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

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

Plaintiff,

v.

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

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 FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND CLASS REPRESENTATIVE SERVICE PAYMENT**

Date: August 6, 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 am  
6 a Senior Partner at Wilshire Law Firm, PLC, counsel of record to Plaintiff Carlos  
7 Moreno (“Plaintiff”). I have personal knowledge of the facts set forth in this  
8 declaration and could and would competently testify to them under oath if called as  
9 a witness.

10 2. This Declaration is submitted in support of Plaintiff’s Motion for Final  
11 Approval of Class Action Settlement and Class Representative Service Payment.

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 periods,  
21 and failed to pay all required meal and rest period premiums for non-compliant meal  
22 and rest periods. Plaintiff also alleges that Defendant failed to pay required double  
23 overtime for all hours worked in excess of 12 hours per workday and all worktime  
24 greater than 8 hours on the 7<sup>th</sup> consecutive day worked. Based on these allegations,  
25 Plaintiff has included claims for failure to pay overtime wages, failure to provide  
26 meal periods, failure to authorize and permit rest periods, failure to provide accurate  
27 wage statements, unfair business practices, and civil penalties under the Private  
28 Attorneys General Act (“PAGA”).

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

7 6. Plaintiff Carlos Moreno initiated this wage-and-hour action on behalf of  
8 himself and a putative class in the Orange County Superior Court on November 26,  
9 2019. The initial Complaint alleged the following claims for relief: (1) failure to pay  
10 overtime wages (Cal. Lab. Code §§ 510, 1194, 1198); (2) failure to provide meal  
11 periods (Cal. Lab. Code §§ 226.7, 512); (3) failure to authorize and permit rest periods  
12 (Cal. Lab. Code § 226.7); (4) failure to provide accurate itemized wage statements  
13 (Cal. Lab. Code § 226); and (5) unfair business practices (Cal. Bus. & Prof. Code §§  
14 17200 *et seq.*). On August 30, 2017, Defendant removed this action to federal court  
15 pursuant to the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1453.

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

18 8. On April 10, 2020, Plaintiff filed a Second Amended Complaint to  
19 modify portions of the allegations and to add an additional cause of action seeking  
20 civil penalties under the Private Attorneys General Act (“PAGA”), California Labor  
21 Code §§ 2698 *et seq.* Prior to filing this action, on November 26, 2019, Plaintiff sent  
22 notice of alleged Labor Code violations to the Labor Workforce Development  
23 Agency (“LWDA”), pursuant to California Labor Code § 2699.3(1).

#### 24 **Discovery and Investigation**

25 9. The Parties have engaged in extensive discovery. On April 7, 2020,  
26 Plaintiff served written discovery, including Requests for Production of Documents  
27 and Interrogatories, on Defendant. The discovery sought information and documents  
28 related to, *inter alia*, Defendant’s policies and procedures for compensating its

1 employees, recording its employees' worktime, providing meal periods, authorizing  
2 and permitting rest periods, and furnishing wage statements. The discovery also  
3 sought information and documents pertaining to the identification of the class  
4 members.

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

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

27  
28

### Settlement Negotiations

1  
2 12. The Parties engaged in a significant amount of investigation, class-wide  
3 discovery, and analysis prior to reaching the proposed settlement. Defendant  
4 responded to Plaintiff's written discovery, provided extensive information on the  
5 company's wage and hour policies and practices, provided the contact information  
6 for the Class Members, and produced over 8,300 pages of relevant documents. It  
7 was only after the exchange of a substantial amount of data and information that the  
8 Parties participated in a full-day mediation session and ultimately reached settlement  
9 of the case.

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

19 14. Under the Settlement Agreement, Pretium will pay \$1,600,000 ("Gross  
20 Settlement Amount") to resolve this litigation.

### Preliminary Approval and Overwhelming Support for the Settlement

21  
22 15. The Court granted Plaintiff's Motion for Preliminary Approval of the  
23 Settlement on March 12, 2021. ECF 54. The initial order granting preliminary  
24 approval required Plaintiff to file a motion requesting attorneys' fees and costs by  
25 July 16, 2021. *Id.* That deadline meant that the motion for attorneys' fees and costs  
26 could be filed after the anticipated deadline of June 24, 2021 for class members to  
27 opt-out or object to the settlement. *See* ECF 55, at 2. However, the Ninth Circuit  
28 has held that class counsel must apply for attorneys' fees before the deadline for class

1 members to object to a class action settlement. *See In re Mercury Interactive Corp.*  
2 *Securities Litigation*, 618 F.3d 988, 993 (9th Cir. 2010). As such, the Parties jointly  
3 moved the Court to modify the Order. ECF 55.

4 16. On March 25, 2021, the Court entered an Amended Order Granting  
5 Motion for Preliminary Approval of Class Action Settlement, requiring Plaintiff to  
6 file a Motion for Attorneys' Fees and Costs before June 3, 2021. ECF 56.

7 17. Notice went out to 745 class members on April 26, 2021. The deadline  
8 for class members to opt-out or object is June 25, 2021. As of the date of filing this  
9 Motion for Final Approval, 127 Notice Packets have been returned to ILYM as  
10 undeliverable. ILYM conducted skip tracing to located some more addresses. In the  
11 instances where the skip tracing could not locate current addresses, Plaintiff's  
12 Counsel actively reached out to those class members through phone calls or text  
13 messages, and was able to obtain approximately 30 updated addresses. The notices  
14 have been sent to those class members at their updated addresses. Many of these  
15 class members likely would not have received the class notices if not for Plaintiff's  
16 Counsel's efforts in directly reaching out to them. The individuals that Plaintiff's  
17 Counsel directly located stand to make \$42,527.48 based on the estimated settlement  
18 payouts, or an average of \$1,417.58 per individual.

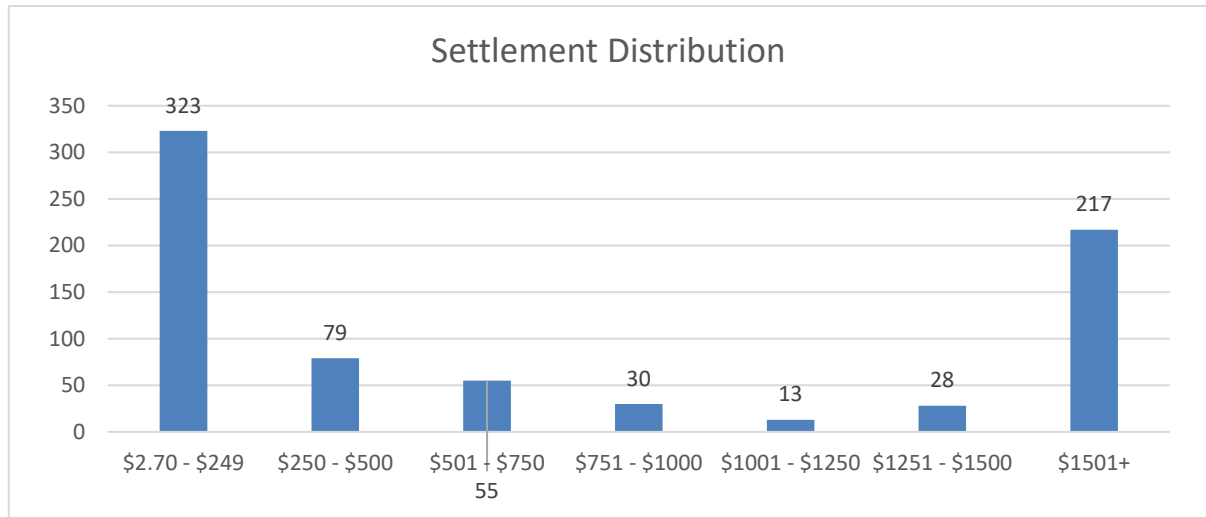
19 18. As a result of ILYM's and Plaintiff's Counsel's efforts, 81 Notice  
20 Packets have been re-mailed. With these efforts, the initial rate of 17.05%  
21 undeliverable notices was reduced to only 6.17%. The total amount of \$21,043.31  
22 is allocated to the 46 members that have been deemed undeliverable, or an average  
23 of \$457.46 per individual. The undeliverable notices represent 6.17% of the class  
24 members, but account for only 2.13% of the net settlement amount to be paid to the  
25 class members.

26 19. The settlement still provides substantial benefits to the class as a whole,  
27 as the overwhelming majority of the class members will be compensated and the  
28

1 settlement fund will be distributed proportionately and fairly according to the class  
 2 member’s time worked.

3 20. The reaction of the Class to the settlement has been overwhelmingly  
 4 positive. Indeed, so far, no class member has opted out of the settlement, no class  
 5 member has objected to the settlement or any requests for attorneys’ fees, and no one  
 6 has disputed the calculation of their workweeks and settlement shares.

7 21. Even after deducting attorneys’ fees and costs, administration costs, and  
 8 the service awards to the named plaintiff, class members will receive approximately  
 9 \$1,321.03 on average and 74 class members will receive the maximum amount of  
 10 \$5,240.85. These Class Members worked during the entire class period from  
 11 November 26, 2015 to February 9, 2021, covering 271.71 workweeks; this is  
 12 equivalent to \$19.29 per workweek. The chart below is a frequency distribution of  
 13 each class member’s net settlement share:



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

23 22. Class Counsel has conducted a thorough investigation into the facts of  
 24 this case. Based on the foregoing discovery and their own independent investigation  
 25 and evaluation, Class Counsel is of the opinion that the Settlement is fair, reasonable,  
 26 and adequate and is in the best interests of the Settlement Class Members in light of  
 27 all known facts and circumstances, including Defendant’s financial condition, the  
 28

1 risk of significant delay, the defenses that could be asserted by Defendants both to  
2 certification and on the merits, trial risk, and appellate risk.

3 23. Based on my analysis of the facts and legal contentions in this case, my  
4 expert's analysis of the time and payroll records provided by Defendant, testimony  
5 and information from Plaintiff and other Settlement Class Members, I evaluated  
6 Defendant's maximum exposure. I took into account the risk of not having the claims  
7 certified and the risk of not prevailing at trial, even if the claims are certified. .

8 24. When Plaintiff filed his Motion for Preliminary Approval on February  
9 12, 2021, I submitted a declaration analyzing the strengths and weaknesses of  
10 Plaintiffs' claims, the realistic range of potential recovery. *See* ECF No. 53-2 at ¶¶  
11 17. Using the data Defendant provided, and with the assistance of an expert, I created  
12 a damages model to evaluate the realistic range of potential recovery for Class  
13 Members. The damages model was based on an estimated 269,000 total shifts  
14 worked by Class Members and an average hourly rate of \$15.38 per hour. On April  
15 12, 2021, Pretium sent the updated class list, which included 745 individuals, to the  
16 ILYM.

17 25. With respect to the meal period claim, Plaintiff estimates that Pretium's  
18 realistic potential liability is \$1.26 million. As discussed above, Plaintiff contends  
19 that Pretium failed to provide legally compliant meal periods to the putative class  
20 members for all shifts worked in excess of 5 hours and failed to provide the requisite  
21 meal period premiums owed. Plaintiff's expert found that 98.2% of the total shifts  
22 worked by Class Members (or 25,303 shifts among the 25,762 shifts analyzed) were  
23 greater than 5 hours, and thus entitled those employees to receive at least one  
24 uninterrupted, 30-minute meal period. Moreover, Plaintiff's expert determined  
25 33.3% (or 8,569 shifts among the shifts analyzed) had at least one facially non-  
26 compliant meal period (i.e., a short meal period, late meal period, and/or missed meal  
27 period). Specifically, among the eligible shifts where the employees worked at least  
28 5 hours, Plaintiff's expert found that 20.4% of the shifts had a first meal period



1 recorded after the employee's 5<sup>th</sup> hour of work; 11.6% of the recorded shifts had a  
2 first meal period recorded that was less than 30 minutes long; 0.7% of the eligible  
3 shifts had no recorded meal period; and 98.3% of the shifts exceeding 10 hours had  
4 no recorded second meal period. Plaintiff's expert also found that Defendant began  
5 paying meal period premiums in around July 2019, and may have paid up to \$75,000  
6 meal period premiums to the class members from July 2019 to the present. Assuming  
7 that Defendant was liable to pay additional meal premiums for 100% of all the  
8 remaining facially non-compliant meal periods in the records analyzed, and  
9 subtracting potential liability based on the assumed premium wages already paid,  
10 Plaintiff's expert determined the potential maximum exposure for this claim was  
11 approximately \$1.26 million.

12 26. With respect to the rest period claim, Plaintiff estimates that  
13 Defendant's realistic maximum liability is \$2.08 million. Plaintiff argues that  
14 Defendant's rest break policy is facially defective because it failed to provide rest  
15 breaks for every four hours "or major fraction thereof language," as required by the  
16 Wage Order and *Brinker Rest. Corp. v. Super. Ct.*, 53 Cal.4th 1004 (2012), raising  
17 the inference that Defendant failed to authorize and permit Class Members to take  
18 second rest periods when they worked shifts between 6 to 8 hours long, and failed to  
19 authorize and permit Class Members to take a third rest periods during shifts  
20 exceeding 10 hours. Plaintiff also contends that Defendant failed to provide off-duty  
21 rest periods by requiring employees to remain on the company premises during  
22 allocated rest periods. *Augustus v. ABM Sec. Servs., Inc.*, 2 Cal.5th 257 (2016).  
23 Assuming a 100% violation rate, Plaintiff's expert determined that potential exposure  
24 for this claim would be approximately \$4,164,000 (269,000 shifts multiplied by  
25 \$15.48). However, Plaintiff concedes that it is incorrect to assume Defendant violated  
26 the law 100% of the time because Class Members occasionally were able to take  
27 breaks, and Defendant may have succeeded in showing that on-premises rest breaks  
28

1 were not always required; to account for this, Plaintiff’s counsel reduced the \$4.16  
2 million figure by 50% to \$2.08 million.

3 27. With respect to the claim that Defendant failed to pay overtime and  
4 double overtime correctly, Plaintiff estimates that Defendant’s potential maximum  
5 liability is \$0.15 million, which also includes interest. Again, Plaintiff’s expert  
6 arrived at this figure by doing a shift-by-shift analysis of the sample data to determine  
7 the total amount of recorded double overtime paid below twice the regular rate of  
8 pay, and the total amount of unpaid overtime compensation when non-discretionary  
9 renumeration earned was not included in the calculation for the regular rate of pay.  
10 *Alvarado v. Dart Container Corp. of Cal.* 4 Cal.5th 542, 554 (2018) (confirming that  
11 “[r]egular rate of pay, which can change from pay period to pay period, includes  
12 adjustments to the straight time rate, reflecting, among other things, shift differentials  
13 and the per-hour value of any non-hourly compensation the employee has earned”).  
14 Plaintiff’s expert then extrapolating those results to the class.

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

1 that the underlying claims are realistically estimated to be \$4.7 million, such a  
2 disproportionate award would also raise Due Process concerns. *Thurman v. Bayshore*  
3 *Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming trial court’s  
4 finding that awarding maximum PAGA penalties would be unjust). Weighing these  
5 factors, Plaintiff’s counsel arrived at \$1.5 million for statutory and civil penalties.

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

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

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

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

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 Cal.App.5th  
3 277 (2017), a wage-and-hour class action for over 40,000 class members for off-the-  
4 clock, meal period, split shift, and reimbursement claims. Although the trial court  
5 denied class certification on September 1, 2011, that decision was reversed  
6 unanimously on appeal more than 6 years later on December 11, 2017.

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

17 34. The Net Settlement Amount available for Class Member settlement  
18 payments is estimated to be \$984,166.67, for a class of 745 individuals, **providing for**  
19 **an average individual settlement payment of \$1,321.03 per Class Member.**

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

1 **Class Representative’s Enhancement Award**

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

14 37. The Class Representative faced many risks in bringing this case as a class  
15 action. The Class Representative assumed the expense and risk in prosecuting this  
16 matter and considered the best interests of the class rather than his personal interests  
17 in agreeing to mediate and settle this matter. Notably, the Class Representative  
18 assumed heightened risk in pursuing this action because he remained employed by  
19 Defendant during the course of litigating this action. Without the effort and risks taken  
20 by the Class Representative, the Class Members likely would not have received any  
21 financial benefit. Because of the Class Representative’s efforts, approximately 745  
22 Class Members will now have the opportunity to participate in a settlement and  
23 recover substantial payments for wage and hour violations they may have never known  
24 about on their own or been willing to pursue on their own. If each Class Member  
25 attempted to pursue his or her legal remedies individually, each person would have  
26 been required to expend a significant amount of their own monetary resources and  
27 time.

28

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

7                           **Plaintiff’s Counsel’s Experience and Qualifications**

8           39. Wilshire Law Firm, PLC was selected by Best Lawyers and U.S. News  
9 & World Report as one of the nation’s Best Law Firms in 2021 and is comprised of  
10 over 20 attorneys and over 200 employees. Wilshire Law Firm is actively and  
11 continuously practicing in employment litigation, representing employees in both  
12 individual and class actions in both state and federal courts throughout California.

13           40. Wilshire Law Firm is qualified to handle this litigation because its  
14 attorneys are experienced in litigating Labor Code violations in both individual, class  
15 action, and representative action cases. Wilshire Law Firm has handled, and is  
16 currently handling, numerous wage and hour class action lawsuits, as well as class  
17 actions involving consumer rights and data privacy litigation.

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

23           42. My practice is focused on advocating for the rights of consumers and  
24 employees in class action litigation and appellate litigation. I am currently the  
25 primary attorney in charge of litigating several class action cases in state and federal  
26 courts across the United States.

27           43. I have received numerous awards for my legal work. From 2017 to  
28 2020, Super Lawyers selected me as a “Southern California Rising Star.” In 2016

1 and 2017, the National Trial Lawyers selected me as a “Top 40 Under 40” attorney.  
2 I am also rated 10.0 (“Superb”) by Avvo.com.

3 44. I am on the California Employment Lawyers Association (CELA)’s  
4 Wage and Hour Committee and Mentor Committee, and I was selected to speak at  
5 CELA’s 2019 Advanced Wage & Hour Seminar on the topic of manageability of  
6 class actions. Since 2013, I have actively mentored young attorneys through CELA’s  
7 mentorship program.

8 45. I am also an active member of the Consumer Attorneys of California  
9 (CAOC). In 2020, I was selected for a position on CAOC’s Board of Directors. I  
10 am also a member of CAOC’s Diversity Committee, and I help assist the CAOC in  
11 defeating bills that harm employees. Indeed, I recently helped assist Jacqueline  
12 Serna, Esq., Legislative Counsel for CAOC, in defeating AB 443, which proposed  
13 legislation that sought to limit the enforceability of California Labor Code § 226.

14 46. As the attorney responsible for day-to-day management of this matter at  
15 Wilshire Law Firm, I have over ten years of experience with litigating wage and hour  
16 class actions. Over the last ten years, I have managed and assisted with the litigation  
17 and settlement of several wage and hour class actions. In those class actions, I  
18 performed similar tasks as those performed in the course of prosecuting this action.  
19 My litigation experience includes:

- 20 (a) I served as lead or co-lead in negotiating class action settlements  
21 worth over \$10 million in gross recovery to class members in  
22 2020.
- 23 (b) To my knowledge, I am the only attorney to appear on each of the  
24 following *Top Verdict* lists for 2018 in California: Top 20 Civil  
25 Rights Violation Verdicts, Top 20 Labor & Employment  
26 Settlements, and Top 50 Class Action Settlements.
- 27 (c) As lead counsel, I prevailed against Bank of America by: winning  
28 class certification on behalf of thousands of employees for

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

- 11 (d) I was the primary author of the class certification and expert briefs  
12 in *ABM Industries Overtime Cases*, 19 Cal.App.5th 277 (2017), a  
13 wage and hour class action for over 40,000 class members for off-  
14 the-clock, meal period, split shift, and reimbursement claims.  
15 *ABM Industries Overtime Cases* is the first published California  
16 appellate authority to hold that an employer’s “auto-deduct policy  
17 for meal breaks in light of the recordkeeping requirements for  
18 California employers is also an issue amenable to classwide  
19 resolution.” *Id.* at 310.<sup>1</sup> Notably, the Court of Appeal also held  
20 that expert analysis of timekeeping records can also support the  
21 predominance requirement for class certification. *Id.* at 310-311.
- 22 (e) I briefed, argued, and won *Yocupicio v. PAE Group, LLC, et al.*,  
23 795 F.3d 1057 (9th Cir. 2015). The Ninth Circuit ruled in my  
24 client’s favor and held that non-class claims under California’s  
25 Private Attorney Generals Act (“PAGA”) cannot be used to

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26  
27 <sup>1</sup> 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, \*7 (N.D. Cal. Feb. 9, 2017).



1 calculate the amount in controversy under the Class Action  
2 Fairness Act (“CAFA”). This case is cited in several leading  
3 treatises such as Wright & Miller’s *Federal Practice &*  
4 *Procedure*, and *Newberg on Class Actions*. In October 2016, the  
5 U.S. Supreme Court denied review of a case that primarily  
6 concerned *Yocupicio*. That effort was led by Theodore J.  
7 Boutrous, who brought the cert petition, with amicus support from  
8 a brief authored by Andrew J. Pincus.<sup>2</sup> Considering that leading  
9 Supreme Court practitioners from the class action defense bar  
10 were very motivated in undermining *Yocupicio* case, but failed,  
11 this demonstrates the national importance of the *Yocupicio*  
12 decision.

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

20 (g) *Gasio v. Target Corp.*, 2014 U.S. Dist. LEXIS 129852 (C.D. Cal.  
21 Sep. 12, 2014), a reported decision permitting class-wide  
22 discovery even though the employer has a lawful policy because  
23 “[t]he fact that a company has a policy of not violating the law  
24 does not mean that the employees follow it, which is the issue  
25 here.” The court also ordered defendant to pay for the cost of  
26 *Belaire-West* notice.

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27  
28 <sup>2</sup> <http://www.chamberlitigation.com/cases/abm-industries-inc-v-castro>

1 (h) In 2013, I represented a whistleblower that reported that his  
2 former employer was defrauding the State of California with the  
3 help of bribes to public employees. The case, a false claims (*qui*  
4 *tam*) action, resulted in the arrest and criminal prosecution of  
5 State of California employees by the California Attorney  
6 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  
9 law case for misclassification of independent contractors that did  
10 crowdsourced work on the Internet, *Otey v. CrowdFlower, Inc.*,  
11 N.D. Cal. Case No. 12-cv-05524-JST (MEJ), resulting in the  
12 following pro-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 *Twombly/Iqbal*).
- 17 2) 2013 U.S. Dist. LEXIS 122007 (N.D. Cal. Aug. 27, 2013)  
18 (order granting conditional collective certification).
- 19 3) 2013 U.S. Dist. LEXIS 95687 (N.D. Cal. July 8, 2013)  
20 (affirming the magistrate judge's discovery ruling which  
21 held that "evidence of other sources of income is irrelevant  
22 to the question of whether a plaintiff is an employee within  
23 the meaning of the FLSA").
- 24 4) 2013 U.S. Dist. LEXIS 91771 (N.D. Cal. June 20, 2013)  
25 (granting broad discovery because "an FLSA plaintiff is  
26 entitled to discovery from locations where he never worked  
27 if he can provide some evidence to indicate company-wide  
28 violations").

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

7 47. Robert J. Dart is a Senior Attorney at Wilshire Law Firm. Robert's  
8 current hourly rate is \$700. He graduated from Duke University, cum laude, and  
9 from the University of Chicago Law School. Spanning over 15 years, his legal  
10 background includes a judicial clerkship for the Honorable Aleta A. Trauger of the  
11 United States District Court for the Middle District of Tennessee, as well as  
12 significant work experiences at Quinn, Emanuel, Urquhart & Sullivan LLP and  
13 Jenner & Block LLP. Robert has significant experience in consumer and  
14 employment class actions, as a part of a team, from 2016 to 2019, who successfully  
15 settled innumerable consumer banking class actions, and as a part of Wilshire Law  
16 Firm, where he has written successful briefs at both the trial and appellate level in  
17 consumer and employment class actions. Robert is admitted to practice in the State  
18 of California and State of Illinois. In *Sondra Ramirez v. Baxter Credit Union*, No.  
19 3:16-cv-03765, the court recognized Robert's hourly rate of \$600 as reasonable,  
20 because the hourly rates were in line with prevailing market rates and considering  
21 the contingent risk and complexity of the action. *Sondra Ramirez v. Baxter Credit*  
22 *Union*, No. 3:16-cv-03765 (N.D. Cal., December 19, 2017), ECF 79, at \*3. He has  
23 since then accumulated much more experience and successes in representing his  
24 clients and is charging a higher hourly rate.

25 48. Benjamin H. Haber is a fifth-year Associate Attorney at Wilshire Law  
26 Firm. His current hourly rate is \$500. He graduated from the University of  
27 California, Los Angeles, with a Bachelor of Arts in Political Science, and received  
28 his Juris Doctor from the University of California, Hastings College of the Law in

1 2016. During law school, he was a member of the executive board for the Hastings  
2 Law Journal, managing editor for the SCOCAblog, and student mediator at the San  
3 Francisco Superior Court, Small Claims Division. He was admitted to practice law  
4 in the State of California in 2017. Since graduating from law school, he has focused  
5 his legal work primarily on wage-and-hour litigation and has helped obtain dozens  
6 of seven-figure settlements on behalf of tens of thousands of workers in California.

7 49. Rachel J. Vinson is a second-year Associate Attorney at Wilshire Law  
8 Firm. She is admitted to practice law in the State of California and the Central and  
9 Southern Districts of California in 2020. Her current hourly rate is \$300. Rachel  
10 graduated from Claremont McKenna College with a Bachelor's in Arts in Philosophy  
11 and Government. She received her Juris Doctor from Washington University in St.  
12 Louis where she earned a Scholar in Law Award, was Executive Editor of the  
13 Washington University Journal of Law and Policy, was a Finalist in the Client  
14 Interviewing and Counseling Competition, and successfully second-chaired a felony  
15 trial as a Rule 13 Attorney for the Missouri State Public Defender Office. She is also  
16 a member of CAALA and CELA.

17 50. Ronghua Guan is an Associate Attorney at Wilshire Law Firm. She is  
18 admitted to practice in the States of California, Missouri, and Texas and in the United  
19 States District Courts for the Eastern District of Missouri and the Central District of  
20 California. Ronghua's current hourly rate is \$400. She received her Juris Doctor from  
21 Washington University in St. Louis in 2018 where she earned a Dean's Fellowship  
22 Award, was on the Dean's List, and received the honor of Order of Barrister upon  
23 graduation. She was the Executive Articles Editor of the Washington University  
24 Global Studies Law Review and competed in the Vis International Arbitration Moot.  
25 Before joining Wilshire Law Firm, she practiced in a top tier insurance defense law  
26 firm in St. Louis, Missouri for two and a half years. She successfully obtained motions  
27 to dismiss and motions for summary judgment in employment discrimination and  
28 retaliation, legal malpractice, and business litigation cases on behalf of her clients

1 while practicing in Missouri. She also successfully opposed many pretrial motions.  
2 She has almost three years of experience in employment cases including wage-and-  
3 hour class action cases.

4 51. Min Jee Kim is a paralegal at Wilshire Law Firm with eight years of  
5 experience working at law firms, including over three years of experience working  
6 on class action cases. She is a graduate of the University of California, San Diego  
7 with a Bachelor's of Arts degree in Economics.

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

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

27 (b) In the wage and hour class action *Savaglio, et al, v. WalMart*,  
28 Alameda County Superior Court No. C-835687-7, Order Granting

1 Class Counsel’s Motion for Attorneys’ Fees, filed September 10,  
2 2010, the Court approved hourly rates from \$435 per hour for four  
3 years of experience to \$875 per hour for 51 years of experience.

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

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

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

20 **Wilshire Law Firm’s Final Lodestar and Costs**

21 53. Since the filing of Plaintiff’s Motion for Attorney’s Fees and Costs on  
22 June 3, 2021, Class Counsel has expended additional time related to drafting the  
23 Motion for Final Approval and supporting documents, communicating with ILYM  
24 regarding the class notices, and contacting Class Members to get updated addresses  
25 for purposes of sending them class notices. Plaintiff’s Counsel incurred an additional  
26 of 46.7 hours in these efforts. Legal assistants employed with Plaintiff’s Counsel’s  
27 office also incurred approximately 25-30 hours attempting to locate updated class  
28 member addresses and contacting the class members; however, these hours worked

1 by legal assistants are not included in Plaintiff’s Counsel’s timesheets. Plaintiff’s  
 2 Counsel’s additional timesheets, when combined with the previously submitted  
 3 timesheets, will show that the lodestar for Plaintiff’s Counsel increased to \$207,395  
 4 and the multiplier reduced to 2.57. This multiplier is fair and reasonable because of  
 5 the reasons stated in Plaintiff’s Motion for Attorneys’ Fees and Costs.

6 54. The lodestar for Wilshire Law Firm based on the Motion for Attorneys’  
 7 Fees filed on June 3, 2021 was as follows:

Person	Role	Hours	Rate	Lodestar
Justin F. Marquez	Senior Partner (10+ years)	147.4	\$750	\$104,775
Robert J. Dart	Senior Attorney (10+ years)	32.0	\$700	\$22,400
Benjamin H. Haber	Associate Attorney (5 <sup>th</sup> year)	76.6	\$500	\$38,300
Ronghua Guan	Associate Attorney (3 <sup>rd</sup> year)	23.4	\$400	\$9,360
Rachel J. Vinson	Associate Attorney (2 <sup>nd</sup> year)	5.8	\$300	\$1,740
Min Jee Kim	Paralegal	21.0	\$150	\$3,150
	<b>Total:</b>	<b>306.2</b>		<b>\$185,500</b>

16 55. The added lodestar for Wilshire Law Firm since the filing of the Motion  
 17 for Attorneys’ Fees is as follows:

Person	Role	Hours	Rate	Lodestar
Justin F. Marquez	Senior Partner (10+ years)	4.5	\$750	\$3,375
Benjamin H. Haber	Associate Attorney (5 <sup>th</sup> year)	16.4	\$500	\$8,200
Ronghua Guan	Associate Attorney (3 <sup>rd</sup> year)	25.8	\$400	\$10,320
	<b>Additional Total:</b>	<b>46.7</b>		<b>\$21,895</b>
	<b>Final Total:</b>	<b>352.9</b>		<b>\$207,395</b>

25 56. All the hours claimed by Plaintiff’s counsel were reasonably necessary  
 26 to litigate this matter. Attached as **Exhibit A** to this declaration is a copy of Wilshire  
 27 Law Firm’s **updated** timesheets in this matter, since the filing of the Motion for  
 28

1 Attorneys' Fees, which accurately state the hours contemporaneously recorded by  
2 the attorneys at Wilshire Law Firm, up the filing of the Motion for Final Approval.

3 57. There are additional hours devoted by me (and by my colleagues) to this  
4 litigation that are not captured in Wilshire Law Firm's timesheets, but Plaintiff's  
5 counsel does not seek to recover such hours in their Motion. These figures do not  
6 include any time spent after filing the Motion for Final Approval, such as any follow  
7 up work related to administering the settlement.

8 58. I estimate that Wilshire Law Firm will spend another 20-30 hours on  
9 this case at an average hourly rate of \$600.00, performing tasks such as preparing for  
10 and appearing at the Final Fairness Hearing, overseeing the settlement administration  
11 process, and responding to inquiries from Class Members. Based on my experience,  
12 after the notice is mailed, numerous Class Members will call my office to inquire  
13 about the status of the case and to ask for further information. We also bear the risk  
14 of taking whatever actions are necessary if Defendant fails to pay. In one of my  
15 recent cases, my firm spent over 50 hours, post-final approval, in collection efforts  
16 on behalf of the class.

17 59. On January 19, 2021, the Hon. Elihu M. Berle of the Los Angeles  
18 County Superior Court approved all the above requested hourly rates for Justin F.  
19 Marquez, Rachel J. Vinson, and Min Jee Kim when he granted final approval of the  
20 class action settlement in *Faye Zhang v. Richemont North America, Inc.*, No.  
21 19STCV32396.

22 60. As of the drafting of this motion, my office has incurred \$14,690.58 in  
23 expenses litigating this action. These expenses were reasonably necessary to the  
24 litigation and were actually incurred by my office. They should be reimbursed in full,  
25 up to the maximum amount allowed in the Settlement Agreement. Attached as  
26 **Exhibit B** to this declaration is a breakdown of costs incurred by my office, updated  
27 since the filing of the Motion for Final Approval.

28



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

3 Executed on July 9, 2021, in Los Angeles, California.  
4

5 */s/ Justin F. Marquez*  
6 \_\_\_\_\_  
7 Justin F. Marquez  
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