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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

PEGGY MALECKI, individually, and on behalf of all others similarly situated, Plaintiff, v. FRISBIE MANAGEMENT, INC., a California corporation; and DOES 1 through 10, inclusive, Defendants.	Case No. 30-2024-01423675-CU-OE-CXC *Related Case No.:* *30-2025-01452208-CU-OE-CXC* *Assigned for all purposes to:* *Hon. Melissa R. McCormick* *Dept. CX105* **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: July 16, 2026 Time: 2:00 p.m. Place: CX105 **Reservation Number: 74837651** Complaint Filed: August 30, 2024 FAC Filed: March 4, 2025

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on July 16, 2026, at 2:00 p.m., or as soon thereafter as the matter may be heard in Department CX105 of the above-entitled Court, located at 751 West Santa Ana Blvd., Santa Ana, CA 92701, Plaintiff Peggy Malecki ("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");
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 Phoenix Settlement Administrators as the Settlement Administrator; and
6. Setting a final approval hearing date within five to six months of preliminary approval.

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

This Motion is based on this Notice of Motion, the accompanying Memorandum of Points and Authorities, the Declaration of John G. Yslas, the Declaration of Peggy Malecki, and on all records and documents on file, together with such oral and documentary evidence that may be presented at the hearing on this matter.

Respectfully submitted,

Dated: April 28, 2026

WILSHIRE LAW FIRM

By:______________________________
Emily Borman
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to California Rules of Court, Rule 3.769(d) and (e), Plaintiff Peggy Malecki seeks preliminary approval of a class action settlement of wage and hour claims, including representative claims brought under the Private Attorneys' General Act ("PAGA"), against Defendant Frisbie Management, Inc. ("Defendant"). The proposed Class is defined as all persons who worked for Defendant in California as an hourly-paid or non-exempt employee at any time ("Class Members") during the Class Period of August 30, 2020 through September 22, 2025 ("Class Period"). The main terms of the Settlement are as follows:

1. A Gross Settlement Amount of $1,850,000.00, which will be distributed to approximately 2,892 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 not more than one-third of the Gross Settlement Amount (currently $616,666.67) and up to $30,000.00 in reimbursement of 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 $22,000.00; and
5. Allocation of $100,000.00 to PAGA penalties, sixty-five percent (65%) of which ($65,000.00) will be paid to the Labor and Workforce Development Agency ("LWDA"), and twenty-five percent (35%) of which ($35,000.00) will be paid to Class Members who worked for Defendant during the PAGA Period of November 6, 2023 through September 22, 2025 ("Aggrieved Employees").

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 Phoenix Settlement

Administrators as the Settlement Administrator, authorize the Settlement Administrator to administer notice of the Settlement to the Class, and set a final approval hearing date.

II. PROCEDURAL HISTORY

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

On November 6, 2024, Plaintiff provided written notice to the LWDA and Defendant of her intention to file a PAGA claim. Yslas Decl. at ¶ 4. The LWDA did not notify Plaintiff that it intended to investigate within 65 days of this written notice. *Id*. Therefore, on January 13, 2025, Plaintiff filed a separate action alleging a claim under PAGA, Case No. 30-2025-01452208-CU-OE-CXC (the "PAGA Action"). *Id*

Pursuant to a stipulated order, the class and PAGA actions were consolidated. On March 4, 2025, Plaintiff filed the operative consolidated putative Class Action and PAGA Action. *Id.* at ¶ 5.

The Parties subsequently participated in a private mediation with mediator Daniel J. Turner ("Mr. Turner") on August 11, 2025. *Id.* at ¶ 6. The mediator made a proposal, which was accepted by both parties on September 22, 2025. *Id.* The Settlement Agreement was executed in January 2026. *Id.* at ¶ 7, Exhibit 1 ("Settlement Agreement"). On April 28, 2026, Plaintiff submitted a copy of the Settlement Agreement to the LWDA. *Id.* at ¶ 8, Exhibit 2.

III. SUMMARY OF THE SETTLEMENT TERMS

A. Terms of the Proposed Settlement

The parties have agreed to settle the claims alleged in this case and the related PAGA Action for a Gross Settlement Amount of $1,850,000.00. 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) attorneys' fees of no more than one-third of the Gross Settlement Amount (currently $616,666.67) and reimbursement of litigation costs of up to $30,000.00 to Plaintiff's Counsel; (3) costs of settlement administration of up to $22,000.00 to Phoenix Settlement Administrators; (4) individual class payments to Class Members; and (5) PAGA penalties in the amount of $100,000.00, which will be allocated 65% to the LWDA ($65,000.00) and 35% to Aggrieved Employees ($35,000.00). *Id.* at § 3.2. After all requested deductions are made, the remaining Net Settlement Amount is currently estimated to be $1,071,333.33.[1]

Individual class payments will be calculated based on the number of workweeks worked by each Class Member during the Class Period. *Id*. at § 3.2.4. For tax purposes, the individual class payments will be allocated 20% to wages and 80% to penalties, interest, and reimbursement of expenses. *Id*. at § 3.2.4.1. Defendant will separately pay any and all employer payroll taxes owed on the wage positions of the individual class payments separate from the Gross Settlement Amount. *Id*. at 3.1.

Individual PAGA payments to Aggrieved employees will be calculated based on the number of pay periods worked by each Aggrieved Employee during the PAGA Period. *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 Settlement Administrator in the Net Settlement Amount. *Id.* at § 3.2. Funds from any uncashed checks will be transmitted by the Settlement Administrator to Ronald McDonald's House Orange County, a Court-approved nonprofit organization. *Id.* at § 4.4.3. None of the Gross Settlement Amount will revert to Defendant. *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

[1] The Net Settlement Amount is calculated by subtracting the following amounts from the Gross Settlement Amount ($1,850.00.00): Class Counsel Fees Payment ($616,666.67), Class Counsel Litigation Expenses Payment (not to exceed $30,000.00), Class Representative Service Payment ($10,000.00), Administrator Costs Payment ($22,000.00), and PAGA Penalties ($100,000.00).

the nature of this lawsuit, a summary of the settlement terms, the formula used for calculating individual class and PAGA payments and instructions to dispute the calculations, instructions on how to opt-out of or object to the Settlement, the date, time, and location of the final approval hearing, and the amounts sought for the class representative service payment, attorneys' fees and litigation costs, and settlement administration costs. *See generally, id*. The Class Notice also notifies Class Members that they do not need to submit a claim in order to participate in the Settlement and receive a payment. *See id*. The Settlement Administrator will mail Class Members the Class Notice by first-class mail in English and in Spanish. Settlement Agreement at § 7.4.2.

If a Class Notice is returned as undeliverable, the Settlement Administrator will re-mail the Class Notice within five (5) court days to the forwarding address provided by the U.S. Postal Service. *Id*. at § 7.4.3. 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.

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, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as follows:

<u>Released Class Claims</u>: "All Participating Class Members will release all claims, rights, demands, liabilities, and causes of action, alleged or which could have been allege based on the facts alleged in the Operative Complaint, Plaintiff's PAGA Notice, or ascertained during the Action, including but not limited to: (1) failure to pay minimum and straight time wages (pursuant to Cal. Labor Code §§ 204, 1194, 1194.2, 1197 and 1197.1); (2) failure to pay overtime wages (pursuant to Cal. Labor Code §§ 510, 1194, and 1198); (3) failure to provide meal periods (pursuant to Cal. Labor Code §§ 226.7 and 512); (4) failure to authorize and permit rest periods (pursuant to Cal. Labor Code §§ 226.7); (5) failure to timely pay final wages at termination (pursuant to Cal. Labor Code §§ 201-203); (6) failure to provide accurate itemized wage statements (pursuant to

Cal. Labor Code §§ 226); (7) failure to indemnify employees for expenditures (pursuant to Cal. Labor Code §§ 2802); (8) failure to produce requested employment records (pursuant to Cal. Labor Code §§ 226, 432, and 1198.5); and (9) unfair business practices (pursuant to Cal. Bus. & Prof. Code §§ 17200, et seq.). The enumeration of these specific claims shall neither enlarge nor narrow the scope of res judicata based on the claims that were asserted in the Actions or could have been asserted in the Actions based on the facts and circumstances alleged in the Operative Complaint. The Released Class Claims are those that accrued during the Class Period."

Settlement Agreement at § 5.2.

Released PAGA Claims: "All Aggrieved Employees will release all claims for PAGA civil penalties that are alleged or could have been alleged based on the facts alleged in the Operative Complaint and in Plaintiff's November 6, 2024 PAGA Notice or ascertained during the Action. The Released PAGA Claims are those that accrued during the PAGA Period."

Id. at § 5.3.

Only Plaintiff will agree to a general release and a waiver of Civil Code § 1542. *Id.* at § 5.1.

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*, 53 Cal.4th 1004, 1021 (2012). Although courts still need to review and consider each element for certification, a lesser standard can be used to provisionally certify a settlement class. *Global Minerals & Metals Corp. v. Superior Court*, 113 Cal.App.4th 836, 859 (2003).

1. The Proposed Class is Numerous and Ascertainable

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

The Class here consists of all persons who worked for Defendant in California as an hourly-paid or non-exempt employee at any time during the Class Period. *See* Settlement Agreement at §§ 1.5, 1.13. 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 2,892 Class Members, making joinder of all Class Members impracticable. Yslas Decl. at ¶ 10, Settlement Agreement at § 4.1.

2. A Well-Defined Community of Interest Exists

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

a. <u>Common Questions Predominate</u>

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

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

b. *Plaintiff is Typical of the Class*

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

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

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

Certification requires adequacy of both the proposed class representative and of the proposed class counsel. Cal. Code Civ. Proc. § 382. "Only a conflict that goes to the very subject matter of the litigation will defeat a party's claim of representative status." *Richmond v. Dart*

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

Plaintiff's interests are coextensive with Class Members' interests. Declaration of Peggy Malecki in Support of Motion for Preliminary Approval ("Malecki Decl.") at ¶ 6. Plaintiff has demonstrated an ability to advocate for the interests of Class Members by initiating this lawsuit, gathering documents and information, being available on the day of mediation to answer questions, meeting with her attorneys to understand the claims and theories of liability at issue, assisting her attorneys in preparation for mediation, and reviewing the proposed Settlement. *Id.* at ¶ 7.

Likewise, Wilshire Law Firm has expended considerable time and effort on this case and will continue to do so through final approval. *See generally*, Yslas Decl. Therefore, Plaintiff should be appointed Class Representative, and 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 other available methods for the fair and efficient adjudication of the controversy." *Dean Witter Reynolds, Inc. v. Superior Court*, 211 Cal.App.3d 758, 772-773 (1989). This is so because "[p]ublic policy has long favored the 'full and prompt payment of wages due an employee.'" *Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal.4th 319, 340 (2004). Here, a class action is superior to a multitude of individual lawsuits. Given the size and amount of each Class Members' claim, Class Members have little incentive to litigate their claims on an individual basis because the out-of-pocket expenses and personal commitment necessary to litigate each claim likely outweighs any potential recovery. Yslas Decl. at ¶ 10. Therefore, a class action is the superior method for seeking relief.

B. The Settlement Meets the Standards for Preliminary Approval

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

1. The Settlement is Entitled to a Presumption of Fairness

A settlement is entitled to "a presumption of fairness . . . where : (1) the settlement is reached through arm's length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the 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. <u>The Settlement is the Result of Arm's Length Negotiation</u>

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

b. <u>Sufficient Investigation and Discovery Have Been Conducted</u>

Prior to attending mediation, Plaintiff's Counsel thoroughly investigated the claims, applicable law, and potential defenses. *Id.* at ¶ 9. Plaintiff's Counsel assessed the value to the class claims using the documents and data Defendant produced in informal discovery, including class data providing the number of Class Members, the number of workweeks in the Class Period, and the number of pay periods in the PAGA Period, Plaintiff's personnel file, employment handbook and policies, job descriptions, and a 15% random sampling of time and payroll records. *Id.*

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

Plaintiff is represented by Wilshire Law Firm. *Id.* at ¶ 1. Plaintiff's Counsel has extensive experience litigating wage and hour class actions on behalf of employees. *See id.* at ¶¶ 19-31. Plaintiff's Counsel have been involved as counsel in numerous class actions that have resulted in millions of dollars in recovery. *See id.*

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

A settlement does not have to provide 100% of the damages sought to be considered fair and reasonable. *See Rebney v. Wells Fargo Bank*, 220 Cal.App.3d 1117, 1139 (1991). Although the exposure Plaintiff's Counsel calculated is substantial, the various risks at succeeding at class certification and through trial affected the valuation of the claims for settlement purposes. Yslas Decl. at ¶ 12.

Overtime Wages and Sick Pay: Plaintiff's unpaid minimum and overtime wage claims were based on the allegation that Defendant regularly paid non-discretionary bonuses to Plaintiff and similarly situated class members but failed to include those payments in the regular rate of pay for overtime and sick pay. *Id.* at ¶ 13. Plaintiff's Counsel calculated that Defendant's liability for underpaid overtime wages would result in $1,665.00 in liability. *Id.* Plaintiff's Counsel further calculated that Defendant's liability for unpaid sick wages at the regular rate of pay results in $6,404.00 in liability. *Id.* Plaintiff's Counsel applied a risk discount based on an 85% chance of succeeding at class certification and an 80% chance of succeeding at trial on the merits yielding a realistic damage estimate of approximately $5,486.92 ($8,069.00 x 85% x 80%). *Id.*

Meal Periods: With respect to the meal period claim, Plaintiff alleges that Defendant required Plaintiff and similarly situated class members to either work in lieu of taking meal periods, or their meal periods were untimely or interrupted. *Id.* at ¶ 14. Plaintiff's Counsel's expert analyzed Defendant's timekeeping records and found that approximately 7.4% of all meal break violations consisting of short, late, or missed meal periods. *Id.* Therefore, potential liability for the meal period claim is approximately $178,488.61 (135,430.00 shifts x $17.81 hourly rate x 7.4% 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 a 7.4% violation rate is unrealistic, Plaintiff's Counsel discounted this figure based on a 40% chance of succeeding at class certification and a 40% chance of succeeding at trial, yielding a realistic damage estimate of approximately $28,558.18 ($178,488.61 x 40% x 40%). *Id.*

Rest Breaks: With respect to the rest period claim, Plaintiff alleges that Defendant required her and similarly situated class members to work in lieu of taking rest periods, remain on-call during their rest periods or their rest periods were interrupted. *Id.* at ¶ 15. Assuming a 45% violation rate for the class period based on Plaintiff's and other class members' experience working for Defendant, Defendant's potential liability for the rest period claim is approximately $1,438,514.59 (179,489.00 shifts x $17.81 hourly rate x 45% 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. Because this claim would have relied exclusively on Class Member testimony, Plaintiff's Counsel discounted this claim based on a 30% chance of succeeding at class certification and a 30% chance of succeeding at trial, yielding a realistic damage estimate of approximately $129,466.31 ($1,438,514.59 x 30% x 30%). *Id.*

Reimbursements: Plaintiff's reimbursement claim was based on the allegation that Defendant expected employees to pay out-of-pocket for necessary employment-related expenses, including, without limitation, use of personal cell phones. *Id.* at ¶ 16. However, Defendant did not reimburse employees for these expenses. Based on Plaintiff's estimate that she incurred $10 in unreimbursed expenses per month, Plaintiff's Counsel assumed each Class Member incurred $10 in unreimbursed expenses per month in calculating potential exposure to be approximately $462,500.00 for this claim. *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 40% chance of succeeding at class certification and a 40% chance of succeeding at trial, yielding a realistic damage estimate of approximately $74,000.00 ($462,500.00 x 40% x 40%). *Id.*

Derivative Penalties and PAGA: With respect to Plaintiff's derivative claims for statutory and civil penalties, Plaintiff estimated that Defendant's realistic potential liability is approximately $1,615,349.71. *Id.* at ¶ 17. Defendant's maximum potential liability for waiting time penalties is approximately $11,140,796.16 (2,304 employees x $17.81 hourly rate x 8.00 hours/day x 30 days) based on approximately 2,304 terminated class members during the 3-year statute of limitations period, approximately $8,108,000.00 (2,027 employees x $4,000 statutory maximum) for inaccurate wage statements based on approximately 2,027 class members who worked during the 1-year statute of limitations period, and approximately $2,933,100.00 for PAGA violations based on the Court assessing a $100 penalty for initial violations for all 29,331 pay periods within the PAGA period. *Id.* In light of the foregoing, Plaintiff's Counsel believes that it would be unrealistic to expect the Court to award the full $22,181,896.16 in penalties given Defendant's defenses, the contested nature of Plaintiff's claims, the challenges of establishing willfulness as applicable, and the discretionary nature of penalties. *Id.* Considering that the underlying claims are realistically estimated to be approximately $235,150.69, such a disproportionate award would also raise due process concerns. *Id.* As such, Plaintiff's Counsel discounted these figures to account for the risk and uncertainty of prevailing at trial, resulting in a realistic evaluation of approximately $835,559.71 ($11,140,796.16 x 25% x 30%) for waiting time penalty claims, approximately $486,480.00 ($8,108,000.00 x 30% x 20%) for wage statement penalty claims, and $293,310.00 for PAGA penalties, or approximately $1,615,349.71 total for statutory and civil penalties. *Id.*

Using these estimated figures, Plaintiff predicted that the realistic maximum recovery for all claims, including penalties, would be approximately $1,852,861.12. *Id.* at ¶ 18. This means that the $1,850,000.00 settlement figure represents approximately 99.85% of the realistic maximum recovery ($1,850,000.00 / $1,852,861.12 = 99.85%). *Id.* 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.*

3. Defendant's Contentions and Substantial Risks that No Class Will be Certified and the PAGA Claim Will Be Determined to be Unmanageable.

Overall, "the most important factor" in determining "whether a settlement is fair and reasonable" is the "strength of the case for plaintiffs on the merits, balanced against the amount offered in the settlement." *Munoz v. BCI Coca-Cola Bottling Co.* 186 Cal.App.4th 399 (2010), 409 n. 6, quoting *Kullar v. Foot Locker Retail, Inc.* 168 Cal.App.4th 116, 120 (2008). Here, Defendant's contend there are numerous and significant weaknesses in Plaintiff's case on the merits. This includes the claim that Plaintiff Malecki has no standing to pursue either a class action or PAGA action as Defendant's content she did not sustain any injury or labor code violation. Plaintiff received all required breaks, was paid for all hours, timely received her final paycheck, never incurred or requested a reimbursable business expense, and received a timely, compliant response to her pre-ligation records request. Because there is no evidence that Plaintiff incurred any labor code violation, Defendant contends that she lacks standing as both a class representative and PAGA representative. Plaintiff lacks standing as a class representative because she sustained no injury. Nor will she be able to meet the requirements predominance of common issues or that class treatment is superior to an individual case. Thus, Defendant's contend that Plaintiff lacks standing as a PAGA representative because she did not personally sustain a labor code violation, and as such she is not an aggrieved employee.

Defendant's further contend that Plaintiff has no common evidence that Defendant violated the Labor Code or a trial plan as to the manageability of the PAGA claim. This action potentially covers a vast number of employees, from 14 different restaurant locations, each of whom Defendant's contend have markedly different experiences relevant to the violations alleged. Defendant's contend that presentation of liability as well as the affirmative defenses will require thousands of mini trials for PAGA and class claims, over numerous months on end delving into thousands of individualized inquiries as to each employee and differing and distinct issues and facts varying from restaurant to restaurant. Defendant's therefore contend that even if Plaintiff could point to a uniform policy, Plaintiff articulates no practical means for addressing these voluminous individualized issues in a manner consistent with Defendant's due process rights.

Defendant's further contend that Plaintiff's claims are also unsupported because it maintains *Brinker*-compliant meal and rest break policies, pays all wages timely, including overtime, reimburses reasonable and necessary business expenses, and regularly uses attestations that would rebut any records that allegedly show noncompliant meal breaks. Defendant did pay over 3,000 meal premiums between 2020-2025. Defendant contends all employees are provided with compliant policies and the employee handbook, employees also go through an orientation process and are trained to comply with Defendant's policies and practices. Defendant contends it did daily review and monitoring of time punches for compliance, and correcting time records to ensure all hours worked are paid.

Based on the foregoing, there was a risk of not obtaining a class certification and obtaining standing from plaintiff to proceed with the PAGA claim or it being determined to be unmanageable.

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 her for undertaking and fulfilling a fiduciary duty to represent absent class members. *See Cellphone Termination Fee Cases*, 186 Cal.App.4th 1380, 1393 (2010); *Bell v. Farmers Ins. Exch.*, 115 Cal.App.4th 715, 726 (2004).

Throughout this case, Plaintiff assisted counsel in gathering evidence necessary to prosecute the claims, maintained regular contact with counsel, was available on the day of mediation to answer questions, and reviewed the Settlement to ensure it was fair to the Class. Malecki Decl. at ¶ 7. No action would likely have been taken by Class Members individually and no compensation would have been recovered for them, but for Plaintiff's services on behalf of the Class. By actively pursuing this action, Plaintiff furthered the California public policy goal of enforcing the State's wage and hour laws. *See Sav-On*, 34 Cal.4th at 340. The requested class representative service payment is reasonable and should be preliminarily approved. Plaintiff has provided a declaration regarding her 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 as Class Counsel. The attorneys performed significant work and expended litigation costs in prosecuting this matter with no guarantee of payment. Yslas Decl. at ¶ 19. Plaintiff's Counsel seeks preliminary approval for $616,666.67 in attorneys' fees, which is no more than one-third of the Gross Settlement Amount, and up to $30,000.00 in reimbursement of litigation costs. Given the work performed in this matter, the extensive information exchange, and the substantial recovery obtained on behalf of the Class, Plaintiff's Counsel achieved a settlement through efficient and diligent work. *See generally*, Yslas Decl. At final approval, Plaintiff's Counsel will fully brief the merits of its request for the award of attorneys' fees and litigation costs.

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: April 28, 2026 **WILSHIRE LAW FIRM**

By: ______________________________
Emily Borman
Attorneys for Plaintiff