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on behalf of himself and all others similarly situated
and aggrieved

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

ROBERTO GONZALEZ, an individual and on
behalf of all others similarly situated,

Plaintiff,

v.

SANTA MARIA TOM'S JR., INC., a
California corporation; TOM'S JR. BURGER
INC., a California corporation; TOM'S JR. LA
MIRADA, INC., a California corporation;
SPIROS POLITIS, an individual;
DIMITRIOS SPATHOPOLOUS, an
individual,

Defendants.

CASE NO.: 22STCV25501

[Assigned to the Hon. Elihu M. Berle in
Dept. 6]

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS AND
REPRESENTATIVE ACTION
SETTLEMENT AND PROVISIONAL
CLASS CERTIFICATION FOR
SETTLEMENT PURPOSES ONLY;
DECLARATIONS OF BRADFORD
SMITH, DAVID D. BIBIYAN, ROBERTO
GONZALEZ, AND SEAN HARTRANFT
IN SUPPORT THEREOF**

HEARING INFORMATION:

DATE: October 10, 2025

TIME: 11:00 a.m.

DEPT: 6

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on October 10, 2025 at 11:00 a.m., or as soon thereafter as
3 they may be heard in Department 6 of the Superior Court of the State of California for the County
4 of Los Angeles, Spring Street Courthouse, plaintiff Roberto Gonzalez (“Plaintiff”), on behalf of
5 himself and all others similarly situated and aggrieved, will and hereby does move for this Court for
6 entry of an Order:

7 1. Preliminarily certifying the following settlement class (“Settlement Class,” “Settlement
8 Class Members” or “Class Members”) for the purpose of settlement only: anyone who was
9 employed by Defendants in the State of California, as a non-exempt, hourly-paid employee at any
10 time during the Class Period of August 8, 2018 through the date the Court grants preliminary
11 approval of the class settlement, at either the Compton Location or the Slauson Location.

12 2. Preliminarily approving Plaintiff as Class Representative.

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

15 4. Preliminarily approving the settlement claims under the terms set forth in the Settlement
16 Agreement.

17 5. Preliminarily approving payment of the Gross Settlement Amount of \$430,000.00, which
18 is subject to escalation pursuant to the Settlement Agreement.

19 6. Approving the form and content of the Class Notice submitted herewith.

20 7. Appointing Apex Class Action, LLC (“Apex”) to administer the Settlement, including
21 distribution of the Class Notice, as set forth in the Settlement Agreement.

22 8. Preliminarily approving the payment of not to exceed \$7,500.00 for settlement
23 administration to Apex from the Gross Settlement Amount.

24 9. Preliminarily approving a service award of up to \$7,500.00 to Plaintiff, in consideration for
25 Plaintiff’s extensive efforts in prosecuting this case.

26 10. Preliminarily approving payment of reasonable attorneys’ fees to Class Counsel in the
27 amount of *up to* thirty-five percent (35%) of the Gross Settlement Amount which, unless escalated
28 pursuant to the Settlement Agreement, amounts to \$150,500.00.

1 11. Preliminarily approving reimbursement of Class Counsel’s costs in an amount, according
2 to proof, not to exceed \$30,000.00.

3 12. Preliminarily approving PAGA penalties in the amount of \$20,000.00, seventy-five percent
4 (75%) or \$18,750.00 of which will be paid to the Labor and Workforce Development Agency
5 (“LWDA”) out of the Gross Settlement Amount, and twenty-five percent (25%) or \$6,250.00 of
6 which will be distributed to “Aggrieved Employees,” defined as all persons currently or formerly
7 employed by Defendant or PCI Industries, Inc., as an hourly-paid, non-exempt employee in the State
8 of California at any time during the period from December 5, 2021 through September 15, 2023
9 (“PAGA Period”).

10 13. Entering an Order preliminarily approving the Settlement consistent with the terms of the
11 Settlement Agreement.

12 Good cause exists for granting this Motion in that the proposed settlement is fair, reasonable
13 and adequate.

14 This Motion will be based on this Notice of Motion, the Memorandum of Points and
15 Authorities filed herewith, the Declarations of Bradford Smith, David D. Bibiyan, Ricardo
16 Gonzalez, and Sean Hartranft, and exhibits attached thereto, arguments of counsel and upon such
17 other materials contained in the file and pleadings of this action.

18
19 Dated: September 8, 2025

BIBIYAN LAW GROUP, P.C.

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21 _____
BRADFORD SMITH

22 Attorneys for Plaintiff, RICARDO GONZALEZ, on
23 behalf of himself and all others similarly situated
24 and aggrieved
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Ricardo Gonzalez (“Plaintiff”), on behalf of himself and all others similarly
4 situated and aggrieved, hereby applies for preliminary approval of the Class and PAGA Settlement
5 Agreement (“Settlement,” “Agreement” or “Settlement Agreement”) upon the terms and
6 conditions set forth in the Settlement Agreement, attached to the Declaration of Bradford Smith
7 as Exhibit “1.”

8 On August 8, 2022, Plaintiff commenced this Action by filing a complaint alleging causes
9 of action against defendants Santa Maria Tom’s Jr., Inc., Tom’s Jr. Burger Inc., Tom’s Jr. La Mirada,
10 Inc., Spiros Politis, and Dimitrios Spathopoulos (collectively, “Defendants”) for: (1) failure to pay
11 overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal periods or
12 compensation in lieu thereof; (4) failure to provide rest periods or compensation in lieu thereof; (5)
13 waiting time penalties; (6) failure to provide accurate wage statements; (7) failure to timely pay
14 wages during employment; (8) failure to indemnify; (9) violation of Labor Code § 227.3; and (10)
15 engaging in unfair competition (“Class Action”).

16 On July 6, 2022, Plaintiff filed with the LWDA and served on Defendant a notice under
17 Labor Code section 2699.3, stating Plaintiff intended to serve as a proxy of the LWDA to recover
18 civil penalties on behalf of Aggrieved Employees for alleged Labor Code violations (“PAGA
19 Notice”). A true and correct copy of the PAGA Notice is attached to the Declaration of Bradford
20 Smith as Exhibit “2.” On September 16, 2022, Plaintiff commenced a separate action against
21 Defendants for civil penalties under the PAGA (“PAGA Action”).

22 On March 14, 2023, defendants Tom’s Jr. La Mirada, Inc., and Dimitrios Spathopoulos were
23 dismissed without prejudice from the Class Action. Thereafter, Plaintiff and Defendants
24 (collectively, the “Parties”) agreed to exchange informal discovery and attend mediation.

25 Prior to mediation, Plaintiff obtained, through informal discovery: (1) time and payroll
26 records for an estimated 103 putative class members; (2) class data points, including average rates
27 of pay, and the total hours and the number of pay periods worked by putative class members during
28 the Class Period; (3) all relevant policy documents, including Defendant’s employee handbook; and

(5) all documents pertaining to Plaintiff available to Defendant. Plaintiff's 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 March 19, 2024, the Parties participated in an all-day mediation presided over by Tagore Subramaniam, Esquire, which led to the Agreement to settle the Action. As part and parcel to the Settlement, the Parties agreed to stipulate to Plaintiff filing a First Amended Complaint in the Class Action to include representative claims pursuant to the Private Attorneys' General Act of 2004. As per the Settlement Agreement, the Parties will file a First Amended Complaint against Defendants, adding Politis Burger Corporation as a named Defendant, dismissing Santa Maria Tom's Jr., Inc. without prejudice, and adding claims for civil penalties under PAGA. The First Amended Complaint will be the operative complaint in the matter (the "Operative Complaint").

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 Declaration of Bradford Smith as Exhibit "1" thereto. A summary of the terms of the settlement are as follows:

Defendants will stipulate, for purpose of this settlement only, as follows:

- Certification of a class ("Settlement Class," "Settlement Class Members" or "Class Members") defined as: anyone who was employed by Defendants in the State of California, as a non-exempt, hourly-paid employee at any time during the period from August 8, 2018 through the date the Court grants preliminary approval ("the Class Period"), at either the Compton Location or the Slauson Location.
- Class Period means the period from August 8, 2018, through the date the Court grants preliminary approval of the class settlement.
- Defendants will pay \$430,000.00 ("Gross Settlement Amount") to resolve the matter.

- Defendants estimate that, based on Defendants’ records, there were approximately 15,000 combined Workweeks at the Compton Location and Slauson Location in the period from August 8, 2018, through March 19, 2024. In the event the number of Workweeks increases by more than 10% during the Class Period, Defendants shall have the option either to: (a) pay a proportional increase in the Gross Settlement Amount for each additional Workweek over 16,500; or (b) modify the end date of the Class Period to the date the number of Workweeks reaches 16,500. Thus, for example, should the number of Workweeks in the Class Period be 11% higher than 15,000, or 16,650, then Defendants shall have the option either to (a) pay a Gross Settlement Amount that is 1% higher than the originally agreed-upon Gross Settlement Amount, or \$434,300; or (b) modify the end date of the Class Period to the date the number of Workweeks reaches 16,500.
- 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 Workweeks¹ worked during the Class Period.
- The Settlement Administration costs, estimated not to exceed \$7,500.00, 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., may apply for, and Defendants will not oppose, attorneys’ fees of *up to* thirty-five percent (35%) of the Gross Settlement Amount, which, unless escalated pursuant to the Settlement Agreement, amounts to \$150,500.00, and actual costs, not to exceed \$30,000.00, all of which will be paid out of the Gross Settlement Amount.

¹ “Workweek” means any week during which a Class Member or an Aggrieved Employee worked for Defendants for at least one day in a non-exempt, hourly-paid position during the Class Period in California, based on Defendants’ pay records.

- 1 • Class Counsel hereby apply for, and Defendant will not oppose, a service award of up
2 to \$7,500.00 to Plaintiff, which will be paid out of the Gross Settlement Amount.
- 3 • “Aggrieved Employees” means anyone who was employed by Defendants in the State
4 of California, as a non-exempt, hourly-paid employee at any time during the PAGA
5 Period, at either the Compton Location or the Slauson Location.
- 6 • The PAGA Period means the period from July 6, 2021, through the date the Court grants
7 preliminary approval of the class settlement.
- 8 • Defendants have agreed to pay \$20,000.00 as PAGA penalties, seventy-five percent
9 (75%) or \$15,000.00 of which will be paid to the LWDA out of the Gross Settlement
10 Amount, and twenty-five percent (25%) or \$5,000.00 of which will be distributed to
11 the Aggrieved Employees.
- 12 • For any Class Member whose Individual Class Payment check or Individual PAGA
13 Payment check is uncashed and cancelled after the void date (i.e., 180 days after the
14 date of mailing) the Administrator shall transmit the funds represented by such checks
15 to the California Controller's Unclaimed Property Fund in the name of the Class
16 Member thereby leaving no "unpaid residue" subject to the requirements of California
17 Code of Civil Procedure Section 384.

18 **III. THE TWO-STEP APPROVAL PROCESS AND THE PRESUMPTION OF** 19 **FAIRNESS**

20 Any settlement of class litigation must be reviewed and approved by the Court. (*See* Cal.
21 Rules of Court, rule 3.769). This is done in two steps: (1) an early (preliminary) review by the
22 trial court; and (2) a final review after notice has been distributed to the class members for their
23 comment or objections. (*See id.*). Courts presume the absence of fraud or collusion in the
24 negotiation of a settlement unless evidence to the contrary is offered. In short, there is a
25 presumption that the negotiations were conducted in good faith. (Newberg on Class Actions, §
26 11.51; *In re Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability*
27 *Litigation* (N.D. Cal. May 17, 2017) No. 16-cv-00295, 2017 WL 2214655, quoting *United States*
28 *v. Oregon* (9th Cir. 1990) 913 F.2d 576, 580.)

1 **IV. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS**

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

6 Attached to the Declaration of Bradford Smith as Exhibit “1” thereto is the Settlement
7 Agreement between the Parties. Attached to the Settlement Agreement as internal Exhibit “A” is the
8 proposed Class Notice to be distributed to Class Members in English and Spanish. The proposed
9 Class Notice satisfies these requirements.

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

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

16 **A. The Settlement was Negotiated at Arm’s-Length and is not Collusive**

17 The Settlement that has been reached, subject to this Court’s approval, is a product of
18 substantial efforts by the Parties and their counsel. The Settlement was reached after extensive
19 factual and legal investigation and research; the exchange of informal discovery; substantial
20 negotiation regarding the scope of informal discovery; exchange of documents and information that
21 included review of time and pay records and analysis thereof with the aid of Plaintiff and expert
22 consultant; analysis of shifts and Workweeks worked by Class Members in the Class Period, analysis
23 of the number of pay periods and number of Aggrieved Employees in the PAGA Period for
24 calculating PAGA penalties, number of Class Members eligible for wage statement penalties and
25 waiting time penalties; an analysis of Defendants’ financial ability to fund the settlement; an analysis
26 of Plaintiff’s employment records; extensive correspondence and communication between counsel;
27 a review of pleadings, evidence and rulings in similar actions litigated elsewhere in the state; a
28 review of similar cases in the same industry elsewhere in the country; and preparation for and

1 attendance at a full-day mediation, followed by further discussions and coordination to finalize the
2 terms and conditions of the general settlement parameters agreed to by the Parties.

3 While Class Counsel believe in the chance of success of certifying the claims, Class Counsel
4 recognized the potential risk, expense and complexity posed by further litigation. Moreover,
5 litigating Plaintiff's claims in this litigation—claims that involve approximately 234 Class Members
6 during the Class Period—would require substantial preparation and discovery, and ultimately would
7 involve the deposition and presentation of numerous more witnesses (including Class Members and
8 expert witnesses), as well as the consideration, preparation and analysis of expert reports. Therefore,
9 should litigation have progressed any further, there would have been significant expense incurred
10 by each side (above and beyond the expense already incurred).

11 **B. The Settlement Amount is Well Within Range of Reasonableness**

12 The settlement amount reached in this case provides significant recovery to Class Members
13 and Aggrieved Employees, and easily falls within the range of reasonableness. Based on documents
14 and information provided by Defendants, Class Counsel understand there are no more than 16,999
15 Workweeks during the Class Period.

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

17 Class Counsel theorized, based on Plaintiff's narrative evidence and information provided
18 by Defendants, that Defendants failed to pay all wages due to Class Members because Defendants
19 required Class Members to work off-the-clock or Class Members spent time off-the-clock under
20 Defendants' control, including, without limitation: (1) requiring Class Members to wait in line
21 before clocking in; (2) requiring Class Members, prior to clocking in, to perform work, such as
22 taking out trash and cleaning the lobby; (3) requiring Class Members to perform duties after
23 clocking out, including washing dishes and cleaning; and (4) requiring Class Members to answer
24 questions from their Supervisor after work hours. As a result, Defendants failed to compensate
25 Class Members for all time under Defendants' control or direction.

26 One theory advanced by Class Counsel alleged, based on Plaintiff's narrative evidence,
27 that Class Members worked off-the-clock for an average of five (5) minutes each shift throughout
28 the Class Period, without pay. Class Counsel understand, based on time and payroll records

1 produced by Defendants and analysis thereof by expert data consultants retained by Class Counsel,
2 that there were approximately 33,348 shifts during the Class Period, 7.7% of which were over
3 eight (8) hours in length, and Class Members had an average hourly rate of pay of \$15.85. Thus,
4 one calculation performed by Class Counsel at mediation resulted in **Defendants' exposure for**
5 **unpaid off-the-clock work in a conservative amount of \$83,978.53** (33,348 shifts x .077 shifts
6 over eight hours x 0.08 hour x \$15.85 x 1.5 overtime rate] + [33,348 shifts x .093 shifts under
7 eight hours x 0.08 hour x \$15.85 x 2 in liquidated damages]).

8 Class Counsel understand that Defendants make the following defenses in connection with
9 this claim: Defendants contend that its policies specifically prohibit off-the-clock work. Defendants
10 contend that it did not require Class Members to work off-the-clock and, rather, they were paid for
11 all time suffered or permitted to work. Defendants contend that any allegations that Class Members
12 were required to be under Defendants' control off-the-clock would necessitate an individualized
13 inquiry into when and why, making this claim not subject to class treatment and any trial in this
14 litigation unmanageable. Thus, Defendants contend that no damages can be recovered here, and,
15 even if, *arguendo*, they could, an estimate of thirty (30) minutes of unpaid time worked for every
16 single shift worked by Class Members during the Class Period is a wild exaggeration of time spent
17 working off-the-clock if *any* such time was spent. Finally, Defendants contend that no class action
18 is even tenable here because Class Members signed what they believe to be enforceable arbitration
19 agreements.

20 2. Recovery of Damages for Non-Compliant Meal Periods

21 Class Counsel theorized, based on documents and information produced by Defendants and
22 Plaintiff's narrative evidence, that Defendants' meal period policies and practices throughout the
23 Class Period were non-compliant. Defendants' policy documents were facially non-compliant,
24 stating that meal breaks had to be taken at designated areas and were additionally bare and did not
25 state that employees were entitled to a thirty minute meal break, that meal breaks should occur
26 before the end of the fifth hour of work, or that an employee is entitled to an hour of premium pay
27 at an employee's regular rate of pay if that meal period is missed or interrupted.

28 ///

1 Class Counsel theorized, based on documents produced by Defendants and analysis thereof
2 by expert data consultants retained by Class Counsel, that there were 32,716 meal-eligible shifts
3 (i.e. shifts above 5 hours in length.). Thus, one calculation advanced at mediation by Class Counsel,
4 assuming a 40% violation rate, resulted in **Defendants' exposure for non-compliant meal periods**
5 **in an amount of \$207,419.44** (32,716 unique meal break violations x \$15.85/hour x .40 violation
6 rate).

7 Class Counsel understand that Defendants make the following defenses in connection with
8 this claim: Defendants argue that it had compliant meal period policies and practices. Defendants
9 argues that Class Members took timely and full meal periods. Defendants contend that its policy
10 requires their employees to take timely and full meal periods. Defendants further contend that any
11 instance of a Class Member failing to take a compliant meal period was voluntary, in violation of
12 their meal period policy, would necessitate an individualized inquiry and would not lend itself to
13 a manageable trial. Thus, Defendants contend that *no* monies are owed for this account but, even
14 if any amounts were due, the amount calculated by Class Counsel is excessive.

15 3. Recovery of Damages for Non-Compliant Rest Periods

16 Class Counsel theorized, based on documents and information produced by Defendants and
17 Plaintiff's narrative evidence, that Defendants' rest period policies and practices throughout the
18 Class Period were non-compliant. Class Counsel understand from Defendants' policy documents
19 that employees were not allowed to take rest breaks off premises and did not inform employees that
20 they were entitled to a ten minute rest break for every four hours worked. Additionally, Defendants'
21 policies failed to mention rest breaks must be off-duty and that employees' are entitled to an hour's
22 worth of premium pay in the event that their rest break is short, missed, or interrupted. Notably,
23 there were no rest period premiums ever issued throughout the Class Period.

24 Thus, one calculation performed by Class Counsel at mediation resulted in, assuming a 40%
25 violation rate for the 33,210 rest-eligible shifts, **Defendant's exposure for failure to provide**
26 **compliant rest periods in a conservative amount of \$210,551.40** (33,210 shifts x \$15.85/hour x
27 .40 violation rate).

28 Class Counsel understand that Defendants make the following defenses in connection with

1 this claim: Defendants argue that it had compliant rest period policies and practices. Defendants
2 argue that Class Members took timely and full rest periods. Defendants contend that its policy
3 requires their employees to take timely and full rest periods. Defendants further contend that any
4 instance of a Class Member failing to take a compliant rest period was voluntary, in violation of
5 their rest period policy, would necessitate an individualized inquiry and would not lend itself to a
6 manageable trial. Finally, Defendants contends that a 40% violation rate is a wild exaggeration of
7 non-compliant rest periods, if there were any. Thus, Defendants contend that *no* monies are owed
8 for this account but, even if any amounts were due, the amount calculated by Class Counsel is
9 excessive.

10 4. Wage Statement Violations

11 Class Counsel theorized that Class Members are entitled to recover penalties for
12 Defendants' alleged failure to issue compliant wage statements under Labor Code section 226,
13 subdivision (e), for failure to clearly list the number of hours worked and total hours worked on
14 employee pay stubs. Additionally, due to the above-referenced wage-and-hour violations, each
15 wage statement issued during the Wage Statement Period suffers from a derivative wage statement
16 violation. A non-exempt employee suffering injury as a result of a knowing and intentional failure
17 by an employer to comply with Labor Code section 226, subdivision (a), is entitled to recover the
18 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
19 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period.
20 Class Counsel understand from the data provided by Defendants that there were 1,850 pay periods
21 during the relevant statutory time period for Class Members. If, in fact, Class Members worked
22 every off-the-clock every shift as set forth above, and no rest premiums were paid, every wage
23 statement would thus, Class Counsel theorized, violate Labor Code section 226. However, due to
24 the derivative nature of wage statement penalties, as well as the requirement that Defendants'
25 failure to comply with Labor Code section 226 be knowing and intentional, one calculation
26 performed by Class Counsel at mediation, based on the initial penalty of fifty dollars (\$50) in light
27 of Defendant's defenses, resulted in **Defendant's maximum exposure for wage statement**
28 **violations in the amount of \$91,000** (1,850 pay periods x \$50/pay period).

1 Class Counsel understand that Defendants make the following defenses in connection with
2 this claim: Defendants contend that the wage statements issued to the employees fully complied
3 with Labor Code section 226. Defendants contend that because it believes no wages are unpaid
4 that, thus, there can be no derivative penalties. However, Class Counsel also understand the risks
5 inherent in this claim if the above claims were not certified. Class Counsel also had to factor in,
6 and did factor in, the risk that the Court would find there was no injury to Class Members even if
7 the wage statements were inaccurate or that Defendants' conduct was not intentional, both of
8 which are requirements of Labor Code section 226 before penalties can issue. Class Counsel also
9 note that the calculation used does not take into account the fact that all Class Members did not
10 work all pay periods and, therefore, Class Counsels' calculation does not take into account the
11 maximum penalty of \$4,000 in Plaintiff's exposure model used at mediation.

12 5. Waiting Time Penalties

13 Pursuant to Labor Code sections 201, 202 and 203, each employee in the relevant statutory
14 period (*i.e.*, three years before the filing of the initial Complaint) is entitled to 30 days' worth of
15 wages as waiting time penalty for not being paid all wages due upon separation from employment.
16 Class Counsel theorized at mediation, based on relevant documents provided by Defendants, that,
17 under Labor Code section 203, Defendants are liable to pay each Class Member, who was terminated
18 during the relevant statutory period, a full 30-day worth of wages as waiting time penalty for failure
19 to pay compensation in lieu of compliant meal and rest periods, and failure to timely pay all wages
20 due at the time of termination or resignation. Based on relevant documents provided by Defendants,
21 there were approximately 60 Class Members who were terminated or resigned during the relevant
22 statutory period. Thus, one calculation performed at mediation by Class Counsel resulted in
23 **Defendants' exposure for waiting time penalties to be approximately \$228,240.00** (60 separated
24 Class Members x \$15.85/hour x 8 hours x 30 days).

25 Class Counsel understand that Defendants contend that there is no credence to Plaintiff's
26 off-the-clock theory and that, thus, no waiting time penalties are owed based on that theory.
27 Finally, Defendants contend that its actions were not "willful" and that, thus, waiting time
28 penalties cannot be awarded. Thus, Defendants argued that no waiting time penalties are owed.

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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 Defendant's maximum exposure in PAGA penalties as follows:

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 Aggrieved Employee in the PAGA Period, this amounts to a maximum exposure of \$397,700.00 (3,977 pay periods x \$100).

28

1 d. Rest Period Violations: Labor Code section 558 prescribes penalties of \$50 for an
2 initial violation and \$100 for each subsequent violation. Using the initial pay period rate for all
3 violations and a violation every single pay period for every single non-exempt employee in the
4 PAGA Period, this amounts to a maximum exposure of \$198,850.00 (3,977 pay periods x \$50).

5 e. Wage Statement Violations: According to *Gunther v. Alaska Airlines, Inc.* (2021)
6 287 Cal.Rptr.3d 229, in this instance, Labor Code section 2699 would be the appropriate penalty
7 for wage statement violations that are inaccurate, which prescribes penalties of \$100 for an initial
8 violation and \$200 for each subsequent violation (*Id.* at 247-248). Using the initial pay period rate
9 for all violations and a violation every single pay period for every single Aggrieved Employee in
10 the PAGA Period, this amounts to a maximum exposure of \$397,700.00 (3,977 pay periods x
11 \$100).

12 f. Waiting Time Penalties: Labor Code section 2699 prescribes penalties of \$100 for
13 an initial violation and \$200 for each subsequent violation. Because this violation is merited only
14 at separation of employment, a 100% violation rate would likely include just one violation per
15 employee. The data produced by Defendant indicate that there were 143 Aggrieved Employees
16 whose employment was separated during the PAGA Period. This amounts to a maximum exposure
17 of \$14,300.00 (143 Aggrieved Employees x \$100).

18 g. Conclusion: In sum, Class Counsel calculated Defendants' total maximum
19 exposure for PAGA violations if the Court were to find a 100% violation rate for every Aggrieved
20 Employee every pay period and not exercise its discretion to reduce any of those penalties to be
21 **\$1,406,250.00**. Class Counsel understand from the mediator and the mediation process that
22 Defendants argued the following in connection with this claim: Defendants contend that no PAGA
23 penalties are likely to be awarded and, even if they were, the maximum exposure calculated by
24 Class Counsel is vastly overstated. First, Defendants defend that PAGA penalties cannot and
25 should not be stacked. Second, Defendants assert that individualized issues predominate the
26 PAGA claims, making the claims unmanageable for trial. Third, Defendants deny that a violation
27 for each pay period can be established. Fourth, Defendants contend that a Court is unlikely to
28 exercise its discretion to award civil penalties under PAGA where, as here, there is no conduct

1 shown by Plaintiff that would show any Labor Code violation by Defendants is knowing and
2 intentional. Defendants insist that this is especially true in this Action where class action damages
3 are available to Class Members, rendering an award of PAGA penalties in addition to class action
4 damages to be double recovery.

5 Class Counsel maintain that it is possible to recover the subsequent violation rate for
6 penalties, that stacking is permissible, and that there is no manageability requirement under PAGA
7 (citing *Estrada v. Royalty Carpet Mills, Inc.*). As such, Class Counsel believe a 90% discount of this
8 claim to be reasonable, resulting in a valuation of **\$140,625.00** as a reasonable estimate of the
9 likelihood of what Plaintiff may recover at trial for PAGA penalties (\$1,406,250.00 x .10).

10 **7. Conclusion**

11 When including derivative penalties, such as waiting time penalties, wage statement
12 violations, and discretionary PAGA penalties, Class Counsel theorized Defendant's maximum
13 exposure to be approximately **\$1,908,199.37**. In all, Class Counsel obtained a Gross Settlement
14 Amount of **\$430,000.00**. Particularly in light of the risks involving obstacles to class certification,
15 all issues and risks related to liability, the issues with manageability at trial, the discretionary
16 nature of PAGA penalties, and considering the case law regarding fair, reasonable and adequate
17 settlements, Class Counsel strongly believe that the settlement reached is fair, reasonable and
18 adequate, and in the best interest of Class Members.

19 Moreover, \$20,000.00 of the Gross Settlement Amount was attributed to PAGA penalties.
20 This allocation was decided mutually by the Parties and the mutual decision was based on: (1) the
21 fact that damages are available for the failure to pay wage claims while only penalties are available
22 for the PAGA claims; (2) the risk that the Court may exercise its discretion to decline to stack
23 PAGA penalties; (3) the risk that the Court may exercise its discretion to not award the full amount
24 of PAGA penalties available; and (4) the risk that the Court may decline to award any PAGA
25 penalties at all in light of the fact that damages are available for Class Members and it may find
26 any further liability against Defendant unnecessarily punitive.

27 **VII. THE PROPOSED ATTORNEYS' FEES AND COSTS ARE REASONABLE**

28 Class Counsel seek an attorneys' fees award of *up to* thirty-five percent (35%) of the Gross

1 Settlement Amount, which, unless escalated pursuant to this Agreement, would amount to
2 \$150,500.00. Class Counsel also seek reimbursement of costs not to exceed \$30,000.00. The
3 requested fees fall well within the historical range of attorney's fees awards under the common fund
4 theory, which is generally from 25% to 50%. The requested fee is fair compensation for undertaking
5 complex, risky, expensive and time-consuming litigation on a contingent fee basis. Thus, the Court
6 should preliminarily approve the requested attorneys' fees and costs, which are justified by the results
7 achieved, the complexity of the issues, the difficulty of the case and the great risks undertaken by
8 Class Counsel. The requested attorneys' fees will not be opposed by Defendants and are well within
9 established guidelines.

10 **VIII. THE REQUESTED ENHANCEMENT AWARD TO THE NAMED**
11 **PLAINTIFF AND CLASS REPRESENTATIVE IS REASONABLE**

12 Plaintiff is entitled to enhanced award for his service as class representative, for answering
13 extensive questions by Class Counsel, for being subjected to intrusive questioning during his
14 deposition, for being available and answering questions during mediation, for the risks in being the
15 named plaintiff and for providing Defendant with a more expansive release of claims, including a
16 waiver based upon California Civil Code section 1542, in exchange for the enhancement award.
17 Defendants do not oppose the requested enhancement to Plaintiff. Plaintiff risked intrusive
18 discovery and the payment of employer costs. In the experience of Class Counsel, the typical
19 enhancement award in wage and hour class actions ranges from approximately \$10,000.00 to
20 \$25,000.00, although some awards are higher. In contrast, Class Counsel seek an extremely limited
21 enhancement of \$7,500.00 to Plaintiff for his service.

22 **IX. CONDITIONAL CERTIFICATION FOR SETTLEMENT PURPOSES**

23 **A. The Class should be Preliminarily Certified**

24 In California, there are two certification prerequisites: (1) the existence of an "ascertainable
25 class;" and (2) "a well-defined community of interest in the questions of law and fact involved
26 affecting the parties to be represented." (*Sotelo v. MediaNews Group, Inc.* (2012) 207 Cal.App.4th
27 639, 647.) To certify a class, the party advocating class treatment must demonstrate: (1) a numerous
28 class; (2) predominant common questions of law or fact; (3) class representatives with claims or

1 defenses typical of the class; and (4) class representatives who can adequately represent the class.”
2 (*Williams v. Sup. Ct.* (2013) 221 Cal.App.4th 1353, citing *Brinker Restaurant Corp. v. Sup. Ct.*
3 (2012) 53 Cal.4th 1004, 1021.) Each of the criteria for class certification is satisfied in this instance:

4 **1. Ascertainability** – “Ascertainability” is a due process requirement that
5 ensures it is possible to decide who will be bound by the judgment (*res judica* effect). The
6 determination is made by examining the class definition and the size of the class. Here, the Class
7 Members definition (*i.e.*, anyone who was employed by Defendants in the State of California, as a
8 non-exempt, hourly-paid employee at any time during the Class Period at either the Compton
9 Location or the Slauson Location) is derived from the operative complaint, which complains of
10 alleged violations of Labor Code sections that are chiefly and, in some instances, solely applicable
11 to non-exempt, hourly paid employees. There is no difficulty ascertaining who is a Class Member
12 based on the above-described definition as it is readily apparent to all involved who is a non-exempt,
13 hourly-paid employee who worked in California for Defendants during the Class Period based solely
14 from Defendants’ payroll records, which amounts to approximately 234 persons.

15 **2. Numerosity** – According to the California Supreme Court, a putative class is
16 sufficiently numerous to achieve the numerosity requirement if their joinder is impracticable and
17 thus substantial benefits accrue both to litigants and the courts if the action proceeds as a class action.
18 (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435, 446.) Numerosity is presumed satisfied if
19 there are forty (40) putative class members. (*Miri v. Dillon* (E.D. MI 2013) 292 F.R.D. 454, 461.)
20 However, as few as 10 class members has been found sufficient. (*See, e.g., Bowles v. Sup. Ct.* (1955)
21 44 Cal.2d 574.) Class Counsel understand from documents provided that Defendants identified at
22 least 234 Class Members. That is sufficiently numerous to establish the numerosity requirement.

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

26 This litigation is brought to resolve common issues that include whether Defendants failed
27 to pay for all hours worked; whether Defendants provided full, timely and un-interrupted meal and
28 rest periods; whether Class Members are entitled to premium pay for incomplete, untimely or

1 interrupted meal or rest periods, among other claims as set forth above.

2 **4. Typicality** – Typicality requires only that the named plaintiff’s interests in
3 the action be significantly similar to those of other class members. (*Williams v. Sup. Ct.* (2013)
4 221 Cal.App.4th 1353, citing *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1021.)
5 Plaintiff’s claims are typical of those of other Class Members as Plaintiff: (1) is a non-exempt,
6 hourly-paid employee like other Class Members; (2) complains of not being paid for all time under
7 Defendants’ control or suffered and/or permitted to work for Defendants; (3) did not receive full
8 premium pay for meal periods that were not compliant with the Labor Code; (4) did not receive
9 premium pay for rest periods that were not provided, among others as set forth above.

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

18 **(i) No Disabling Conflict of Interest Exists Between the Class**
19 **Representative and the Class**

20 No conflicts, disabling or otherwise, exists between Plaintiff and Class Members because
21 Plaintiff alleges to have been damaged by the same alleged conduct of Defendants (*i.e.*, Plaintiff
22 classified as non-exempt, hourly-paid employee, not paid premium pay, etc.) and thus have the
23 incentive to fairly represent all Class Members’ claims to achieve the maximum possible recovery.

24 **(ii) Class Counsel are Experienced Class Action Attorneys**

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

28 **6. Superiority of Class Action** - Also relevant to the Court’s certification

1 decision is whether a class action is the superior method of adjudication. (*Brinker Restaurant Corp.*
2 *v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1021.)

3 It deals with common issues that are most efficiently adjudicated together, as indicated
4 above. Moreover, with at least 234 Class Members, presentation of all of them before this Court
5 may be problematic, impractical, and burdensome. On the contrary, a class action allows claims of
6 many individuals to be resolved at the same time, eliminates the possibility of repetitious litigation
7 and affords small claimants with a method of obtaining redress for claims which otherwise would
8 be too insufficient to warrant individual litigation.

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

12 **X. CONCLUSION**

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

15
16 Dated: September 8, 2025

BIBIYAN LAW GROUP, P.C.

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18 _____
BRADFORD SMITH

19 Attorneys for Plaintiff ROBERTO GONZALEZ, on
20 behalf of herself and all others similarly situated
21 and aggrieved
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