Gross Settlement Amount represents approximately 79% of the realistic maximum recovery
25 ($\$236,000.00 / \$299,990.38 = 79\%$). Considering the risk and uncertainty of prevailing at class
26 certification and at trial, and the chance that Plaintiff may be unable to collect on a later verdict,
27 this is an excellent result for the Class. Indeed, because of the proposed Settlement, Class Members
28 will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment. *Id.*

1 Based on the figures in the Settlement Agreement, The Net Settlement Amount available
2 for Class Member settlement payments is estimated to be \$102,251.57, for the Class of 237
3 persons. Coelho Decl. at ¶ 19. As a result, each Class Member is eligible to receive an average net
4 benefit of approximately \$431.44. Based on the estimated Net Settlement Amount available for
5 individual class payments and there being approximately 9,763 workweeks in the Class Period, the
6 estimated weekly valuation for Individual Class Payments is \$10.47 ($\$102,251.57 / 9,763$
7 workweeks). *Id.*

8 **C. The Requested Service Payment is Reasonable**

9 Plaintiff seeks a Class Representative Service Payment of up to \$10,000.00 for accepting
10 the responsibilities of representing the interests of the Class and potential costs that were not borne
11 by any other Class Member. Settlement Agreement at § 3.2.1. A named plaintiff is eligible for
12 payment that reasonably compensates the plaintiff for undertaking and fulfilling a fiduciary duty
13 to represent absent class members. *See Cellphone Termination Fee Cases*, (2010) 186 Cal.App.4th
14 1380, 1393; *Bell v. Farmers Ins. Exch.*, (2004) 115 Cal.App.4th 715, 726.

15 Throughout this case, Plaintiff assisted counsel in providing information necessary to
16 prosecute the claims, meeting with counsel regarding the claims, maintaining regular contact with
17 counsel, making herself available the day of mediation to answer questions, and reviewing the
18 Settlement to ensure it was fair to the Class. Vieira Decl. at ¶ 11. No action would likely have been
19 taken by Class Members individually and no compensation would have been recovered for them,
20 but for Plaintiff's services on behalf of the Class. By actively pursuing this action, Plaintiff
21 furthered the California public policy goal of enforcing the State's wage-and-hour laws. *See Say-*
22 *On, supra*, 34 Cal.4th at 340. The requested Class Representative Service Payment is reasonable
23 and should be preliminarily approved. Plaintiff has provided a declaration regarding her work
24 performed to date and will provide additional information as requested or required by the Court at
25 final approval.

26 **D. The Requested Attorneys' Fees and Costs Are Reasonable**

27 The purpose of an attorneys' fee award in class action litigation is to reward counsel who
28 invested in a case despite the risk of non-payment and achieved a substantial positive result for the

1 class. California courts routinely award attorneys' fees equaling one-third or more of the potential
2 value of the common fund. *See Chavez, supra*, 162 Cal.App.4th at 66, fn. 11 ("Empirical studies
3 show that, regardless of whether the percentage method or the lodestar method is used, fee awards
4 in class actions average around one-third of the recovery.").

5 Plaintiff seeks appointment of Wilshire Law Firm, PLC as Class Counsel. The attorneys
6 performed significant work and expended litigation costs in prosecuting this matter with no
7 guarantee of payment. Coelho Decl. at ¶ 22. Plaintiff's Counsel seeks preliminary approval for up
8 to one-third (1/3) of the Gross Settlement Amount in attorneys' fees, currently estimated to be
9 \$78,666.67, and up to \$25,981.76 in reimbursement of actual litigation costs. Given the work
10 performed in this matter, the extensive information exchange, and the substantial recovery obtained
11 on behalf of the Class, Plaintiff's Counsel achieved a settlement through efficient and diligent
12 work. *See generally*, Coelho Decl. At final approval, Plaintiff's Counsel will fully brief the merits
13 of its request for the award of attorneys' fees and litigation costs.

14 **E. The Administration Costs Are Reasonable**

15 The Parties have agreed upon using Phoenix to administer this Settlement. Settlement
16 Agreement at §§ 1.2, 7.1. Plaintiff seeks preliminary approval of \$7,250.00 for Phoenix, to
17 administer this Settlement pursuant to Phoenix's will-not-exceed bid. *See* Coelho Decl. at ¶ 32,
18 Exhibit 4. The services covered by this payment are extensive and necessary to carry out the
19 Settlement administration.

20 **V. CONCLUSION**

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

26
27 ///

28 [Signature on the following page]

Respectfully submitted,

Dated: September 23, 2026

WILSHIRE LAW FIRM, PLC

By: 

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