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Superior Court of California  
County of Fresno  
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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **FOR THE COUNTY OF FRESNO**

11 LUCIANO HERNANDEZ and MIGUEL  
12 ANGEL RAMIREZ-MAYA, individually, on  
13 behalf of all others similarly situated, and on  
14 behalf of the State of California and other  
aggrieved persons; and SILVIANO  
RODRIGUEZ, individually, and on behalf of all  
other similarly situated,

15 *Plaintiffs,*

16 v.

17 BURFORD FARMING COMPANY, INC., a  
18 California corporation; and DOES 1 through 10,  
inclusive,

19 *Defendants.*

Case No. 21CECG03817

**CLASS & REPRESENTATIVE ACTION**

[Assigned to: Hon. D. Tyler Tharpe, Dept.  
501]

**DECLARATION OF JUSTIN F.  
MARQUEZ IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION AND PAGA SETTLEMENT**

[Filed concurrently with: Plaintiffs' Notice of  
Motion and Motion for Preliminary Approval  
of Class Action and PAGA Settlement,  
Memorandum of Points and Authorities; and  
[Proposed] Order Granting Plaintiffs' Motion  
for Preliminary Approval of Class Action and  
PAGA Settlement]

**PRELIMINARY APPROVAL HEARING**

Date: December 22, 2022  
Time: 3:27 p.m.  
Dept: 501

1 **DECLARATION OF JUSTIN F. MARQUEZ**

2 I, Justin F. Marquez, declare as follows:

3 1. I am admitted, in good standing, to practice as an attorney in the State of California,  
4 the Ninth Circuit Court of Appeals, and the United States District Courts for the Central, Southern,  
5 Eastern, and Northern Districts of California. I am a Senior Partner at Wilshire Law Firm, PLC,  
6 counsel of record for Plaintiffs Luciano Hernandez, Miguel Angel Ramirez-Maya, and Silvano  
7 Rodriguez (“Plaintiffs”). I have personal knowledge of the facts set forth in this declaration and  
8 could and would competently testify to them under oath if called as a witness. This Declaration is  
9 submitted in support of Plaintiffs’ Motion for Preliminary Approval of Class Action and PAGA  
10 Settlement.

11 **CASE BACKGROUND**

12 2. This is a wage and hour class and Private Attorneys General Act (“PAGA”) (Cal.  
13 Lab. Code §§ 2699, *et seq.*) representative action. Plaintiffs and putative class members worked  
14 in California as hourly-paid or non-exempt employees for Defendant during the class period.  
15 Defendant specializes in the farming and agricultural industry and runs its operation out of Fresno,  
16 California.

17 3. Plaintiffs allege that Defendant’s payroll, timekeeping, and wage and hour practices  
18 resulted in Labor Code violations. Plaintiffs allege that Defendant failed to pay for all hours  
19 worked by not recording the actual start and end times of shifts for each workday. Plaintiffs further  
20 allege that Defendant failed to provide employees with legally compliant meal and rest periods.  
21 Plaintiffs further allege that Defendant failed to reimburse employees for all necessary business-  
22 related expenditures. Based on these allegations, Plaintiffs assert claims against Defendant for  
23 failure to pay minimum and straight time wages, failure to pay overtime wages, failure to provide  
24 meal periods, failure to authorize and permit rest periods, failure to timely pay all final wages at  
25 termination, failure to provide accurate itemized wage statements, failure to indemnify employees  
26 for expenditures, unfair business practices, and civil penalties under PAGA.

27 4. On December 28, 2021, Plaintiffs Luciano Hernandez and Miguel Angel Ramirez-  
28 Maya filed a putative wage and hour class action complaint against Defendant for: (1) failure to

1 pay minimum wages, straight time wages, rest and recover periods, and other non-productive time  
2 (Cal. Lab. Code §§ 204, 226.2, 1194, 1194.2, and 1197; IWC Wage Orders 13 and 14); (2) failure  
3 to pay overtime wages (Cal. Lab. Code §§ 226.2, 1194 and 1198; IWC Wage Orders 13 and 14);  
4 (3) failure to provide meal periods (Cal. Lab. Code §§ 226.2, 226.7 and 512; IWC Wage Orders  
5 13 and 14); (4) failure to authorize and permit rest periods (Cal. Lab. Code §§ 226.2 and 226.7;  
6 IWC Wage Orders 13 and 14); (5) failure to timely pay final wages at termination (Cal. Lab. Code  
7 §§ 201-203); (6) failure to provide accurate itemized wage statements (Cal. Lab. Code §§ 226 and  
8 226.2); (7) failure to indemnify for necessary business expenses (Cal. Lab. Code § 2802); and (8)  
9 unfair business practices (Cal. Bus. & Prof. Code §§ 17200, *et seq.*). On March 3, 2022, Plaintiffs  
10 Luciano Hernandez and Miguel Angel Ramirez-Maya separately filed a PAGA-only action against  
11 Defendant in the Fresno County Superior Court (Case No. 22CECG00669). The PAGA-only  
12 action was dismissed after Plaintiffs Luciano Hernandez and Miguel Angel Ramirez-Maya filed a  
13 First Amended Class & Representative Action Complaint on August 22, 2022 adding an additional  
14 class representative (Plaintiff Silvano Rodriguez) and the cause of action alleged in the separately-  
15 filed PAGA matter.

#### 16 DISCOVERY AND INVESTIGATION

17 5. Following the filing of the initial Complaint, the Parties exchanged documents and  
18 information before mediating this action. Defendant produced timekeeping and pay records for  
19 the class members. Defendant also provided documents of its wage and hour policies and practices  
20 during the class period, and information regarding the total number of current and former  
21 employees in its informal discovery responses.

22 6. After reviewing documents regarding Defendant's wage and hour policies and  
23 practices, analyzing Defendant's timekeeping and payroll records, Class Counsel was able to  
24 evaluate the probability of class certification, success on the merits, and Defendant's maximum  
25 monetary exposure for all claims. Class Counsel also investigated the applicable law regarding  
26 the claims and defenses asserted in the Litigation. Class Counsel reviewed these records and  
27 utilized an expert to prepare a damages analysis prior to mediation.

28 ///



1 this case.

2 THE PROPOSED SETTLEMENT IS FAIR AND REASONABLE

3 13. Class Counsel has conducted a thorough investigation into the facts of this case.  
4 Based on the foregoing discovery and their own independent investigation and evaluation, Class  
5 Counsel is of the opinion that the Settlement is fair, reasonable, and adequate and is in the best  
6 interests of the Settlement Class Members in light of all known facts and circumstances, the risk  
7 of significant delay, the defenses that could be asserted by Defendant both to certification and on  
8 the merits, trial risk, and appellate risk.

9 14. Based on an analysis of the facts and legal contentions in this case, documents and  
10 information from Defendant, I evaluated Defendant's maximum exposure. I took into account the  
11 risk of not having the claims certified and the risk of not prevailing at trial, even if the claims are  
12 certified. After using the data Defendant provided, including class member timekeeping and  
13 payroll records, as well as class member demographics (i.e., the number of class members,  
14 workweeks and average total compensation of the class), with the assistance of a statistics expert,  
15 I created a damages model to evaluate the realistic range of potential recovery for the class. The  
16 damages model is based on the following benchmarks:

17 Total Class Members: 97
18 Terminated Class Members during 3-year statute: 33
19 Total Workweeks: 15,658
20 PAGA Pay Periods: 3,344
21 Avg. Hourly Rate: \$13.25

22 15. Based on Plaintiffs' discovery and investigation, Class Counsel reached the  
23 conclusion that Defendant failed to pay class members for all hours worked, including overtime  
24 wages, failed to provide employees with all meal and rest periods, and failed to indemnify  
25 employees for necessary business-related expenditures. Defendant denied these claims.

26 16. Plaintiffs allege that Defendant failed to pay for all hours worked, including  
27 minimum, straight time, and overtime wages. My expert analyzed Defendant's timekeeping and  
28 payroll records and found many instances where he concluded that Defendant failed to pay

1 employees for all hours worked, particularly the time employees spent performing work-related  
2 duties outside of their scheduled shifts. A more conservative estimate was appropriate given the  
3 difficulty of proving an “off-the-clock” work violation on a class-wide basis. Assuming that  
4 Defendant failed to pay employees for one hour of off-the-clock work per workweek, with 40% of  
5 that work being paid at the overtime rate, potential liability for this claim is \$248,962.20 (calculated  
6 as follows: 15,658 workweeks x \$13.25 average hourly rate x 0.6 [36 minutes per workweek] +  
7 15,658 workweeks x \$19.875 average hourly rate x 0.4 [24 minutes per workweek] = \$248,962.20).  
8 Because individualized issues can be a significant obstacle to certifying and proving an off-the-  
9 clock claim, I discounted this figure by 80% to account for the difficulty of prevailing on a motion  
10 for class certification and a trial on the merits, yielding a realistic damage estimate of **\$49,792.44**.<sup>1</sup>

11 17. With respect to the meal period claim, Plaintiffs allege that Defendant failed to  
12 provide them and other similarly situated class members compliant meal periods. Defendant’s  
13 timekeeping records evidence a failure to accurately record meal periods in compliance with  
14 California law. In fact, the records produced by Defendant show that meal periods were never  
15 recorded by employees. As such, based on the foregoing information and Plaintiffs’ and other  
16 class members’ experience working for Defendant, Class Counsel opined that approximately 80%  
17 of all meal breaks had violations of short, late, interrupted, or missed meal periods. Potential  
18 liability for the meal period claim is \$979,355.20 (calculated as follows: 92,392 shifts x \$13.25  
19 average hourly rate x 80% violation rate = \$979,355.20). However, I discounted this figure by  
20 60% to account for the difficulty of certifying and proving meal period claims, as well as  
21 Defendant’s contention that the claim lacks merit, yielding a realistic damage estimate of  
22 **\$391,742.08**.

23 18. With respect to the rest period claim, Plaintiffs allege that Defendant required them  
24 and similarly situated class members to work in lieu of taking rest periods. Assuming a 100%

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25  
26 <sup>1</sup> This discount for risk at certification and trial is reasonable because the Judicial Council  
27 of California found that only 21.4% of all class actions were certified either as part of a settlement  
28 *or* as part of a contested certification motion. See Findings of the Study of California Class Action  
Litigation, 2000-2006, available at <http://www.courts.ca.gov/documents/class-action-lit-study.pdf>.

1 violation rate for the class period based on Plaintiffs' and other class members' experience working  
2 for Defendant, Defendant's potential liability for the rest period claim is \$1,224,194.00 (calculated  
3 as follows: 92,392 shifts x \$13.25 average hourly rate x 100% violation rate = \$1,224,194.00).  
4 However, I discounted this figure by 80% to account for the difficulty of certifying and proving  
5 rest period claims, particularly because rest periods do not have to be recorded, and to account for  
6 the possibility of class members voluntarily choosing to forego a rest period, yielding a realistic  
7 damage estimate of **\$244,838.80**.

8 19. With respect to the claim for unreimbursed business expenses, Plaintiffs allege that  
9 Defendant required them and similarly situated class members to purchase tools/equipment (e.g.,  
10 hand tools, wrench sets, etc.), specific work-related attire (e.g., steel toe work boots, safety glasses,  
11 etc.), and to use their personal cell phones for employment-related matters. Based on Plaintiffs'  
12 experience working for Defendant, Plaintiffs estimate that they and the other class members spent  
13 approximately \$25 for every four weeks worked. Defendant's potential liability for this claim is  
14 estimated to be \$97,862.50 (calculated as follows: 15,658 workweeks x ¼ x \$25 = \$97,862.50).  
15 However, I discounted this figure by 50% to account for the difficulty of certifying and proving  
16 this claim, as well as Defendant's contention that the claim lacks merit, yielding a realistic damage  
17 estimate of **\$48,931.25**.

18 20. In sum, I estimated that Plaintiffs' maximum recovery for the unpaid wages based  
19 on the failure to pay for all hours worked (minimum, straight time, and overtime wages) and meal  
20 and rest period violations, as well as Defendant's failure to indemnify its employees for necessary  
21 business expenses, is \$2,550,373.90, but, **after factoring in the risk and uncertainty of**  
22 **prevailing at certification and trial, I estimate that Plaintiffs' realistic estimated recovery for**  
23 **the non-penalty claims is \$735,304.57**.

24 21. With respect to Plaintiffs' derivative claims for statutory and civil penalties,  
25 Plaintiffs estimated that Defendant's realistic potential liability is **\$140,000.00**. While Defendant's  
26 maximum potential liability for waiting time penalties is \$104,940.00 based on approximately 33  
27 terminated class members during the 3-year statute of limitations period (calculated as follows: 8  
28 [hours in a workday] x 30 [days] x \$13.25 [average hourly rate] x 33 [employees within 3-year

1 statute of limitations period] = \$104,940.00), \$312,000.00 for inaccurate wage statements based  
2 on approximately 78 class members who worked within the 1-year statute of limitations period  
3 (calculated as follows: 78 employees x \$4,000.00 maximum penalty = \$312,000.00), and  
4 \$334,400.00 for PAGA violations based on the Court assessing a \$100 penalty for initial violations  
5 for all 3,344 pay periods within the 1-year statute, I believe that it would be unrealistic to expect  
6 the Court to award the full \$751,340.00 in penalties given Defendant’s defenses, the contested  
7 nature of Plaintiffs’ claims, and the discretionary nature of penalties. Considering that the  
8 underlying claims are estimated to be \$735,304.57, such a disproportionate award would also raise  
9 due process concerns. Weighing these factors, and applying a discount to account for the risk and  
10 uncertainty of prevailing at trial, I arrived at \$140,000.00 for statutory and civil penalties.

11 22. **Using these estimated figures, Plaintiffs predicted that the realistic maximum**  
12 **recovery for all claims, including penalties, would be \$875,304.57. This means that the**  
13 **\$600,000.00 settlement figure represents 68.5% of the realistic maximum recovery (\$600,000**  
14 **/ \$875,304.57 = 68.5%).** Considering the risk and uncertainty of prevailing at class certification  
15 and at trial, this is an excellent result for the Class.<sup>2</sup> Indeed, because of the proposed Settlement,  
16 class members will receive timely, guaranteed relief and will avoid the risk of an unfavorable  
17 judgment.

18 23. While Plaintiffs are confident in the merits of their claims, a legitimate controversy  
19 exists as to each cause of action. Plaintiffs also recognize that proving the amount of wages due  
20 to each Class Member would be an expensive, time-consuming, and uncertain proposition.

21 24. This Settlement avoids the risks and the accompanying expense of further litigation.  
22 Although the Parties had engaged in a significant amount of investigation, informal discovery and  
23 class-wide data analysis, the Parties had not yet completed formal written discovery. Plaintiffs  
24

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25 <sup>2</sup> See, e.g., *Wise v. Ulta Salon, Cosmetics & Fragrance, Inc.* 2019 WL 3943859 at \*8 (E.D.  
26 Cal. Aug. 21, 2019) (granting preliminary approval where the proposed allocation to settle class  
27 claims was between 9.53 percent of plaintiffs’ maximum recovery); *Bravo v. Gale Triangle, Inc.*,  
28 2017 WL 708766 at \* 10 (C.D. Cal. Feb 16, 2017) (finding that “a settlement for fourteen percent  
recovery of Plaintiffs’ maximum recovery is reasonable”); *In re Omnivision Techs., Inc.*, 559  
F.Supp.2d 1036, 1042 (N.D. Cal. 2008) (approving settlement amount that “is just over 9% of the  
maximum potential recovery asserted by either party.”).



1 intended to depose corporate officers and managers of Defendant. Moreover, preparation for class  
2 certification and a trial remained for the Parties as well as the prospect of appeals in the wake of a  
3 disputed class certification ruling for Plaintiffs and/or adverse summary judgment ruling. Had the  
4 Court certified any claims, Defendant could move to decertify the claims. As a result, the Parties  
5 would incur considerably more attorneys' fees and costs through trial.

6 25. The Net Settlement Amount available for Class Member settlement payments is  
7 estimated to be \$327,750.00, for a class of 97 persons.<sup>3</sup> **As a result, each Settlement Class**  
8 **Member is eligible to receive an average net benefit of approximately \$3,378.87.**

9 26. The proposed Settlement of \$600,000.00 therefore represents a substantial recovery  
10 when compared to Plaintiffs' reasonably forecasted recovery. When considering the risks of  
11 litigation, the uncertainties involved in achieving class certification, the burdens of proof necessary  
12 to establish liability, the probability of appeal of a favorable judgment, it is clear that the settlement  
13 amount of \$600,000.00 is within the "ballpark" of reasonableness, and preliminary settlement  
14 approval is appropriate.

15 SERVICE PAYMENTS FOR PLAINTIFFS ARE REASONABLE

16 27. Class Counsel represent that Plaintiffs devoted a great deal of time and work  
17 assisting counsel in the case, communicated with counsel very frequently for litigation and to  
18 prepare for mediation, and was frequently in contact with Class Counsel during the mediation.  
19 Plaintiffs' requested service awards are reasonable particularly in light of the substantial benefits  
20 Plaintiffs generated for all class members.

21 28. Throughout this Litigation, Plaintiffs, who are former employees of Defendant, have  
22 cooperated immensely with my office and have taken many actions to protect the interests of the  
23 class. Plaintiffs provided valuable information regarding unpaid overtime, meal period, and rest  
24 period claims. Plaintiffs also informed my office of developments and information relevant to this

25 \_\_\_\_\_  
26 <sup>3</sup> The Net Settlement Amount is: \$600,000.00 minus \$200,000.00 for Class Counsel's  
27 attorneys' fees, minus \$20,000.00 for Class Counsel's litigation expenses, minus \$7,250.00 in  
28 administration costs, minus \$15,000.00 for the PAGA portion sent to the LWDA, minus \$5,000.00  
for payments to the Aggrieved Employees, and minus \$25,000.00 for the class representatives' service payments.

1 action, participated in decisions concerning this action, and made themselves available to answer  
2 questions during the mediation. Before we filed this case, Plaintiffs Luciano Hernandez and  
3 Miguel Angel Ramirez-Maya provided my office with documents and information regarding the  
4 claims alleged in this action. The information and documentation provided was instrumental in  
5 establishing the alleged wage and hour violations alleged in this action. The ultimate recovery  
6 provided for in the Settlement Agreement would have been impossible to obtain without Plaintiffs’  
7 participation.

8 29. At the same time, Plaintiffs faced many risks in adding themselves as the class  
9 representatives in this matter. Plaintiffs faced actual risks with their future employment, as putting  
10 themselves on public record in an employment lawsuit could also very well affect their likelihood  
11 for future employment. Furthermore, as part of this Settlement, Plaintiffs are executing a general  
12 release of all claims against Defendant (including Plaintiff Luciano Hernandez with the express  
13 exceptions agreed upon in Section 12.18 of the Settlement Agreement).

14 30. In turn, class members will now have the opportunity to participate in a settlement,  
15 reimbursing them for alleged wage violations they may have never known about on their own or  
16 been willing to pursue on their own. If these class members would have each tried to pursue their  
17 legal remedies on their own, that would have resulted in each having to expend a significant amount  
18 of their own monetary resources and time, which were obviated by Plaintiffs putting themselves  
19 on the line on behalf of these other class members.

20 31. In the final analysis, this class action would not have been possible without the aid  
21 of Plaintiffs, who put their own time and effort into this Litigation, sacrificed the value of their  
22 own individual claims, and placed themselves at risk for the sake of the class members. The  
23 requested service awards for Plaintiffs for their service as the class representatives and for their  
24 general release of all individual claims is a relatively small amount of money when the time and  
25 effort put into the Litigation are considered and in comparison to enhancements granted in other  
26 class actions. The requested incentive awards are therefore reasonable to compensate Plaintiffs  
27 for their active participation in this lawsuit. Indeed, in *Karl Adams, III, et al. v. MarketStar*  
28 *Corporation*, et al., No. 2:14-cv-02509-TLN-DB, a wage and hour class action alleging that class

1 members were misclassified as exempt outside salespersons, I was co-lead Class Counsel and  
2 helped negotiate a \$2.5 million class action settlement for 339 class members, and the court  
3 approved a \$25,000.00 class representative incentive award for each named plaintiff.

4 THE REQUEST FOR ATTORNEYS' FEES AND COSTS IS REASONABLE

5 32. The Settlement provides for attorney's fees payable to Class Counsel in an amount  
6 up to one-third (33 1/3%) of the Settlement Amount, for a maximum fees award of \$200,000.00,  
7 plus actual verifiable costs and expenses not to exceed \$20,000.00. The proposed award of  
8 attorneys' fees to Class Counsel in this case can be justified under either method – lodestar or  
9 percentage recovery. The regular and customary practice at Wilshire Law Firm, PLC is for all  
10 attorneys to maintain contemporaneous time records setting forth the amount of time spent  
11 (rounded to the nearest 0.1 hour) on each task in each case, with explanatory descriptions of each  
12 task performed. My colleagues and I followed this practice throughout this litigation. For the  
13 Court's convenience, I calculated my firm's lodestar for this case after reviewing the time records  
14 and exercising discretion in eliminating excessive entries. Using these time records, my office  
15 derived the following summary chart of timekeeping activities of the attorneys working on this  
16 case:

17 <b>Attorney</b>	<b>Hours</b>	<b>Rate</b>	<b>Lodestar</b>
18 Justin F. Marquez	45	\$850	\$38,250
19 Benjamin H. Haber	60	\$650	\$39,000
20 Arrash T. Fattahi	90	\$450	\$40,500
21 <b>Total:</b>			\$117,750

22 33. There are additional hours devoted by me (and by my colleagues) to this litigation  
23 that are not reflected in Class Counsel's request for attorneys' fees.

24 34. We can provide complete, detailed billing records in the event the Court requests  
25 them but would request the opportunity to redact attorney-client privileged information and any  
26 other privileged information. Thus far, the efforts expended by Class Counsel include, but are not  
27 limited to, the following:  
28

- a. investigation of the matter, including meeting with Plaintiffs, reviewing Defendant's policies, requesting and reviewing Plaintiffs' personnel files and timekeeping and payroll, and exploring the corporate structure of Defendant;
- b. filing the Action;
- c. meeting and conferring with Defendant regarding mediation, exchange of informal discovery beforehand, and negotiating with opposing counsel regarding the parameters thereof;
- d. selecting a mediator and mediation date;
- e. working with opposing counsel for the receipt of a representative sampling and analyzing the same with the aid of expert consultants and Plaintiffs to perform analyses of liability and exposure prior to attendance of the mediation;
- f. reviewing policy documents from Defendant;
- g. preparation of a mediation brief and damages model for use at mediation;
- h. attendance at mediation by all Parties and Counsel;
- i. communicating with Plaintiffs who requested updates or other information regarding this matter;
- j. negotiating, finalizing, and fully executing the Settlement Agreement, in which numerous drafts were exchanged; and
- k. preparing and filing the Motion for Preliminary Approval and supporting documents.

35. I am informed and believe that the fee and costs provision is reasonable. The fee percentage requested is less than that charged by my office for most employment cases. My office invested significant time and resources into the case, with payment deferred to the end of the case, and then, of course, contingent on the outcome.

36. It is further estimated that my office will need to expend at least another 50 to 100 hours to monitor the process leading up to the final approval and payments made to the class. My office also bears the risk of taking whatever actions are necessary if Defendant fails to pay.

37. The risk to my office has been very significant, particularly if we would not be

1 successful in pursuing this class action. In that case, we would have been left with no compensation  
2 for all the time taken in litigating this case. Indeed, I have taken on a number of class action cases  
3 that have resulted in thousands of attorney hours being expended and ultimately having  
4 certification denied or the defendant company going bankrupt. The contingent risk in these types  
5 of cases is very real and they do occur regularly. Furthermore, we were precluded from focusing  
6 on, or taking on, other cases which could have resulted in a larger, and less risky, monetary gain.

7 38. Because most individuals cannot afford to pay for representation in litigation on an  
8 hourly basis, Wilshire Law Firm, PLC represents virtually all of its employment law clients on a  
9 contingency fee basis. Pursuant to this arrangement, we are not compensated for our time unless  
10 we prevail at trial or successfully settle our clients' cases. Because Wilshire Law Firm, PLC is  
11 taking the risk that we will not be reimbursed for our time unless our client settles or wins his or  
12 her case, we cannot afford to represent an individual employee on a contingency basis if, at the  
13 end of our representation, all we are to receive is our regular hourly rate for services. It is essential  
14 that we recover more than our regular hourly rate when we win if we are to remain in practice so  
15 as to be able to continue representing other individuals in civil rights employment disputes.

16 39. As of the drafting of Plaintiffs' Motion for Preliminary Approval of Class Action  
17 and PAGA Settlement, my office has incurred around \$11,979.55 in expenses litigating this action,  
18 and we anticipate accruing additional costs up to Final Approval of the Settlement. These expenses  
19 were reasonably necessary to the Litigation and were actually incurred by my office. They should  
20 be reimbursed in full, up to the maximum amount allowed in the Settlement Agreement.

#### 21 MY EXPERIENCE AND QUALIFICATIONS

22 40. Wilshire Law Firm, PLC was selected by Best Lawyers and U.S. News & World  
23 Report as one of the nation's Best Law Firms in 2022 and is comprised of over 55 attorneys and  
24 over 300 employees. Wilshire Law Firm, PLC is actively and continuously practicing in  
25 employment litigation, representing employees in both individual and class actions in both state  
26 and federal courts throughout California.

27 41. Wilshire Law Firm, PLC is qualified to handle this Litigation because its attorneys  
28 are experienced in litigating Labor Code violations in both individual, class action, and

1 representative action cases. Wilshire Law Firm, PLC has handled, and is currently handling,  
2 numerous wage and hour class action lawsuits, as well as class actions involving consumer rights  
3 and data privacy litigation.

4 42. I graduated from the University of California, Los Angeles’s College Honors  
5 Program in 2004 with Bachelor of Arts degrees in History and Japanese, *magna cum laude* and *Phi*  
6 *Beta Kappa*. As an undergraduate, I also received a scholarship to study abroad for one year at  
7 Tokyo University in Tokyo, Japan. I received my Juris Doctor from Notre Dame Law School in  
8 2008.

9 43. My practice is focused on advocating for the rights of consumers and employees in  
10 class action litigation and appellate litigation. I am currently the primary attorney in charge of  
11 litigating several class action cases in state and federal courts across the United States.

12 44. I have received numerous awards for my legal work. From 2017 to 2020, Super  
13 Lawyers selected me as a “Southern California Rising Star,” and in 2022, I was selected as a  
14 “Southern California Super Lawyer.” I was selected as one of the “Best Lawyers in America” in  
15 2023. In 2016 and 2017, the National Trial Lawyers selected me as a “Top 40 Under 40” attorney.  
16 I am also rated 10.0 (“Superb”) by Avvo.com.

17 45. I am on the California Employment Lawyers Association (“CELA”)’s Wage and  
18 Hour Committee and Mentor Committee, and I was selected to speak at CELA’s 2019 Advanced  
19 Wage & Hour Seminar on the topic of manageability of class actions. Since 2013, I have actively  
20 mentored young attorneys through CELA’s mentorship program.

21 46. I am also a past member of the Consumer Attorneys of California (“CAOC”). In  
22 2020, I was selected for a position on CAOC’s Board of Directors. I am also a past member of  
23 CAOC’s Diversity Committee, and I helped assist the CAOC in defeating bills that harm  
24 employees. Indeed, I recently helped assist Jacqueline Serna, Esq., Legislative Counsel for CAOC,  
25 in defeating AB 443, which proposed legislation that sought to limit the enforceability of California  
26 Labor Code § 226.

27 47. As the attorney responsible for day-to-day management of this matter at the  
28 Wilshire Law Firm, PLC, I have over thirteen years of experience with litigating wage and hour

1 class actions. Over the last thirteen years, I have managed and assisted with the litigation and  
2 settlement of several wage and hour class actions. In those class actions, I performed similar tasks  
3 as those performed in the course of prosecuting this action. My litigation experience includes:

- 4 a. I served as lead or co-lead in negotiating class action settlements worth over \$10  
5 million in gross recovery to class members for each year since 2020, including over  
6 \$30 million in 2022.
- 7 b. I was part of the team of attorneys that prevailed in *Moore v. Centrelake Medical*  
8 *Group, Inc.* (2022) 83 Cal.App.5th 515, the first California appellate decision in a  
9 data breach class action holding that consumer plaintiffs adequately alleged injury  
10 in fact under the benefit of the bargain theory and monitoring-costs theory.
- 11 c. In 2022, *Top Verdict* recognized Wilshire Law Firm, PLC and myself for having  
12 one case in the Top 20 Labor & Employment Settlements (including number 19 for  
13 the \$1.6 million settlement in *Moreno v. Pretium Packaging, L.L.C*) and four  
14 additional cases in the Top 50 Labor & Employment Settlements (numbers 27, 30,  
15 33, and 37).
- 16 d. To my knowledge, I am the only attorney to appear on each of the following *Top*  
17 *Verdict* lists for 2018 in California: Top 20 Civil Rights Violation Verdicts, Top 20  
18 Labor & Employment Settlements, and Top 50 Class Action Settlements.
- 19 e. As lead counsel, on April 29, 2021, I prevailed against CVS Pharmacy, Inc. by  
20 winning class certification on behalf of hundreds of thousands of consumers for  
21 misleading advertising claims in *Joseph Mier v. CVS Pharmacy, Inc.*, U.S. Dist. Ct.  
22 C.D. Cal. no. SA CV 20-1979-DOC-(ADSx).
- 23 f. As lead counsel, I prevailed against Bank of America by: winning class certification  
24 on behalf of thousands of employees for California Labor Code violations; defeating  
25 appellate review of the court's order certifying the class; defeating summary  
26 judgment; and defeating a motion to dismiss. (*Frausto v. Bank of America, N.A.*  
27 (N.D. Cal. 2019) 334 F.R.D. 192, 2020 WL 1290302 (9th Cir. Feb. 27, 2020), 2019  
28 WL 5626640 (N.D. Cal. Oct. 31, 2019), 2018 W.L. 3659251 (N.D. Cal. Aug. 2,

1 2018).). The decision certifying the class in *Frausto* is also discussed in *Class*  
2 *Certification Under Fed. R. Civ. P. 23 in Action by Information Technology or Call*  
3 *Center Employees for Violation of State Law Wage and Hour Rules*, 35 A.L.R. Fed.  
4 3d Art. 8.

5 g. I was the primary author of the class certification and expert briefs in *ABM*  
6 *Industries Overtime Cases* (2017) 19 Cal.App.5th 277, a wage and hour class action  
7 for over 40,000 class members for off-the-clock, meal period, split shift, and  
8 reimbursement claims. *ABM Industries Overtime Cases* is the first published  
9 California appellate authority to hold that an employer’s “auto-deduct policy for  
10 meal breaks in light of the recordkeeping requirements for California employers is  
11 also an issue amenable to classwide resolution.” (*Id.* at p. 310.)<sup>4</sup> Notably, the Court  
12 of Appeal also held that expert analysis of timekeeping records can also support the  
13 predominance requirement for class certification. (*Id.* at p. 310-11.) In 2021, the  
14 case settled for \$140 million, making it one of the largest ever wage and hour class  
15 action settlements for hourly-paid employees in California.

16 h. I briefed, argued, and won *Yocupicio v. PAE Group, LLC* (9th Cir. 2015) 795 F.3d  
17 1057. The Ninth Circuit ruled in my client’s favor and held that non-class claims  
18 under PAGA cannot be used to calculate the amount in controversy under the Class  
19 Action Fairness Act (“CAFA”). This case is cited in several leading treatises such  
20 as *Wright & Miller’s Federal Practice & Procedure*, and *Newberg on Class Actions*.  
21 In October 2016, the U.S. Supreme Court denied review of a case that primarily  
22 concerned *Yocupicio*. That effort was led by Theodore J. Boutrous, who brought  
23 the cert petition, with amicus support from a brief authored by Andrew J. Pincus.<sup>5</sup>  
24 Considering that leading Supreme Court practitioners from the class action defense  
25 bar were very motivated in undermining *Yocupicio* case, but failed, this

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26  
27 <sup>4</sup> As a California district court observed before the *ABM Industries Overtime* decision,  
28 “[t]he case law regarding certification of auto-deduct classes is mixed.” (*Wilson v. TE Connectivity*  
*Networks, Inc.* (N.D. Cal. Feb. 9, 2017) No. 14-CV-04872-EDL, 2017 WL 1758048, \*7.)

<sup>5</sup> <http://www.chamberlitigation.com/cases/abm-industries-inc-v-castro>.



1 demonstrates the national importance of the *Yocupicio* decision.

- 2 i. On December 13, 2018, the United States District Court granted final approval of  
3 the \$2,500,000 class action settlement in *Mark Brulee, et al. v. DAL Global Services,*  
4 *LLC* (C.D. Cal. Dec. 13, 2018) No. CV 17-6433 JVS(JCGx), 2018 WL 6616659 in  
5 which I served as lead counsel. In doing so, the Court found: “Class Counsel’s  
6 declarations show that the attorneys are experienced and successful litigators.” (*Id.*  
7 at p. \*10.)
- 8 j. *Gasio v. Target Corp.* (C.D. Cal. Sep. 12, 2014) 2014 U.S. Dist. LEXIS 129852, a  
9 reported decision permitting class-wide discovery even though the employer has a  
10 lawful policy because “[t]he fact that a company has a policy of not violating the  
11 law does not mean that the employees follow it, which is the issue here.” The court  
12 also ordered defendant to pay for the cost of *Belaire-West* notice.
- 13 k. In 2013, I represented a whistleblower that reported that his former employer was  
14 defrauding the State of California with the help of bribes to public employees. The  
15 case, a false claims (*qui tam*) action, resulted in the arrest and criminal prosecution  
16 of State of California employees by the California Attorney General’s Office.
- 17 l. In 2013, I was part of a team of attorneys that obtained conditional certification for  
18 over 2,000,000 class members in a federal labor law case for misclassification of  
19 independent contractors that did crowdsourced work on the Internet, *Otey v.*  
20 *CrowdFlower, Inc.*, N.D. Cal. Case No. 12-cv-05524-JST (MEJ), resulting in the  
21 following pro-plaintiff reported decisions:
- 22 1) 2013 U.S. Dist. LEXIS 151846 (N.D. Cal. Oct. 22, 2013) (holding  
23 that an unaccepted Rule 68 offer doesn’t moot plaintiff’s claims, and  
24 granting plaintiff’s motion to strike defendant’s affirmative defenses  
25 based on *Twombly/Iqbal*).
- 26 2) 2013 U.S. Dist. LEXIS 122007 (N.D. Cal. Aug. 27, 2013) (order  
27 granting conditional collective certification).
- 28 3) 2013 U.S. Dist. LEXIS 95687 (N.D. Cal. July 8, 2013) (affirming the

1 magistrate judge’s discovery ruling which held that “evidence of  
2 other sources of income is irrelevant to the question of whether a  
3 plaintiff is an employee within the meaning of the FLSA”).

4 4) 2013 U.S. Dist. LEXIS 91771 (N.D. Cal. June 20, 2013) (granting  
5 broad discovery because “an FLSA plaintiff is entitled to discovery  
6 from locations where he never worked if he can provide some  
7 evidence to indicate company-wide violations”).

8 j. From 2012 to 2013, I was part of a team of attorneys that obtained class certification  
9 for over 60,000 class members for off-the-clock claims, *Linares v. Securitas*  
10 *Security Services USA, Inc.*, Los Angeles Superior Court No. BC416555. We also  
11 successfully opposed subsequent appeals to the California Court of Appeal and  
12 California Supreme Court.

13 48. Benjamin H. Haber is a sixth-year Associate Attorney at Wilshire Law Firm, PLC.  
14 He was admitted to practice law in the State of California and the Central, Southern, Eastern, and  
15 Northern Districts of California. He graduated from the University of California, Los Angeles,  
16 with a Bachelor of Arts in Political Science, and received his Juris Doctor from the University of  
17 California, Hastings College of the Law in 2016. During law school, he was a member of the  
18 executive board for the Hastings Law Journal and a student mediator at the San Francisco Superior  
19 Court, Small Claims Division. Since graduating law school, he has focused his legal work  
20 primarily on wage and hour class action litigation. His current contingent billing rate for this case  
21 is \$650 per hour, which is consistent with his level of experience in the wage and hour arena.

22 49. Arrash T. Fattahi is a second-year Associate Attorney at Wilshire Law Firm, PLC.  
23 He was admitted to practice law in the State of California and the Central and Southern Districts  
24 of California in January 2021. Arrash graduated from the University of California, Los Angeles,  
25 with a Bachelor of Arts in Political Science, *summa cum laude*. He received his Juris Doctor from  
26 The George Washington University Law School. During law school, he was a member of the  
27 student editorial board for the *Federal Circuit Bar Journal*. Since January 2021, his practice has  
28 mainly been focused on wage and hour class action litigation. His current contingent billing rate

1 for this case is \$450 per hour.

2 50. My current contingent billing rate of \$850 per hour is consistent with my practice  
3 area, lead appellate experience in the Ninth Circuit Court of Appeals, numerous awards received,  
4 legal market and accepted hourly rates:

5 a. In the December 8, 2008 article “Billable Hours Aren’t the Only Game in Town  
6 Anymore,” *NATIONAL LAW JOURNAL*, the following hourly billing rates were  
7 reported by Sheppard, Mullin, Richter & Hampton, a leading firm in the defense of  
8 wage-and-hour class actions that I opposed when litigating wage-and-hour class  
9 actions: Partners: \$475-\$795; Associates: 1st Year - \$275, 2nd Year - \$310, 3rd  
10 Year - \$335, 4th Year - \$365, 5th Year - \$390, 6th Year - \$415, 7th Year - \$435,  
11 8th Year - \$455. I am a 14th year attorney and Senior Partner, with most of my  
12 experience in class action litigation as a primary practice area. Having successfully  
13 briefed and argued a published appeal in the Ninth Circuit Court of Appeals  
14 involving CAFA and PAGA, having experience certifying large class actions  
15 (including *ABM Industries Overtime Cases*, which was decided on appeal), and  
16 having received numerous awards for my legal work, my hourly rate should be  
17 adjusted upward.

18 b. On May 6, 2022, the Hon. Jay A. Garcia-Gregory of the United States District Court,  
19 District of Puerto Rico, approved my \$850 hourly rate when he granted final  
20 approval of the class action settlement in *Serrano v. Inmediata Corp.*, No. 3:19-cv-  
21 01811-JAG, Dkt. 57 (U.S. Dist. Ct. P.R. May 6, 2022).

22 c. On September 9, 2021, the Hon. Peter Wilson of the Orange County Superior Court  
23 approved my \$800 hourly rate when he granted final approval of the class action  
24 settlement in *Ricardo Campos Hernandez v. Adams Iron Co., Inc.*, No. 30-2019-  
25 01066522-CU-OE-CXC.

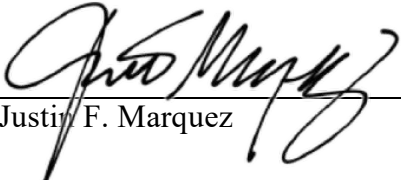
26 d. On August 6, 2021, the Hon. Stanley Blumenfeld, Jr. of the United States District  
27 Court granted final approval of the \$1,600,000 class action settlement in *Carlos*  
28 *Moreno v. Pretium Packaging, Inc.* (C.D. Cal. Aug. 6, 2021) No. 8:19-cv-02500-

1 SB-DFM, 2021 WL 3673845 in which I served as lead counsel. In doing so, the  
2 Court approved my then \$750 hourly rate after finding it was “reasonable, given the  
3 qualifications of the attorneys who worked on this matter.” (*Id.* at p. \*3.)

4 e. On January 19, 2021, the Hon. Elihu M. Berle of the Los Angeles County Superior  
5 Court approved my \$750 hourly rate when he granted final approval of the class  
6 action settlement in *Faye Zhang v. Richemont North America, Inc.*, Case No.  
7 19STCV32396.

8 I declare under penalty of perjury under the laws of the State of California and the United  
9 States that the foregoing is true and correct.

10 Executed on November 30, 2022, at Los Angeles, California.

11  
12   
13 \_\_\_\_\_  
Justin F. Marquez