BIBIYAN LAW GROUP, P.C.
Vedang J. Patel (SBN 328647)
vedang@tomorrowlaw.com
Brandon M. Chang (SBN 316197)
brandon@tomorrowlaw.com
1460 Westwood Boulevard
Los Angeles, California 90024
Tel: (310) 438-5555; Fax: (310) 300-1705

Attorneys for Plaintiffs, BLANCA JAUREGUI and CARLOS AGUERO, individually and on behalf of themselves and all others similarly situated and aggrieved

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

BLANCA I. JAUREGUI and CARLOS AGUERO, as individuals and on behalf of all others similarly situated and aggrieved,

Plaintiffs,

v.

SAGE APARTMENT COMMUNITIES, INC., a Nevada corporation; INVESTMENT PROPERTY GROUP UT, INC., a Utah corporation; and INVESTMENT PROPERTIES GROUP, LLC, a California limited liability company; and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 30-2022-01259919-CU-OE-CXC

[Assigned for all purposes to the Hon. William Claster in Dept. CX-101]

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT AND PROVISIONAL CLASS CERTIFICATION FOR SETTLEMENT PURPOSES ONLY; DECLARATIONS OF BRANDON M. CHANG, DAVID D. BIBIYAN, PLAINTIFFS, AND SEAN HARTRANFT IN SUPPORT THEREOF

HEARING INFORMATION:

DATE: December 18, 2026
TIME: 9:00 a.m.
DEPT: CX-101

Reservation Number: 74972183

Filing Date: May 16, 2022
Trial Date: None Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on December 18, 2026, at 9:00 a.m., or as soon thereafter as they may be heard in Department CX-101 of the Superior Court of the State of California for the County of Orange, plaintiffs Blanca Jauregui ("Plaintiff Jauregui") and Carlos Aguero ("Plaintiff Aguero," and collectively, "Plaintiffs"), on behalf of themselves and all others similarly situated and aggrieved, will and hereby does move for this Court for entry of an Order:

1. Preliminarily certifying the following settlement class ("Settlement Class," "Settlement Class Members" or "Class Members") for the purpose of settlement only: all persons who are or previously were directly employed by defendants Sage Apartment Communities Inc. and Investment Property Group UT, Inc. (collectively, "Defendants") in California and classified as non-exempt employees at any of Defendants' locations in the State of California at any time between May 16, 2018 through the date the Court grants preliminary approval of the class ("Class Period").

2. Preliminarily approving Plaintiffs as Class Representatives.

3. Preliminary approving David D. Bibiyan and Vedang J. Patel of Bibiyan Law Group, P.C., as Class Counsel.

4. Preliminarily approving the settlement claims under the terms set forth in the Stipulation of Settlement of Class and PAGA Action and Release of Claims ("Settlement Agreement").

5. Preliminarily approving payment of the Gross Settlement Amount of $2,200,000.00, which is subject to escalation pursuant to the Stipulation of Settlement of Class and PAGA Action and Release of Claims ("Settlement," "Agreement," or "Settlement Agreement").

6. Approving the Notice of Pendency of Class and Representative Action Settlement and Final Hearing Date ("Class Notice") submitted herewith.

7. Appointing Apex Class Action, LLC ("Apex" or "Settlement Administrator") to administer the Settlement, including distribution of the Class Notice, as set forth in the Settlement Agreement.

8. Preliminarily approving the payment not to exceed $7,990.00 for settlement administration to the Settlement Administrator from the Gross Settlement Amount.

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9. Preliminarily approving a service award in an amount of not more than $10,000.00 to each of the Plaintiffs, for a total amount of $20,000.00 to Plaintiffs, in consideration for Plaintiffs' extensive efforts in prosecuting this case.

10. Preliminarily approving payment of reasonable attorneys' fees to Class Counsel in the amount of not more than one-third (1/3) of the Gross Settlement Amount which, unless increased pursuant to the Settlement Agreement, amounts to $733,333.33.

11. Preliminarily approving reimbursement of Class Counsel's costs in an amount, according to proof, of not more than $50,000.00.

12. "Aggrieved Employees" means all persons who are or previously were employed by Defendants in California and classified as non-exempt employees at any time during the period from May 16, 2021 through the end of the Class Period ("PAGA Period").

13. Preliminarily approving PAGA penalties in the amount of $220,000.00, seventy-five percent (75%) or $165,000.00 of which will be paid to the Labor and Workforce Development Agency ("LWDA") out of the Gross Settlement Amount, and twenty-five percent (25%) or $55,000.00 of which will be distributed to Aggrieved Employees.

14. Entering an Order preliminarily approving the Settlement consistent with the terms of the Settlement Agreement.

Good cause exists for granting this Motion in that the proposed settlement is fair, reasonable and adequate. This Motion will be based on this Notice of Motion, the Memorandum of Points and Authorities filed herewith, the Declarations of Brandon M. Chang, David D. Bibiyan, Plaintiffs, and Sean Hartranft and exhibits attached thereto, arguments of counsel and upon such other materials contained in the file and pleadings of this action.

Dated: October 1, 2026

BIBIYAN LAW GROUP, P.C.

Brandon M. Chang

BRANDON M. CHANG
Attorneys for Plaintiffs, BLANCA JAUREGUI and CARLOS AGUERO, individually and on behalf of themselves and all others similarly situated and aggrieved

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Blanca Jauregui ("Plaintiff Jauregui") and Carlos Aguero ("Plaintiff Aguero," and collectively, "Plaintiffs"), on behalf of themselves and all others similarly situated and aggrieved, hereby apply for preliminary approval of the proposed Stipulation of Settlement of Class and PAGA Action and Release of Claims ("Settlement," "Agreement" or "Settlement Agreement") upon the terms and conditions set forth in the Settlement Agreement, attached to the concurrently filed Declaration of Brandon M. Chang ("Chang Decl."), attached as Exhibit "1."

On May 16, 2022, Plaintiff Jauregui filed with the Labor and Workforce Development Agency ("LWDA") and served on defendants Sage Apartment Communities Inc. and Investment Property Group UT, Inc. (collectively, "Defendants"), a notice under Labor Code section 2699.3, stating Plaintiff Jauregui intended to serve as a proxy of the LWDA to recover civil penalties on behalf of Aggrieved Employees for alleged Labor Code violations ("Jauregui PAGA Notice"). A true and correct copy of the Jauregui PAGA Notice is attached to the Chang Decl. as Exhibit "2."

On May 16, 2022, Plaintiff Jauregui filed a Class Action complaint against Defendants in Orange County Superior Court, Case No. 30-2022-01259919-CU-OE-CXC, alleging claims for: (1) Failure to Pay Overtime Wages; (2) Failure to Pay Minimum Wages; (3) Failure to Provide Meal Periods; (4) Failure to Provide Rest Periods; (5) Waiting Time Penalties; (6) Wage Statement Violations; (7) Failure to Timely Pay Wages; (8) Failure to Indemnify; and (9) Unfair Competition (the "Class Action").

On November 16, 2022, Plaintiff Jauregui filed a PAGA complaint in Orange County Superior Court, Case No. 30-2022-01292683-CU-OE-CXC, alleging claims for: Private Attorneys General Act of 2004 for Civil Penalties Under Labor Code Sections 210, 226.3, 558, 1174.5, 1197.1 and 2699 (the "PAGA Action").

On May 12, 2023, Plaintiff Aguero filed a Class Action complaint against Defendants in Orange County Superior Court, Case No. 30-203-01325117-CU-OE-CXC, alleging claims for: (1) Failure to Pay Overtime Wages; (2) Failure to Pay Minimum Wages; (3) Failure to Provide Meal Periods; (4) Failure to Provide Rest Periods; (5) Waiting Time Penalties; (6) Wage Statement

Violations; (7) Failure to Timely Pay Wages; (8) Failure to Indemnify; (9) Misclassification; and (10) Unfair Competition (the "Aguero Class Action").

On May 29, 2024, Plaintiff Aguero filed with the LWDA and served on Defendants, a notice under Labor Code section 2699.3, stating Plaintiff Aguero intended to serve as a proxy of the LWDA to recover civil penalties on behalf of Aggrieved Employees for alleged Labor Code violations ("Aguero PAGA Notice"). A true and correct copy of the Aguero PAGA Notice is attached to the Chang Decl. as Exhibit "3."

On August 21, 2024, Plaintiff Aguero filed a PAGA complaint in Orange County Superior Court, Case No. 30-2024-01420186-CU-OE-CXC, alleging claims for: Private Attorneys General Act of 2004 for Civil Penalties Under Labor Code Sections 210, 226.3, 558, 1174.5, 1197.1 and 2699 (the "Aguero PAGA Action").

Thereafter, the Parties agreed to exchange informal discovery and attend mediation.

Prior to mediation Plaintiffs obtained, through informal discovery, time and payroll records for all Class Members through the date of mediation, class data points, and documents pertaining to Plaintiffs' employment.

Plaintiffs' investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc. (*1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc. (2008)* 168 Cal.App.4th 116, 129-130 ("Dunk/Kullar").

On January 22, 2026, the Parties participated in mediation presided over by Lynn Frank, Esq., an experienced mediator of wage and hour class and PAGA actions. The mediation concluded without a settlement, but Mediator Frank made a mediator's proposal, which was accepted by both Parties.

The Parties stipulated to Plaintiffs' filing a First Amended Complaint in the Class Action that includes Plaintiff Aguero as a named plaintiff and Plaintiffs' claims in the Class Action, PAGA Action, Aguero Class Action, and Aguero PAGA Action. Upon the acceptance of the First Amended Complaint in the Class Action, Plaintiffs will dismiss the PAGA Action, Aguero Class Action, and Aguero PAGA Action, without prejudice, to effectively consolidate the four Actions

for the purpose of settlement approval. The First Amended Complaint shall be considered as the "Operative Complaint."

Class Counsel have conducted significant investigation of the law and facts relating to the claims asserted in the Action and the PAGA Notice, and have concluded that the Settlement set forth herein is fair, reasonable, adequate and in the best interests of the Settlement Class, taking into account the sharply contested issues involved, the expense and time necessary to litigate the Action through trial and any appeals, the risks and costs of further litigation of the Action, the risk of an adverse outcome, the uncertainties of complex litigation, the information learned through discovery regarding Plaintiffs' allegations, and the substantial benefits to be received by Settlement Class Members.

II. THE SETTLEMENT

Subject to Court approval pursuant to Code of Civil Procedure section 382 and California Rules of Court, rule 3.679, *et seq*., the Parties have agreed to settle the Action by agreement upon the terms and conditions and for the consideration set forth in the Settlement Agreement, a copy of which is attached to the Chang Decl. as Exhibit "1" thereto. A summary of the terms of the settlement are as follows:

Defendants will stipulate, for purpose of the Settlement only, as follows:

- Certification of a class ("Settlement Class," "Settlement Class Members" or "Class Members") defined as: all persons who are or previously were directly employed by Defendants in California and classified as non-exempt employees at any of Defendants' locations in the State of California at any time between May 16, 2018 through the date the Court grants preliminary approval of the class ("Class Period").
- Defendants will pay $2,200,000.00 ("Gross Settlement Amount") to resolve the matter.
- At the time of mediation, Defendants estimated that there are approximately 300 Class Members who worked approximately 36,334 Workweeks during the Class Period. The Parties acknowledge and agree that this data (and other information provided by Defendants for purposes of mediation) was relied on to extrapolate and reach an arms-length negotiation of Plaintiffs' claims in the Actions through the Class Period. Should

the number of Workweeks increase by more than 10% of what was represented at the mediation during the Class Period, the Gross Settlement Amount will be increased on a pro-rata basis for any Workweek added above the 10% increase. For example, if the number is 11% or higher, the Settlement Amount will be increased by 1%. Defendants will provide a declaration under penalty of perjury confirming the number of applicable Class Members and Workweeks they worked during the applicable Class Period one week prior to Plaintiffs' deadline to file their motion for preliminary approval of the settlement.

- Defendants will pay the employer's share of taxes separate and apart from the Gross Settlement Amount.
- This is a non-reversionary settlement.
- Class Members will be paid their *pro rata* share of the class action settlement based on the total number of Workweeks[1] worked during the Class Period.
- The Settlement Administration costs, estimated not to exceed $7,990.00 will be paid out of the Gross Settlement Amount.
- Class Counsel, comprised of David D. Bibiyan and Vedang J. Patel of Bibiyan Law Group, P.C., will apply for, and Defendants will not oppose, attorneys' fees of not more than one-third (1/3) of the Gross Settlement Amount, which, unless escalated pursuant to the Settlement Agreement, amounts to $733,333.33, and actual costs, not more than $50,000.00, all of which will be paid out of the Gross Settlement Amount.
- Class Counsel will apply for, and Defendants will not oppose, a service award in an amount not to exceed $10,000.00 each, to a total amount of $20,000.00, for the Class Representatives, which will be paid out of the Gross Settlement Amount.
- "Aggrieved Employees" means all persons who are or previously were employed by Defendants in California and classified as non-exempt employees at any time during the period from May 16, 2021 through the end of the Class Period ("PAGA Period").

[1] "Workweeks," for purposes of calculating the distribution of the Net Settlement Amount, means the number of weeks of employment during the Class Period that each Class Member was employed by Defendants in California.

- Defendants have agreed to pay $220,000.00 as PAGA penalties, seventy-five percent (75%) or $165,000.00 of which will be paid to the LWDA out of the Gross Settlement Amount, and twenty-five percent (25%) or $55,000.00 of which will be distributed to the Aggrieved Employees.
- In the event an Individual Settlement Payment or Aggrieved Employees' individual share of the PAGA Payment has not been cashed within one hundred and eighty (180) days, all funds represented by such uncashed checks, plus any interest accrued thereon, shall escheat to the state via Settlement Administrator the California State Controller's Office, Unclaimed Property Fund.

III. THE TWO-STEP APPROVAL PROCESS AND THE PRESUMPTION OF FAIRNESS

Any settlement of class litigation must be reviewed and approved by the Court. (*See* Cal. Rules of Court, rule 3.769). This is done in two steps: (1) an early (preliminary) review by the trial court; and (2) a final review after notice has been distributed to the class members for their comment or objections. (*See id.*). Courts presume the absence of fraud or collusion in the negotiation of a settlement unless evidence to the contrary is offered. In short, there is a presumption that the negotiations were conducted in good faith. (Newberg on Class Actions, § 11.51; *In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation* (N.D. Cal. May 17, 2017) No. 16-cv-00295, 2017 WL 2214655, quoting *United States v. Oregon* (9th Cir. 1990) 913 F.2d 576, 580.). Here, the Settlement is fair, reasonable, and adequate and negotiations were conducted in good faith with the aid of a well-respected and neutral mediator.

IV. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS

A notice of settlement of a class action "must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement." (Cal. Rules of Court, rule 3.769, subd. (f).)

Attached to the Chang Decl. as Exhibit "1" thereto is the Settlement Agreement between the Parties. Attached to the Settlement Agreement as internal Exhibit "A" is the proposed Class Notice to be distributed to Class Members in English and Spanish. The proposed Class Notice satisfies these requirements.

The Parties respectfully request that this Court approve the above-referenced Class Notice and dissemination of the Class Notice to the Class Members, consistent with the manner and timing as set forth in the Settlement Agreement. The Parties have agreed to use Apex Class Action, LLC ("Apex"), an experienced settlement administrator, to administer the Settlement.

V. THE SETTLEMENT IS FAIR AND REASONABLE BASED UPON OBJECTIVE EVIDENCE

A. The Settlement was Negotiated at Arm's-Length and is not Collusive

The Settlement that has been reached, subject to this Court's approval, is a product of substantial efforts by Class Counsel. The Settlement was reached after: extensive factual and legal investigation and research; substantial negotiation regarding the scope of informal discovery; exchange of documents and information that included review of time and pay records and analysis thereof with the aid of Plaintiffs and expert data consultants; exchange of formal discovery; the deposition of Plaintiff Jauregui; interviews with putative Class Members; an analysis of shifts and Workweeks worked by Class Members in the Class Period, analysis of the number of pay periods and number of Aggrieved Employees in the PAGA Period extrapolated and carefully analyzed by Class Counsel, attorneys and staff of Bibiyan Law Group, P.C., and expert data consultants from the data produced by Defendants for calculating PAGA penalties, number of Class Members eligible for wage statement penalties and waiting time penalties; an analysis of Plaintiffs' employment records; extensive correspondence and communication between counsel; a review of pleadings, evidence and rulings in similar actions litigated elsewhere in the state; a review of similar cases in the same industry elsewhere in the country; and preparation for and attendance at a full-day mediation session, followed by months of further discussions and coordination to finalize the terms and conditions of the general settlement parameters agreed to by the Parties.

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While Class Counsel believe in the chance of success of certifying the claims, Class Counsel recognized the potential risk, expense and complexity posed by further litigation. Moreover, litigating Plaintiffs' claims in this Litigation—claims that involve approximately 300 Class Members during the Class Period—would require enormous preparation and discovery, and ultimately would involve the deposition and presentation of numerous more witnesses (including Class Members and expert witnesses), as well as the consideration, preparation and analysis of expert reports. Therefore, should litigation have progressed any further, there would have been significant expense incurred by each side (above and beyond the expense already incurred).

B. The Settlement Amount is Well Within Range of Reasonableness

The settlement amount reached in this case provides significant recovery to Class Members and Aggrieved Employees, and easily falls within the range of reasonableness. Based on documents and information provided by Defendants, Class Counsel understand there were approximately 300 Class Members who collectively worked a total of 36,334 Workweeks during the start of the Class Period (May 16, 2018) through the date of mediation (January 22, 2026), and 181 Aggrieved Employees who worked a total of 7,604 PAGA Pay Periods.

1. Unpaid Wages for Failure to Pay Off-the-Clock Work

Class Counsel theorized, based on Plaintiffs' narrative evidence and documents produced by Defendants, that Defendants failed to pay all wages due to Class Members because Defendants required Class Members to work off-the-clock or Class Members spent time working off-the-clock under Defendants' control and direction. Class Counsel contend, based on narrative evidence from Plaintiffs, that Class Members were required to perform work before clocking in and after clocking out, including conducting property inspections and completing paperwork, without being compensated for such time. Class Members reported that they were required to inspect the property before clocking in and after clocking out, which took up to six minutes each day. Class Counsel further contend that Class Members were required to respond to work-related calls and emergencies outside of their scheduled work hours, and that if they did not respond right away, their supervisors would reprimand them during team meetings. Class Counsel further contend that Class Members reported working approximately four hours each weekend from May 2019 through

approximately May 2020 to provide food to tenants during building renovations, without compensation, despite their supervisor's knowledge of this work. Class Counsel further contend that Defendants' time records did not accurately reflect Class Members' actual time worked because such off-the-clock work was not recorded or compensated.

Class Counsel advanced a theory that all Class Members worked off-the-clock for an estimate of ten (10) minutes each shift throughout the Class Period, without pay. Class Counsel understands from the data provided by Defendants and analyzed by expert data consultants that there were approximately 132,493 shifts worked by Class Members during the Class Period, approximately 22.70% of shifts were longer than eight hours, and that Class Members' average regular rate of pay was $37.12 per hour. Thus, one theory advanced by Class Counsel resulted in Defendants' exposure for unpaid overtime wages due to failure to track and pay for all time worked in the approximate amount of $279,663 (132,493 shifts x 0.167 hours per shift x $37.12/hour x 0.227 shifts longer than 8 hours x 1.5 OT rate). Additionally, Class Counsel theorized Defendants' exposure for unpaid minimum wages is $1,269,775 (132,493 shifts x 0.167 hours per shift x 0.773 shifts less than 8 hours x $37.12/hour x 2 liquidated damages). Thus, Class Counsel theorized Defendants' total exposure for failure to pay for all time worked is **$1,549,438**.

Class Counsel understand that Defendants explicitly deny these contentions and make the following defenses in connection with this claim: Defendants contend that their policies specifically prohibit off-the-clock work. Defendants contend that they did not require Class Members to work off-the-clock and, rather, they were paid for all time suffered or permitted to work. Finally, Defendants contend that any allegations that Class Members were required to be under Defendants' control off-the-clock would necessitate an individualized inquiry into when and why, making this claim not subject to class treatment and any trial in this litigation unmanageable. Thus, Defendants contend that no damages can be recovered here, and, even if, *arguendo*, they could, an estimate of ten (10) minutes of unpaid work off-the-clock of Class Members for *every single shift* during the Class Period is a wild exaggeration of time spent working off-the-clock if *any* such time was spent.

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2. Recovery of Damages for Non-Compliant Meal Periods

Class Counsel theorized, based on the narrative evidence of Plaintiffs, as well as documents produced by Defendants, that Defendants' meal period policies and practices throughout the Class Period were non-compliant. Class Counsel contend that the Class Members reported that meal periods were regularly interrupted, short, or missed entirely. Class Counsel further contend that Plaintiffs and Class Members reported that they were often unable to take meal periods due to the workload during the recertification period and frequently took late meal periods, approximately three times per week, due to the heavy workload. Class Members also reported that their meal periods were regularly interrupted by tenant questions and calls. Class Counsel further contend that Plaintiffs and other Putative Class Members were expected to remain responsive to tenant requests during all business hours and were required to carry a company cell phone, resulting in meal periods that were not fully duty-free. Class Counsel further contend that Class Members did not take a second meal period when they worked more than 10 hours. Class Members reported that they do not recall signing meal waivers, and no meal waivers were provided in any Plaintiffs' personnel files.

Class Counsel understand from the documents produced by Defendants and analysis of expert data consultants that there were 98,191 meal period eligible shifts worked during the Class Period and no meal period premiums were ever paid. Assuming a conservative 40% violation rate, one calculation performed by Class Counsel resulted in Defendants' liability for unpaid meal premiums in the approximate amount of **$1,457,940** (98,191 shifts x $37.12/hour x 0.40 violation rate).

Class Counsel understand that Defendants deny all such contentions and makes the following defenses in connection with this claim: Defendants argued that it had compliant meal period policies and practices. Defendants argued that it provided Class Members with the opportunity to take timely and full meal periods. Defendants contend that its policy requires their employees to take timely and full meal periods. Defendants further contend that any instance of a Class Member failing to take a compliant meal period was voluntary, in violation of its meal period policy, would necessitate an individualized inquiry and would not lend itself to a

manageable trial. Thus, Defendants contend that *no* monies are owed for this account but, even if any amounts were due, the amount calculated by Class Counsel is excessive.

3. Recovery of Damages for Non-Compliant Rest Periods

Class Counsel theorized, based on the narrative evidence of Plaintiffs, as well as documents produced by Defendants, that Defendants' rest period policies and practices throughout the Class Period were non-compliant. Class Counsel contend, based on Plaintiffs' narrative evidence, that Plaintiffs and Class Members were never able to take a rest break outside of the meal period. Moreover, Class Counsel contend that Defendants' records indicate that no rest period premiums were paid to Class Members for non-compliant rest periods.

Class Counsel understand from the documents produced by Defendants and analysis of expert data consultants that there were approximately 108,883 rest period eligible shifts worked during the Class Period and no rest period premiums were ever paid. Assuming a 100% violation rate for the 108,883 rest-period eligible shifts in the Class Period, one calculation performed by Class Counsel resulted in Defendants' maximum liability for unpaid rest premiums in the approximate amount of **$4,041,737** (108,883 shifts x $37.12/hour).

Class Counsel understand that Defendants make the following defenses in connection with this claim: Defendants argued that they had compliant rest break policies and practices and that its policy requires their employees to take timely and full rest breaks. Defendants argued that Class Members took timely and full rest periods. Defendants further contend that any instance of a Class Member failing to take a compliant rest break was voluntary and therefore would necessitate an individualized inquiry and would not lend itself to a manageable trial. Defendants also argued that Class Members were provided a reasonable opportunity to take uninterrupted rest breaks and the employer is not required to "police" such rest breaks. Thus, Defendants contend that no monies are owed for this account but, even if any amounts were due, the amount calculated by Class Counsel is excessive.

4. Wage Statement Violations

Class Counsel theorized that Class Members are entitled to recover penalties for Defendants' alleged failure to issue compliant wage statements under Labor Code section 226,

subdivision (e), for the derivative impact of the failure to pay all wages owed on providing accurate information on wage statements. Class Counsel also theorized that penalties are owed under Labor Code section 226 due to, at minimum, Defendants' failure to pay premium wages. A non-exempt employee suffering injury as a result of a knowing and intentional failure by an employer to comply with Labor Code section 226, subdivision (a), is entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period. Class Counsel contends Defendants is liable for wage statement violations for each pay period and Class Counsel understands from the data provided by Defendants that there were 7,604 pay periods in the wage statement liability period. If, in fact, Class Members worked off-the-clock every shift as set forth above, and no rest premiums were paid, every wage statement would thus, Class Counsel theorized, violate Labor Code section 226. Thus, one calculation performed by Class Counsel, based on the penalty of one hundred dollars ($100), resulted in **$760,400** (7,604 pay periods in the wage statement period x $100 penalty).

Class Counsel understand that Defendants deny these allegations and makes the following defenses in connection with this claim: Defendants contend that the wage statements issued to the employees fully complied with Labor Code section 226. Defendants contend that because they believe no wages are unpaid that, thus, there can be no derivative penalties. However, Class Counsel also understand the risks inherent in this claim if the above claims were not certified. Class Counsel also had to factor in, and did factor in, the risk that a Court would find there was no injury to Class Members even if the wage statements were inaccurate or that Defendants' conduct was not intentional, both of which are requirements of Labor Code section 226 before penalties can issue. Class Counsel also note that the calculation used does not take into account the first pay period violation only being $50 and the fact that all Class Members did not work all pay periods and, therefore, do not qualify for the maximum penalty of $4,000 as calculated in Plaintiffs' exposure model used at mediation.

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5. Waiting Time Penalties

Pursuant to Labor Code sections 201, 202 and 203, each employee in the relevant statutory period (*i.e.*, three years before the filing of the initial Complaint) is entitled to 30 days' worth of wages as waiting time penalty for not being paid all wages due upon separation from employment. Class Counsel theorized that, under Labor Code section 203, Defendants is liable to pay each Class Member, who was terminated during the relevant statutory period, a full 30-day worth of wages as waiting time penalty for failure to pay compensation in lieu of compliant meal and rest periods, and failure to timely pay all wages due at the time of termination or resignation. Class Counsel contends that Defendants have not paid for all wages owed to Class Members, including, without limitation, for off-the-clock work and failure to pay meal and rest premiums. Since *Naranjo*, penalties may be earned for unpaid premiums and there is no question that waiting time penalties are owed. Class Counsel understand from documents provided by Defendants that there were 179 separated employees during the relevant statutory period. Thus, Class Counsel theorized Defendants' exposure for this claim to be **$1,594,675** (179 separated Class Members x 37.12/hr. x 8 hours x 30 days).

Class Counsel understand that Defendants deny these allegations in their entirety and contends that there is no credence to Plaintiffs' off-the-clock theories and premium pay theories, and thus, no waiting time penalties are owed based thereon. Finally, Defendants contend that their actions were not "willful" and that, thus, waiting time penalties cannot be awarded. Thus, Defendants argued that no waiting time penalties are owed.

6. Failure to Reimburse Work Expenses

Class Counsel theorized that Defendants failed to reimburse Plaintiffs and Class Members for work-related expenses because Defendants required Plaintiffs and other Class Members to use their personal cell phones for work-related purposes, including receiving work-related text messages from their supervisors outside of work hours regarding after-hours emergencies and responding to those emergencies, without reimbursement. Class Counsel further contend that Defendants' handbook does not provide any information regarding reimbursement for personal cell phone usage. Class Members reported that they risked missing work-related communications and facing

discipline from supervisors if they were not responsive to work-related text messages. Class Counsel contend that Class Members would incur approximately $5.00 per Workweek for cellphone costs throughout the Class Period. Thus, one calculation performed by Class Counsel resulted in Defendants' exposure for the failure to reimburse necessary business expense in the amount of **$181,670** (36,334 Workweeks x $5.00 per Workweek).

Class Counsel understand that Defendants argued the following: Defendants argued that it did not require Class Members to use their cell phones for work-related purposes, that personal cell phones were used by Class Members solely for personal tasks or convenience, and as such Defendants were not required to compensate them for such use. Finally, Defendants argued that they reimbursed employees for all expenses incurred in furtherance of work. Thus, Defendants contend that they owes no monies under this theory, either.

7. PAGA Penalties

Class Counsel understand from the time and payroll data provided by Defendants that there were 7,604 pay periods in the PAGA Period. Plaintiffs' claims in the Action under PAGA are substantially similar to those described herein. PAGA penalties include penalties for initial violations and subsequent violations. Defendants contend that only initial violation rates may be used instead of the subsequent violation rates initially used by Class Counsel. With this in mind and because Class Counsel through investigation and discovery did not come to the conclusion that Defendants at any time was notified by any governmental entity that they violated any Labor Code sections presented in the PAGA Notice and PAGA claims, Class Counsel adjusted the exposure model for Defendants to include only initial violation rates.

While Class Counsel are informed and believe that reasonable minds differ with regard to calculation of PAGA penalties, Class Counsel believe it is reasonable to calculate Defendants' maximum exposure in PAGA penalties as follows:

a. Overtime Violations: Labor Code section 558 prescribes penalties of $50 for an initial violation and $100 for each subsequent violation. Using the initial pay period rate for all violations, and a violation every single pay period for every single non-exempt employee in the PAGA Period, this amounts to a maximum exposure of $380,200 (7,604 pay periods x $50).

b. Minimum Wage Violations: Labor Code section 1197.1 prescribes penalties of $100 for an initial violation and $250 for each subsequent violation. Using the initial pay period rate for all violations and a violation every single pay period for every single PAGA Member in the PAGA Period, this amounts to a maximum exposure of $760,400 (7,604 pay periods x $100).

c. Meal Period Violations: Labor Code section 558 prescribes penalties of $50 for an initial violation and $100 for each subsequent violation. Using the initial pay period rate for all violations and a violation every single pay period for every single non-exempt employee in the Settlement Period, this amounts to a maximum exposure of $380,200 (7,604 pay periods x $50).

d. Rest Period Violations: Labor Code section 558 prescribes penalties of $50 for an initial violation and $100 for each subsequent violation. Using the initial pay period rate for all violations and a violation every single pay period for every single non-exempt employee in the Settlement Period, this amounts to a maximum exposure of $380,200 (7,604 pay periods x $50).

e. Misclassification as Salary Exempt: Labor Code 226.8 prescribed penalties of not less than $5,000 and not more than $15,000 for each violation, not less than $10,000 and not more than $25,000 for a pattern or practice of these violations. Class Counsel understand that approximately 37 of the 181 Aggrieved Employees were misclassified as salary exempt, and contend this establishes a pattern or practice of misclassification. One theory advanced by Class Counsel resulted in Defendants' maximum theoretical exposure, based on the initial $10,000 penalty for a pattern or practice of salary exemption misclassification, in the amount of $370,000 (37 misclassified aggrieved employees x $10,000 per violation).

f. Waiting Time Penalties: Labor Code section 2699 prescribes penalties of $100 for an initial violation and $200 for each subsequent violation. Because this violation is merited only at separation of employment, a 100% violation rate would likely include just one violation per employee. The data produced by Defendants indicate that there were 81 Aggrieved Employees in the PAGA Period. This amounts to a maximum exposure of $8,100 (81 Aggrieved Employees x $100).

g. Failure to Reimburse Work Expenses: Labor Code section 2699 would be the appropriate penalty for failure to reimburse work expenses, which prescribes penalties of $100 for

an initial violation and $200 for each subsequent violation. Using *only* the initial pay penalty of $100 for all violations, and a violation every pay period for each Aggrieved Employee in the PAGA Period, this amounts to exposure of $760,400 (7,604 pay periods x $100).

h. Wage Statement Violations: According to *Gunther v. Alaska Airlines, Inc.* (2021) 287 Cal.Rptr.3d 229, in this instance, Labor Code section 2699 would be the appropriate penalty for wage statement violations that are inaccurate, which prescribes penalties of $100 for an initial violation and $200 for each subsequent violation (*Id.* at 247-248). Using the initial pay period rate for all violations and a violation every single pay period for every single Aggrieved Employee in the PAGA Period, this amounts to a maximum exposure of $760,400 (7,604 pay periods x $100)

i. Conclusion: In sum, Class Counsel calculated Defendants' total maximum exposure for PAGA violations if the Court were to find a 100% violation rate for *every* Aggrieved Employee in *every* pay period, allowing "stacking" of PAGA Penalties (*i.e.* multiple penalties for different Labor Code violations in the same pay period), and not exercise its discretion to reduce any of those penalties to be $3,799,900. Class Counsel understand from the mediator and the mediation process that Defendants argued the following in connection with this claim: Defendants contend that no PAGA penalties are likely to be awarded and, even if they were, the maximum exposure calculated by Class Counsel is vastly overstated. First, Defendants defend that PAGA penalties cannot and should not be stacked. Second, Defendants assert that individualized issues predominate the PAGA claims, making the claims unmanageable for trial. Third, Defendants deny that a violation for each pay period can be established. Fourth, Defendants contend that a Court is unlikely to exercise its discretion to award civil penalties under PAGA where, as here, there is no conduct shown by Plaintiffs that would show any Labor Code violation by Defendants are knowing and intentional. Defendants insist that this is especially true in this Action where class action damages are available to Class Members, rendering an award of PAGA penalties in addition to class action damages to be double recovery.

Class Counsel maintain that it is possible to recover the subsequent violation rate for penalties, that stacking is permissible, and that there is no manageability requirement under PAGA (citing *Estrada v. Royalty Carpet Mills, Inc.*). Altogether, Class Counsel believe a 10% valuation of

this claim off the maximum theoretical value to be reasonable, resulting in a valuation of **$379,990** as a reasonable estimate of the likelihood of what Plaintiffs may recover at trial for PAGA penalties ($3,799,900 x 0.10). *See also Carrington v. Starbucks Corp.,* 30 Cal.App.5th 504, 529 (2018) (upholding trial courts 90% reduction in maximum penalties, from $50 to $5 per initial violation).

8. Conclusion

When including derivative penalties, such as waiting time penalties, wage statement violations, and discretionary PAGA penalties, Class Counsel theorized Defendants' maximum exposure to be approximately **$9,965,850**. In all, Class Counsel obtained a Gross Settlement Amount of **$2,200,000.** Particularly in light of the risks involving obstacles to class certification, all issues and risks related to liability, the issues with manageability at trial, the discretionary nature of PAGA penalties, and considering the case law regarding fair, reasonable and adequate settlements, Class Counsel strongly believe that the settlement reached is fair, reasonable and adequate, and in the best interest of Class Members.

Moreover, $220,000 of the Gross Settlement Amount was attributed to PAGA penalties. This allocation was decided mutually by the Parties and the mutual decision was based on: (1) the fact that damages are available for the failure to pay wage claims while only penalties are available for the PAGA claims; (2) the risk that the Court may exercise its discretion to decline to stack PAGA penalties; (3) the risk that the Court may exercise its discretion to not award the full amount of PAGA penalties available; and (4) the risk that the Court may decline to award any PAGA penalties at all in light of the fact that damages are available for Class Members and it may find any further liability against Defendants unnecessarily punitive.

VII. THE PROPOSED ATTORNEYS' FEES AND COSTS ARE REASONABLE

Class Counsel seek an attorneys' fees award of not more than one-third (1/3) of the Gross Settlement Amount, which, unless escalated pursuant to the Agreement, would amount to $733,333.33 Class Counsel also seek reimbursement of costs not to exceed $50,000. The requested fees fall well within the historical range of attorney's fees awards under the common fund theory, which is generally from 25% to 50%. The requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent fee basis. Thus, the Court

should preliminarily approve the requested attorneys' fees and costs, which are justified by the results achieved, the complexity of the issues, the difficulty of the case and the great risks undertaken by Class Counsel. The requested attorneys' fees will not be opposed by Defendants and are well within established guidelines.

VIII. THE REQUESTED ENHANCEMENT AWARD TO THE NAMED PLAINTIFFS AND CLASS REPRESENTATIVES IS REASONABLE

Plaintiffs are entitled to an enhanced award for their service as class representatives, for answering extensive questions by Class Counsel, for being available and answering questions during a full-day mediation and for the risks in being the named Plaintiffs. Defendants do not oppose the requested enhancement to Plaintiffs. Plaintiffs risked intrusive discovery and the payment of employer costs. In the experience of Class Counsel, the typical enhancement award in wage and hour class actions ranges from approximately $10,000.00 to $25,000.00, although some awards are higher. In contrast, Class Counsel seek a limited enhancement of not more than $10,000.00 each for Plaintiffs or a total of $20,000.00 for their services.

IX. CONDITIONAL CERTIFICATION FOR SETTLEMENT PURPOSES

A. The Class should be Preliminarily Certified

In California, there are two certification prerequisites: (1) the existence of an "ascertainable class;" and (2) "a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented." (*Sotelo v. MediaNews Group, Inc.* (2012) 207 Cal.App.4th 639, 647.) To certify a class, the party advocating class treatment must demonstrate: (1) a numerous class; (2) predominant common questions of law or fact; (3) class representatives with claims or defenses typical of the class; and (4) class representatives who can adequately represent the class." (*Williams v. Sup. Ct.* (2013) 221 Cal.App.4th 1353, citing *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1021.) Each of the criteria for class certification is satisfied in this instance:

1. Ascertainability – "Ascertainability" is a due process requirement that ensures it is possible to decide who will be bound by the judgment (*res judica* effect). The determination is made by examining the class definition and the size of the class. Here, the Class Members definition (*i.e.*, all persons who are or previously were directly employed by Defendants

in California and classified as non-exempt employees at any of Defendants' locations in the State of California at any time during the Class Period) is derived from the Operative Complaint, which complains of alleged violations of Labor Code sections that are chiefly and, in some instances, solely applicable to non-exempt employees. There is no difficulty ascertaining who is a Class Member based on the above-described definition as it is readily apparent to all involved who is a non-exempt employee who worked in California for Defendants during the Class Period based solely from Defendants' payroll records, which amounts to approximately 300 persons.

2. Numerosity – According to the California Supreme Court, a putative class is sufficiently numerous to achieve the numerosity requirement if their joinder is impracticable and thus substantial benefits accrue both to litigants and the courts if the action proceeds as a class action. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435, 446.) Numerosity is presumed satisfied if there are forty (40) putative class members. (*Miri v. Dillon* (E.D. MI 2013) 292 F.R.D. 454, 461.) However, as few as 10 class members have been found sufficient. (*See, e.g., Bowles v. Sup. Ct.* (1955) 44 Cal.2d 574.) Class Counsel understand from documents provided by Defendants that there are approximately 300 Class Members. That is sufficiently numerous to establish the numerosity requirement.

3. Commonality – California law also requires that "questions of law or fact common to the class [be] substantially similar and predominate over the questions affecting the individual members." (*In re Steroid Hormone Product Cases* (2010) 181 Cal.App.4th 145, 153.)

This Litigation is brought to resolve common issues that include whether Defendants failed to pay for all hours worked; whether Defendants provided full, timely and un-interrupted meal and rest periods, whether Class Members are entitled to premium pay for incomplete, untimely or interrupted meal or rest periods, among other claims as set forth above.

4. Typicality – Typicality requires only that the named plaintiff's interests in the action be significantly similar to those of other class members. (*Williams v. Sup. Ct.* (2013) 221 Cal.App.4th 1353, citing *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1021.) Plaintiffs' claims are typical of those of other Class Members as Plaintiffs: (1) were non-exempt employees like other Class Members; (2) complain of not being paid for all time under

Defendants' control or suffered and/or permitted to work for Defendants; (3) did not receive full premium pay for meal periods that were not compliant with the Labor Code; (4) did not receive premium pay for rest periods that were not provided, among others as set forth above.

5. Adequacy of Representation - To maintain a class action, the representative Plaintiffs must adequately protect the interests of the class. (*Williams v. Sup. Ct.* (2013) 221 Cal.App.4th 1353, citing *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1021.) Adequacy of representation consists of two components. First, there must be no disabling conflicts of interest between the class representatives and the class. Second, the class representative must be represented by counsel who are competent and experienced in the kind of litigation to be undertaken. (*See McGhee v. Bank of Am.* (1976) 60 Cal.App.3d 442, 450; *accord In re Juniper Networks, Inc. Securities Litigation* (N.D. Cal. 2009) 264 F.R.D. 584, 590.) Both criteria are met in this instance:

(i) No Disabling Conflict of Interest Exists Between the Class Representatives and the Class

No conflicts, disabling or otherwise, exists between Plaintiffs and Class Members because Plaintiffs allege to have been damaged by the same alleged conduct of Defendants (*i.e.*, Plaintiffs were classified as a non-exempt, hourly-paid employees, not paid premium pay, etc.) and thus have the incentive to fairly represent all Class Members' claims to achieve the maximum possible recovery.

(ii) Class Counsel are Experienced Class Action Attorneys

As set forth in the Declarations of Class Counsel, Class Counsel in this matter consist of experienced class action attorneys, have been appointed as class counsel in other class actions and have a successful "track record" in litigating class actions.

6. Superiority of Class Action - Also relevant to the Court's certification decision is whether a class action is the superior method of adjudication. (*Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1021.)

It deals with common issues that are most efficiently adjudicated together, as indicated above. Moreover, with approximately 300 Class Members, presentation of all of them before this Court may be problematic, impractical, and burdensome. On the contrary, a class action allows

claims of many individuals to be resolved at the same time, eliminates the possibility of repetitious litigation and affords small claimants with a method of obtaining redress for claims which otherwise would be too insufficient to warrant individual litigation.

7. Conclusion – Thus, because this class action meets all criteria for certification and a lesser standard of scrutiny applies when evaluating these criteria for settlement purposes, it should be certified for purposes of effectuating the settlement.

X. CONCLUSION

Therefore, the Parties request the Court grant preliminary approval of the proposed settlement.

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BIBIYAN LAW GROUP, P.C.

Brandon M. Chang

BRANDON M. CHANG
Attorneys for Plaintiffs, BLANCA JAUREGUI and CARLOS AGUERO, individually and on behalf of themselves and all others similarly situated and aggrieved