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12 Attorneys for Plaintiff CARLOS
13 MORENO

14 **UNITED STATES DISTRICT COURT**
CENTRAL DISTRICT OF CALIFORNIA

15 CARLOS MORENO, individually, and on
16 behalf of all others similarly situated,

17 Plaintiff,

18 v.

19 PRETIUM PACKAGING, L.L.C., a
20 Delaware limited liability company, and
21 DOES 1 through 10, inclusive,

22 Defendants

Case No. 8:19-cv-02500-SB-DFM

[Hon. Stanley Blumenfeld, Jr.]

**DECLARATION OF JUSTIN F.
MARQUEZ IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: March 12, 2021

Time: 8:30 a.m.

Courtroom: 6C

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
4 of California, the Ninth Circuit Court of Appeals, and the United States District
5 Courts for the Central, Southern, Eastern, and Northern Districts of California. I
6 am a Senior Partner at the law firm of Wilshire Law Firm, PLC, counsel of record
7 to Plaintiff Carlos Moreno (“Plaintiff”). I have personal knowledge of the facts set
8 forth in this declaration and could and would competently testify to them under
9 oath if called as a witness.

10 2. This Declaration is submitted in support of Plaintiff’s Motion for
11 Preliminary Approval of Class Action Settlement.

12 **Case Background**

13 3. Plaintiff and putative class members worked in California as hourly-
14 paid, non-exempt employees for Defendant during the class period. Defendant is a
15 packaging solutions company based in Chesterfield, Missouri, that operates
16 numerous locations throughout the United States, including locations in Anaheim,
17 California and Escondido, California.

18 4. Plaintiff alleges that Defendant’s payroll, timekeeping, and wage-and-
19 hour practices resulted in Labor Code violations. Specifically, Plaintiff alleges that
20 Defendant failed to provide employees with legally compliant meal and rest
21 periods, and failed to pay all required meal and rest period premiums for non-
22 compliant meal and rest periods. Plaintiff also alleges that Defendant failed to pay
23 required double overtime for all hours worked in excess of 12 hours per workday
24 and all worktime greater than 8 hours on the 7th consecutive day worked, and failed
25 to include non-discretionary remuneration in overtime payments. Based on these
26 allegations, Plaintiff has included claims for failure to pay overtime wages, failure
27 to provide meal periods, failure to authorize and permit rest periods, failure to
28 provide accurate wage statements, unfair business practices, and civil penalties

1 under the Private Attorneys General Act (“PAGA”).

2 5. Defendant denies Plaintiff’s allegations and denies any liability to
3 Plaintiff and the putative class members. Specifically, Defendant contends that its
4 wage and hour policies and practices, including those regarding overtime pay, meal
5 periods, rest periods, record keeping, and pay stubs are lawful and have been lawful
6 throughout the entire class period.

7 6. Plaintiff initiated this wage-and-hour action in the Orange County
8 Superior Court on November 26, 2019. Plaintiff’s initial complaint alleged the
9 following claims for relief: (1) failure to pay overtime wages (Cal. Lab. Code §§
10 510, 1194 and 1198); (2) failure to provide meal periods (Cal. Lab. Code §§ 226.7,
11 512); (3) failure to authorize and permit rest breaks (Cal. Lab. Code § 226.7); (4)
12 failure to provide accurate itemized wage statements (Cal. Lab. Code § 226); and
13 (5) unfair business practices (Cal. Bus. & Prof. Code §§ 17200 *et seq.*).

14 7. On February 10, 2020, Plaintiff filed a First Amended Complaint,
15 which provided additional information and facts regarding Plaintiff’s allegations.

16 8. On April 10, 2020, Plaintiff filed a Second Amended Complaint to
17 modify portions of the allegations and to add an additional cause of action under
18 PAGA. On November 26, 2019, Plaintiff sent notice of alleged Labor Code
19 violations to the Labor Workforce Development Agency (“LWDA”), pursuant to
20 California Labor Code § 2699.3(1).

21 **Discovery and Investigation**

22 9. The parties have engaged in extensive discovery. On April 7, 2020,
23 Plaintiff served Defendant with written discovery, including Requests for
24 Production of Documents and Interrogatories. The discovery sought information
25 and documents related to, *inter alia*, Defendant’s policies and procedures for
26 compensating its employees, recording its employees’ worktime, providing meal
27 periods, authorizing and permitting rest periods, and furnishing wage statements.
28 The discovery also sought information and documents pertaining to the

1 identification of the class members.

2 10. Defendant provided written responses to Plaintiff's discovery on June
3 8, 2020. Defendant subsequently produced more than 8,300 pages of documents
4 between June 8, 2020 and early December 2020 in response to the written
5 discovery. The documents produced by Defendant pertained to Defendant's wage-
6 and-hour policies and procedures, including employee handbooks and other policy
7 documents, personnel files, job descriptions, contact information for the putative
8 class members, and a sampling of putative class member pay and time records

9 11. Plaintiff's counsel investigated and reviewed these records prior to
10 mediation. Plaintiff's counsel hired an expert to assist in analyzing the putative
11 class members' pay and time records and to prepare a damages model. The expert
12 analyzed the time and pay records for the putative class members at both the
13 Anaheim and Escondido locations to determine whether Defendant paid overtime
14 correctly, paid double overtime correctly, provided timely and compliant meal
15 periods, and provided any premiums for noncompliant meal or rest periods.
16 Plaintiff's expert also calculated the total amount of unpaid double overtime,
17 unpaid overtime, late meal periods, short meal periods, and missed meal periods.
18 Moreover, Plaintiff's expert conducted a detailed analysis of the frequency and
19 severity of the recorded late, short, and missed meal periods based on the time and
20 pay records throughout the class period. In addition to their factual investigation,
21 Plaintiff's counsel investigated the applicable law regarding the claims and
22 defenses to the claims asserted in the litigation. Thus, Plaintiff and his counsel are
23 familiar with the facts of the case and the legal issues raised by the pleadings and
24 were able to act intelligently in negotiating the Settlement.

25 **Settlement Negotiations**

26 12. The parties engaged in a significant amount of investigation, class-
27 wide discovery, and analysis prior to reaching the proposed settlement. Defendant
28 responded to Plaintiff's written discovery, provided extensive information on the

1 company's wage and hour policies and practices, provided the contact information
2 for the Class Members, and produced over 8,300 pages of relevant documents. It
3 was only after the exchange of a substantial amount of data and information that
4 the parties participated in a full-day mediation session and ultimately reached this
5 proposed settlement.

6 13. On December 16, 2020, the Parties participated in private mediation
7 with the experienced neutral Hon. Peter D. Lichtman (Ret.). Judge Lichtman (Ret.)
8 was the former head of the Los Angeles Superior Court Mandatory Settlement
9 Program and served as a chair of the county's Complex Civil Litigation
10 Department. After extensive negotiations and discussions regarding the strengths
11 and weakness of Plaintiff's claims and Defendant's defenses, the parties were able
12 to reach an agreement at the mediation regarding the key terms and provisions of
13 the proposed settlement. Ultimately, the parties agreed to a settlement through
14 multiple arm's length negotiations.

15 14. Under the Settlement Agreement, Defendant will pay \$1,600,000 to
16 resolve this litigation. A true and correct copy of the Stipulation of Settlement
17 ("Stipulation") is attached hereto as Exhibit 1. True and correct copies of the
18 proposed Class Notice and the Proposed Order Granting Preliminary Approval are
19 attached as Exhibits A and B, respectively to the Stipulation.

20 15. On December 18, 2020, Defendant confirmed the total class size at the
21 time of settlement was approximately 749 individuals.

22 **The Settlement Is Fair, Reasonable, and Adequate**

23 16. Class Counsel has conducted a thorough investigation into the facts of
24 this case. Based on the foregoing discovery and their own independent
25 investigation and evaluation, Class Counsel is of the opinion that the Settlement is
26 fair, reasonable, and adequate and is in the best interests of the Settlement Class
27 Members in light of all known facts and circumstances, including the risk of
28 significant delay, the defenses that could be asserted by Defendant both to

1 certification and on the merits, trial risk, and appellate risk.

2 17. Based on my analysis of the facts and legal contentions in this case,
3 my expert's analysis of the time and payroll records provided by Defendant, and
4 the written policy documents provided by Defendant, I evaluated Defendant's
5 maximum exposure. I took into account the risk of not having the claims certified
6 and the risk of not prevailing at trial, even if the claims are certified.

7 18. Using the randomized timekeeping and payroll data provided by
8 Defendant, and with the assistance of an expert, I created a damages model to
9 evaluate the realistic range of potential recovery for Class Members. The damages
10 model is based on an estimated 269,000 total shifts worked by Class Members and
11 an average hourly rate of \$15.38 per hour.

12 19. With respect to the meal period claim, Plaintiff estimates that
13 Defendant's potential maximum liability is \$1.26 million. As discussed above,
14 Plaintiff contends that Defendant failed to provide legally compliant meal periods
15 to the putative class members for all shifts worked in excess of 5 hours and failed
16 to provide the requisite meal period premiums owed. Plaintiff's expert found that
17 98.2% of the total shifts worked by Class Members (or 25,303 shifts among the
18 25,762 shifts analyzed) were greater than 5 hours, and thus entitled those
19 employees to receive at least one uninterrupted, 30-minute meal period. Moreover,
20 Plaintiff's expert determined 33.3% (or 8,569 shifts among the shifts analyzed) had
21 at least one facially non-compliant meal period (i.e., a short meal period, late meal
22 period, and/or missed meal period). Specifically, among the eligible shifts where
23 the employees worked at least 5 hours, Plaintiff's expert found that 20.4% of the
24 shifts had a first meal period recorded after the employee's 5th hour of work; 11.6%
25 of the recorded shifts had a first meal period recorded that was less than 30 minutes
26 long; 0.7% of the eligible shifts had no recorded meal period; and 98.3% of the
27 shifts exceeding 10 hours had no recorded second meal period. Plaintiff's expert
28 also found that Defendant began paying meal period premiums in or around July

1 2019, and may have paid up to \$75,000 meal period premiums to the class
2 members from July 2019 to the present. Assuming that Defendant was liable to
3 pay additional meal premiums for 100% of all the remaining facially non-compliant
4 meal periods in the records analyzed, and subtracting potential liability based on
5 the assumed premium wages already paid, Plaintiff's expert determined the
6 potential maximum exposure for this claim was approximately \$1.26 million.

7 20. With respect to the rest period claim, Plaintiff estimates that
8 Defendant's realistic maximum liability is \$2.08 million. Plaintiff argues that
9 Defendant's rest break policy is facially defective because it failed to provide rest
10 breaks for every four hours "or major fraction thereof language," as required by the
11 Wage Order and *Brinker Rest. Corp. v. Super. Ct.*, 53 Cal.4th 1004 (2012), raising
12 the inference that Defendant failed to authorize and permit Class Members to take
13 second rest periods when they worked shifts between 6 to 8 hours long, and failed
14 to authorize and permit Class Members to take a third rest periods during shifts
15 exceeding 10 hours. Plaintiff also contends that Defendant failed to provide off-
16 duty rest periods by requiring employees to remain on the company premises
17 during allocated rest periods. *Augustus v. ABM Sec. Servs., Inc.*, 2 Cal.5th 257
18 (2016). Assuming a 100% violation rate, Plaintiff's expert determined that
19 potential exposure for this claim would be approximately \$4,164,000 (269,000
20 shifts multiplied by \$15.48). However, Plaintiff concedes that it is incorrect to
21 assume Defendant violated the law 100% of the time because Class Members
22 occasionally were able to take breaks, and Defendant may have succeeded in
23 showing that on-premises rest breaks were not always required; to account for this,
24 Plaintiff's counsel reduced the \$4.16 million figure by 50% to \$2.08 million.

25 21. With respect to the claim that Defendant failed to pay overtime and
26 double overtime correctly, Plaintiff estimates that Defendant's potential maximum
27 liability is \$0.15 million, which also includes interest. Again, Plaintiff's expert
28 arrived at this figure by doing a shift-by-shift analysis of the sample data to

1 determine the total amount of recorded double overtime paid below twice the
2 regular rate of pay, and the total amount of unpaid overtime compensation when
3 non-discretionary remuneration earned was not included in the calculation for the
4 regular rate of pay. *Alvarado v. Dart Container Corp. of Cal.* 4 Cal.5th 542, 554
5 (2018) (confirming that “[r]egular rate of pay, which can change from pay period to
6 pay period, includes adjustments to the straight time rate, reflecting, among other
7 things, shift differentials and the per-hour value of any nonhourly compensation the
8 employee has earned.”) Plaintiff’s expert then extrapolating those results to the
9 class.

10 22. With respect to Plaintiff’s derivative claims for statutory and civil
11 penalties, Plaintiff estimates that Defendant’s realistic maximum liability is \$1.5
12 million. While Defendant’s maximum potential liability for wage statement
13 penalties is \$0.9 million for approximately 19,200 inaccurate wage statements
14 provided to 310 employees within the 1-year statute of limitations, and \$3.8 million
15 for PAGA based on the Court assessing the initial \$100 and subsequent \$200
16 penalties for the same pay periods within the 1-year statute of limitations,
17 Plaintiff’s counsel believes that it would be unrealistic to expect a Court to award
18 the maximum \$4.7 million in penalties given Defendant’s defenses described above
19 and the discretionary nature of penalties. *See, e.g., Amaral v. Cintas Corp. No. 2,*
20 *163 Cal.App.4th 1157, 1203-4 (2008)* (holding that the employer did not willfully
21 fail to pay wages under Cal. Lab. Code § 203 even though the class prevailed on
22 the merits on the underlying claim for failing to pay wages); *see also Willner v.*
23 *Manpower Inc.*, 35 F.Supp.3d 1116, 1131 (N.D. Cal. 2014) (violation of Cal. Lab.
24 Code § 203 requires a finding of willfulness). And considering that the underlying
25 claims are realistically estimated to be \$4.7 million, such a disproportionate award
26 would also raise Due Process concerns. *Thurman v. Bayshore Transit Mgmt., Inc.*,
27 *203 Cal.App.4th 1112, 1135 (2012)* (affirming trial court’s finding that awarding
28 the maximum PAGA penalties would be unjust). Weighing these factors,

1 Plaintiff's counsel arrived at \$1.5 million for statutory and civil penalties.

2 23. Using these estimated figures, Plaintiff predicted that his realistic
3 maximum recovery would be approximately \$4.99 million. But after factoring in
4 the risk of failing at class certification, post-certification, or trial, it is appropriate to
5 discount this figure by 70%, resulting in a risk-discounted figure of \$1.5 million.¹

6 24. While Plaintiff is confident in the merits of his claims, a legitimate
7 controversy exists as to each cause of action. Plaintiff also recognizes that proving
8 the amount of wages due to each Class Member would be an expensive, time-
9 consuming, and uncertain proposition.

10 25. I am also of the opinion that because the issues here are fairly
11 contested, there is a possibility of the Court not awarding PAGA penalties even if
12 Plaintiff prevailed on the merits. For example, I worked on *Jon N. Shields v.*
13 *Security Paving Company, Inc.*, Los Angeles Superior Court Case No. BC492828
14 for over four years before leaving to join Moon & Yang APC in April 2017. I
15 spent over 1,000 hours on the *Shields* case and took around 15 depositions. The
16 *Shields* case was later tried in September 19, 2017, before Judge Ann I. Jones as a
17 PAGA representative action for failure to authorize and permit rest periods.
18 Although Judge Jones found that the defendant was liable on the rest period claim,
19 the court only awarded \$50 in nominal damages because Judge Jones also found
20 that plaintiff could not prove damages to the aggrieved employees.

21 26. The settlement obviates the significant risk that this Court may deny
22 certification of all or some of Plaintiff's claims. Furthermore, even if Plaintiffs
23 obtained certification of all or some of the claims, continued litigation would be
24 expensive, involving a trial and possible appeals, and would substantially delay and
25 _____

26 ¹ A 70% discount for risk at certification and trial is reasonable because the
27 Judicial Council of California found that only 21.4% of all class actions were
28 certified either as part of a settlement *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 reduce any recovery by the Settlement Class Members. For instance, I drafted the
2 class certification and expert briefs in *ABM Industries Overtime Cases*, 19
3 Cal.App.5th 277 (2017), a wage-and-hour class action for over 40,000 class
4 members for off-the-clock, meal period, split shift, and reimbursement claims.
5 Although the trial court denied class certification on September 1, 2011, that
6 decision was reversed unanimously on appeal more than 6 years later on December
7 11, 2017.

8 27. This settlement avoids the risks and the accompanying expense of
9 further litigation. Although the parties had engaged in a significant amount of
10 investigation, discovery and class-wide data analysis, the parties had not yet
11 completed formal written discovery. Plaintiff intended to depose Defendant's Rule
12 30(b)(6) witnesses on all topics related to Defendant's wage and hour policies.
13 Moreover, preparation for class certification and a trial remained for the Parties as
14 well as the prospect of appeals in the wake of a disputed class certification ruling
15 for Plaintiff and/or adverse summary judgment ruling. Had the Court certified any
16 claims, Defendant could move to decertify the claims. As a result, the parties
17 would incur considerably more attorneys' fees and costs through trial.

18 28. The Net Settlement Amount available for Class Member settlement
19 payments is estimated to be \$984,166.67, for a class of 749 individuals, **providing**
20 **for an average individual settlement payment of \$1,313.97 per Class Member.**

21 29. The proposed settlement of \$1.6 million therefore represents a
22 substantial recovery when compared to Plaintiff's reasonably forecasted recovery.
23 Given the litigation risks involved, the proposed settlement is well within the realm
24 of being fair, reasonable, and adequate because the proposed settlement
25 compensates Class Members for all of their underpaid overtime wages resulting
26 from the alleged improper calculations for double overtime pay and the correct
27 regular rate of pay for purposes of determining the overtime compensation, and
28 provides substantial, additional compensation for hotly contested rest and meal

1 period claims, and related penalty claims.

2 **Class Representatives Enhancement Award**

3 30. The settlement provides for a Class Representative Service Award of
4 \$10,000.00 each to Plaintiff. This payment is intended to recognize the Class
5 Representative's substantial effort and risks in assisting with the prosecution of this
6 action on behalf of the Class. Throughout this litigation, the Class Representative
7 cooperated with Class Counsel and took actions to protect the interests of the Class.
8 The Class Representative provided valuable information regarding Defendant's
9 alleged wage and hour violations. The Class Representative kept informed of the
10 developments in this action, informed my office of relevant information and
11 participated in decisions concerning this action. The information and
12 documentation provided by the Class Representative was instrumental in
13 establishing the wage and hour violations alleged in this action, and the recovery
14 provided for in the settlement would have been impossible to obtain without his
15 participation.

16 31. The Class Representative faced many risks in bringing this case as a
17 class action. The Class Representative assumed the expense and risk in prosecuting
18 this matter and considered the best interests of the class rather than his personal
19 interests in agreeing to mediate and settle this matter. Notably, the Class
20 Representative assumed heightened risk in pursuing this action because he
21 remained employed by Defendant during the course of litigating this action.
22 Without the effort and risks taken by the Class Representative, the Class Members
23 likely would not have received any financial benefit. Because of the Class
24 Representative's efforts, approximately 749 Class Members will now have the
25 opportunity to participate in a settlement and recover substantial payments for wage
26 and hour violations they may have never known about on their own or been willing
27 to pursue on their own. If each Class Member attempted to pursue his or her legal
28 remedies individually, each person would have been required to expend a

1 significant amount of their own monetary resources and time.

2 32. In sum, this class action would not have been possible without the aid
3 of the Class Representative, who put his own time and effort into the litigation,
4 sacrificed the value of his own individual claims, and placed himself at risk for the
5 sake of the other Class Members. The requested incentive award of \$10,000.00 to
6 the Class Representatives is therefore reasonable to compensate him for his active
7 participation in this lawsuit.

8 **Selection of Class Action Administrator and *Cy Pres* Recipient**

9 33. I requested multiple bids from experienced class action settlement
10 administrators to handle the responsibilities of the Settlement Administrator under
11 this settlement. The Parties accepted the bid of ILYM Group. In its bid, ILYM
12 Group agreed to cap its costs at \$15,000.00 if there are 749 class members and a
13 second distribution of uncashed checks. Accordingly, in the Stipulation, the Parties
14 agreed that settlement administrative costs shall not exceed \$15,000.00.

15 34. No one in my firm has any financial interest in ILYM Group or the *cy*
16 *pres* recipient, Los Angeles Trial Lawyers' Charities ("LATLC"), 2708 Wilshire
17 Boulevard, Suite 391, Santa Monica, CA 90403. Two members of Wilshire Law
18 Firm—Bobby Saadian and Daniel DeSantis—are on LATCL's Board of Directors.

19 **Attorneys' Fees and Costs**

20 35. The settlement provides for attorney's fees and costs to Class Counsel
21 in an amount up to one-third (1/3) of the Gross Settlement Amount, for a maximum
22 fees award of \$533,333.33, plus reasonable litigation expenses to be determined by
23 the court. Class Counsel's litigation costs are presently estimated to be no more
24 than \$20,000.00 total, and we anticipate seeking no more than that amount.

25 36. Based on my experience, I believe the fees and costs provision is
26 reasonable. The fee percentage requested is less than that charged by Class Counsel
27 for other employment cases. Class Counsel invested significant time and resources
28 into the case, with payment deferred to the end of the case, and then, of course,

1 contingent on the outcome. Class Counsel’s efforts have resulted in substantial
2 benefits to Class Members in the form of a significant settlement fund established
3 to compensate Class Members for Defendant’s unlawful wage and hour practices.
4 Without Class Counsel’s efforts, the claims as alleged in the complaint would
5 almost certainly have gone without remedy.

6 37. The efforts expended by Class Counsel thus far include, but are not
7 limited to, the following: interviewing Plaintiff; legal research regarding Plaintiff’s
8 claims and anticipated defenses; obtaining reviewing and analyzing thousands of
9 pages of documents produced by Defendant; propounding written discovery;
10 reviewing written discovery responses; drafting the original, First Amended and
11 Second Amended Complaints; meeting and conferring with Defendant’s counsel to
12 obtain relevant documents and information and on other discovery, pleading and
13 class certification issues; retaining an expert to analyze time and payroll data;
14 working with the expert to analyze the data and prepare a damages analysis;
15 drafting Plaintiff’s mediation brief; attending a full-day mediation and court
16 hearings; negotiating, drafting, and revising the Stipulation, Class Notice and
17 Dispute Form; and drafting the Motion for Preliminary Approval and supporting
18 documents.

19 38. Class Counsel took this case on a contingent basis and has put a
20 substantial amount of time and energy into litigating this case, all while receiving
21 no payment. The risk was significant given that, if the case was unsuccessful, Class
22 Counsel would not have received any compensation for the time our firms spent
23 litigating this case.

24 39. Because most individuals cannot afford to pay for representation in
25 litigation on an hourly basis, Class Counsel represents the majority of its
26 employment law clients on a contingency-fee basis. Pursuant to this arrangement,
27 we are not compensated for our time unless we prevail at trial or successfully settle
28 our clients’ cases. Because Class Counsel is taking the risk that we will not be

1 reimbursed for our time unless our client settles or wins his or her case, we cannot
2 afford to represent an individual employee on a contingency basis if, at the end of
3 our representation, all we are to receive is our regular hourly rate for services. It is
4 essential that we recover more than our regular hourly rate when we win if we are
5 to remain in practice so as to be able to continue representing other individuals in
6 civil rights employment disputes.

7 40. Class Counsel's efforts have resulted in substantial benefits to the
8 Class in the form of a substantial settlement fund established to compensate Class
9 Members for missed meal and rest periods, unpaid wages, and other wage and hour
10 violations. I am informed and believe that, without Class Counsel's efforts, the
11 Labor Code and Wage Order violations alleged in the Second Amended Complaint
12 would have gone without remedy.

13 **My Experience and Qualifications**

14 41. Wilshire Law Firm was selected by Best Lawyers and U.S. News &
15 World Report as one of the nation's Best Law Firms in 2021 and is comprised of
16 over 20 attorneys and over 200 employees. Wilshire Law Firm is actively and
17 continuously practicing in employment litigation, representing employees in both
18 individual and class actions in both state and federal courts throughout California.

19 42. Wilshire Law Firm is qualified to handle this litigation because its
20 attorneys are experienced in litigating Labor Code violations in both individual,
21 class action, and representative action cases. Wilshire Law Firm has handled, and
22 is currently handling, numerous wage and hour class action lawsuits, as well as
23 class actions involving consumer rights and data privacy litigation.

24 43. I graduated from the University of California, Los Angeles's College
25 Honors Program in 2004 with Bachelor of Arts degrees in History and Japanese,
26 *magna cum laude* and *Phi Beta Kappa*. As an undergraduate, I also received a
27 scholarship to study abroad for one year at Tokyo University in Tokyo, Japan. I
28 received my Juris Doctor from Notre Dame Law School in 2008.

1 following *Top Verdict* lists for 2018 in California: Top 20 Civil Rights
2 Violation Verdicts, Top 20 Labor & Employment Settlements, and Top
3 50 Class Action Settlements.

4 c. As lead counsel, I prevailed against Bank of America by: winning
5 class certification on behalf of thousands of employees for California
6 Labor Code violations; defeating appellate review of the court's order
7 certifying the class; defeating summary judgment; and defeating a
8 motion to dismiss. *Frausto v. Bank of America, N.A.*, 334 F.R.D. 192,
9 2020 WL 1290302 (9th Cir. Feb. 27, 2020), 2019 WL 5626640 (N.D.
10 Cal. Oct. 31, 2019), 2018 WL 3659251 (N.D. Cal. Aug. 2, 2018). The
11 decision certifying the class in *Frausto* is also discussed in *Class*
12 *Certification Under Fed. R. Civ. P. 23 in Action by Information*
13 *Technology or Call Center Employees for Violation of State Law Wage*
14 *and Hour Rules*, 35 A.L.R. Fed. 3d Art. 8.

15 d. I was the primary author of the class certification and expert briefs in
16 *ABM Industries Overtime Cases*, 19 Cal.App.5th 277 (2017), a wage
17 and hour class action for over 40,000 class members for off-the-clock,
18 meal period, split shift, and reimbursement claims. *ABM Industries*
19 *Overtime Cases* is the first published California appellate authority to
20 hold that an employer's "auto-deduct policy for meal breaks in light of
21 the recordkeeping requirements for California employers is also an
22 issue amenable to classwide resolution." *Id.* at p. 310.² Notably, the
23 Court of Appeal also held that expert analysis of timekeeping records
24 can also support the predominance requirement for class certification.
25 *Id.* at p. 310-311.

26
27 ² As a California district court observed before the *ABM Industries Overtime*
28 decision, "[t]he case law regarding certification of auto-deduct classes is mixed."
Wilson v. TE Connectivity Networks, Inc., No. 14-CV-04872-EDL, 2017 WL
1758048, at *7 (N.D. Cal. Feb. 9, 2017).

- 1 e. I briefed, argued, and won *Yocupicio v. PAE Group, LLC*, 795 F.3d
2 1057 (9th Cir. 2015). The Ninth Circuit ruled in my client’s favor and
3 held that non-class claims under California’s Private Attorney
4 Generals Act (“PAGA”) cannot be used to calculate the amount in
5 controversy under the Class Action Fairness Act (“CAFA”). This case
6 is cited in several leading treatises such as *Wright & Miller’s Federal*
7 *Practice & Procedure*, and *Newberg on Class Actions*. In October
8 2016, the U.S. Supreme Court denied review of a case that primarily
9 concerned *Yocupicio*. That effort was led by Theodore J. Boutrous,
10 who brought the cert petition, with amicus support from a brief
11 authored by Andrew J. Pincus.³ Considering that leading Supreme
12 Court practitioners from the class action defense bar were very
13 motivated in undermining *Yocupicio* case, but failed, this demonstrates
14 the national importance of the *Yocupicio* decision.
- 15 f. On December 13, 2018, the United States District Court granted final
16 approval of the \$2,500,000 class action settlement in *Mark Brulee, et*
17 *al. v. DAL Global Services, LLC*, No. CV 17-6433 JVS(JCGx), 2018
18 WL 6616659 (C.D. Cal. Dec. 13, 2018) in which I served as lead
19 counsel. In doing so, the Court found: “Class Counsel’s declarations
20 show that the attorneys are experienced and successful litigators.” *Id.*
21 at p. *10.
- 22 g. *Gasio v. Target Corp.*, 2014 U.S. Dist. LEXIS 129852 (C.D. Cal. Sep.
23 12, 2014), a reported decision permitting class-wide discovery even
24 though the employer has a lawful policy because “[t]he fact that a
25 company has a policy of not violating the law does not mean that the
26 employees follow it, which is the issue here.” The court also ordered
27

28 ³ <http://www.chamberlitigation.com/cases/abm-industries-inc-v-castro>

1 defendant to pay for the cost of *Belaire-West* notice.

2 h. In 2013, I represented a whistleblower that reported that his former
3 employer was defrauding the State of California with the help of bribes
4 to public employees. The case, a false claims (*qui tam*) action,
5 resulted in the arrest and criminal prosecution of State of California
6 employees by the California Attorney General’s Office.

7 i. In 2013, I was part of a team of attorneys that obtained conditional
8 certification for over 2,000,000 class members in a federal labor law
9 case for misclassification of independent contractors that did
10 crowdsourced work on the Internet, *Otey v. CrowdFlower, Inc.*, N.D.
11 Cal. Case No. 12-cv-05524-JST (MEJ), resulting in the following pro-
12 plaintiff reported decisions:

- 13 1) 2013 U.S. Dist. LEXIS 151846 (N.D. Cal. Oct. 22, 2013)
14 (holding that an unaccepted Rule 68 offer doesn’t moot
15 plaintiff’s claims, and granting plaintiff’s motion to strike
16 defendant’s affirmative defenses based on
17 *Twombly/Iqbal*).
- 18 2) 2013 U.S. Dist. LEXIS 122007 (N.D. Cal. Aug. 27, 2013)
19 (order granting conditional collective certification).
- 20 3) 2013 U.S. Dist. LEXIS 95687 (N.D. Cal. July 8, 2013)
21 (affirming the magistrate judge’s discovery ruling which
22 held that “evidence of other sources of income is
23 irrelevant to the question of whether a plaintiff is an
24 employee within the meaning of the FLSA”).
- 25 4) 2013 U.S. Dist. LEXIS 91771 (N.D. Cal. June 20, 2013)
26 (granting broad discovery because “an FLSA plaintiff is
27 entitled to discovery from locations where he never
28 worked if he can provide some evidence to indicate

1 company-wide violations”).

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

8 49. Bobby Saadian is the Founding President and Managing Attorney at
9 Wilshire Law Firm. He graduated from California State University, Northridge,
10 Pepperdine University Graziadio Business School and Pepperdine University
11 School of Law. He is listed in both The Best Lawyers in America and Super
12 Lawyers. Through his work with the CAOC, Bobby meets with state attorney
13 generals and legislators to help shape policies designed to protect vulnerable
14 consumers from large corporations. He frequently speaks at trial advocacy,
15 litigation seminars, and other continuing legal education events, including the
16 annual Consumer Attorneys Association of Los Angeles (CAALA) Las Vegas
17 Convention, the National Trial Lawyers Summit and the Association of Plaintiff
18 Interstate Trucking Lawyers of America (APITLA) National Interstate Trucking
19 Supper Summit. He has been named one of the “Most Influential Minority
20 Lawyers” by the Los Angeles Business Journal. The Streets Are For Everyone
21 (SAFE). In 2017, Mr. Saadian started Wilshire Law Firm’s Academic Scholarship
22 Program, which is “committed to helping the next generation of lawyers succeed.”
23 He is also an Executive Board Member of the Los Angeles Trial Lawyers’
24 Charities (LATLC). He is also rated 10.0 (“Superb”) by Avvo.com and he has
25 been awarded “Client’s Choice Award Winner.” He also holds Martindale-Hubbell
26 AV Preeminent Peer Review Rating, the highest possible rating in both legal ability
27 and ethical standards. In 2014 and 2015, he was awarded the “Litigator Award
28

1 Winner”, which is awarded to the Top 1% of lawyers nationwide. He is admitted
2 to practice in the State of California, State of Texas and District of Columbia.

3 50. Robert J. Dart is a Senior Attorney at Wilshire Law Firm. He
4 graduated from Duke University, *cum laude*, and from the University of Chicago
5 Law School. Spanning over 15 years, his legal background includes a judicial
6 clerkship for the Honorable Aleta A. Trauger of the United States District Court for
7 the Middle District of Tennessee, as well as significant work experiences at Quinn,
8 Emanuel, Urquhart & Sullivan LLP and Jenner & Block LLP. Robert has
9 significant experience in consumer and employment class actions, as a part of a
10 team, from 2016 to 2019, who successfully settled innumerable consumer banking
11 class actions, and as a part of Wilshire Law Firm, where he has written successful
12 briefs at both the trial and appellate level in consumer and employment class
13 actions. Robert is admitted to practice in the State of California and State of
14 Illinois.

15 51. Benjamin H. Haber is an Associate Attorney at Wilshire Law Firm.
16 He graduated from the University of California, Los Angeles, with a Bachelor of
17 Arts in Political Science, and received his Juris Doctor from the University of
18 California, Hastings College of the Law in 2016. During law school, he was a
19 member of the executive board for the *Hastings Law Journal*, managing editor for
20 the *SCOCAblog*, and student mediator at the San Francisco Superior Court, Small
21 Claims Division. He was admitted to practice law in the State of California in
22 2017. Since graduating law school, he has focused his legal work primarily on
23 wage-and-hour litigation and has helped obtain dozens of seven-figure settlements
24 on behalf of tens of thousands of workers in California.

25 52. Rachel J. Vinson is a first-year Associate Attorney at Wilshire Law
26 Firm. She was admitted to practice law in the State of California and the Central
27 and Southern Districts of California in 2020. Rachel graduated from Claremont
28 McKenna College with a Bachelor in Arts in Philosophy and Government. She

1 received her Juris Doctor from Washington University in St. Louis where she
2 earned a Scholar in Law Award, was Executive Editor of the Washington
3 University Journal of Law and Policy, was a Finalist in the Client Interviewing and
4 Counseling Competition, and successfully second-chaired a felony trial as a Rule
5 13 Attorney for the Missouri State Public Defender Office. She is also a member of
6 CAALA and CELA.

7 53. My current contingent billing rate of \$750 per hour is consistent with
8 my practice area, lead appellate experience in the Ninth Circuit Court of Appeals,
9 numerous awards received, legal market and accepted hourly rates:

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

26 (b) In the wage and hour class action *Savaglio, et al, v. WalMart*,
27 Alameda County Superior Court No. C-835687-7, Order
28 Granting Class Counsel’s Motion for Attorneys’ Fees, filed

1 September 10, 2010, the Court approved hourly rates from \$435
2 per hour for four years of experience to \$875 per hour for 51
3 years of experience.

4 (c) On January 19, 2021, the Hon. Elihu M. Berle of the Los
5 Angeles County Superior Court approved my \$750 hourly rate
6 when he granted final approval of the class action settlement in
7 *Faye Zhang v. Richemont North America, Inc.*, No.
8 19STCV32396.

9 (d) On December 13, 2018, the United States District Court granted
10 final approval of the \$2,500,000 class action settlement in *Mark*
11 *Brulee, et al. v. DAL Global Services, LLC*, No. CV 17-6433
12 JVS(JCGx), 2018 WL 6616659 (C.D. Cal. Dec. 13, 2018) in
13 which I served as lead counsel. In doing so, the Court approved
14 my then \$600 hourly rate and found: “Class Counsel’s
15 declarations show that the attorneys are experienced and
16 successful litigators.” *Id.* at *10.

17 (e) On September 17, 2018, the Los Angeles Superior Court
18 approved my \$600 hourly rate when it granted final approval of
19 the class action settlement in *Rosillo v. Fashion Nova, Inc.*, No.
20 BC659644.

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

23 Executed on February 12, 2021, at Los Angeles, California.

24
25 */s/ Justin F. Marquez*
26 Justin F. Marquez