

BIBIYAN LAW GROUP, P.C.

David D. Bibiyan (SBN 287811)

david@tomorrowlaw.com

Vedang J. Patel (SBN 328647)

vedang@tomorrowlaw.com

1460 Westwood Boulevard

Los Angeles, California 90024

Telephone: (310) 438-5555; Facsimile: (310) 300-1705

Attorneys for Plaintiff, CAYA RODRIGUEZ

an individual and on behalf of all others similarly situated and aggrieved

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES - SPRING STREET COURTHOUSE

CAYA RODRIGUEZ, as an aggrieved employee, and on behalf of all other aggrieved employees under the Labor Code Private Attorneys' General Act of 2004,

Plaintiff,

v.

RAISING CANE'S USA, L.L.C., a California limited liability company; RAISING CANE'S RESTAURANTS, L.L.C., a California limited liability company; and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 25STCV11470

[Assigned for all purposes to the Hon. David S. Cunningham III, in Dept. 11]

**DECLARATION OF VEDANG J. PATEL
IN SUPPORT OF PLAINTIFF'S MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION AND
REPRESENTATIVE ACTION
SETTLEMENT**

DECLARATION OF VEDANG J. PATEL

1. I am an attorney at law, duly licensed to practice before all the Courts of the State of California, a senior attorney at Bibiyan Law Group, P.C., counsel for plaintiff Caya Rodriguez (“Plaintiff”), on behalf of herself and all others similarly situated and aggrieved. As such, I am familiar with the file in this matter and, if called as a witness, I could and would competently testify to the following facts of my own personal knowledge.

2. On August 26, 2022, Plaintiff filed with the Labor and Workforce Development Agency (“LWDA”) a notice letter under the Private Attorneys’ General Act (“PAGA”) which stated that Plaintiff intended to seek civil penalties against Raising Cane’s USA, L.L.C. (“Raising Cane’s”) and Raising Cane’s Restaurants, L.L.C. (“Company” and with Raising Cane’s, “Defendants”) for various violations of the California Labor Code and Industrial Welfare Commission Wage Orders relating to alleged violations as to herself and other employees of Defendants (“PAGA Notice”). A true and correct copy of the PAGA Notice is attached to the Patel Decl. as Exhibit “2.”

3. On August 26, 2022, Plaintiff filed a putative class action complaint in the Los Angeles County Superior Court, entitled Caya Rodriguez v. Raising Cane’s USA, L.L.C., et al, Case No. 22STCV27956. On November 14, 2022, Defendants removed the action to the United States District Court for the Central District of California; (the “Federal Action”).

4. On August 26, 2022, Plaintiff filed a putative class action complaint in the Los Angeles County Superior Court, entitled Caya Rodriguez v. Raising Cane’s USA, L.L.C., et al, Case No. 22STCV27956. On November 14, 2022, Defendants removed the action to the United States District Court for the Central District of California; (the “Federal Action”). On February 7, 2023, Plaintiff filed a representative PAGA complaint in the Los Angeles County Superior Court, entitled Caya Rodriguez v. Raising Cane’s USA, L.L.C., et al, Case No. 23STCV02673; (the “State Action”).

5. As part of the Agreement, the Parties agree to file a First Amended Complaint (“FAC”) in the State Action which will include all claims originally alleged in the Federal Action, as well as claims under the Fair Credit Reporting Act, the Investigative Consumer Reporting Agency Act, and the Consumer Credit Reporting Agencies Act.

1 6. Prior to mediation, Plaintiff obtained, through informal discovery: (1) class data
2 points, including the number of weeks worked during the Class Period, the number of
3 terminated/separated Class Members in the waiting time penalty period, the number of allegedly
4 aggrieved employees, the number of hours worked, and the number of pay periods in the wage
5 statement/PAGA Period; (2) all policy documents related to the claims in the case; (3) Plaintiff's
6 personnel file; (4) time and payroll records for 100 of the employees during the PAGA period.

7 7. On March 27, 2023, the Parties participated in a mediation with experienced
8 mediator Tripper Ortman, Esq. The mediation was unsuccessful. Thereafter, the Parties engaged in
9 more than (1) year of ensuing arms-length negotiations through the mediator, which resulted in the
10 Settlement Agreement. Prior to mediation, Plaintiff obtained, through informal discovery: (1) class
11 data points, including the number of weeks worked during the Class Period, the number of
12 terminated/separated Class Members in the waiting time penalty period, the number of allegedly
13 aggrieved employees, the number of hours worked, and the number of pay periods in the wage
14 statement/PAGA Period; (2) all policy documents related to the claims in the case; (3) Plaintiff's
15 personnel file; (4) time and payroll records for 100 of the employees during the PAGA period.

16 8. Plaintiff filed a motion for preliminary approval in the separate PAGA Action. The
17 court in the PAGA Action declined to approve the settlement on the grounds that the motion was
18 filed in a non-complex court. The Parties thereafter met and conferred. The Parties agreed to file a
19 new class action and PAGA complaint, encompassing all claims at issue, and file a new motion for
20 preliminary approval before the Court in the Los Angeles County Superior Court, complex
21 department. Thus, Plaintiff files this motion for preliminary approval.

22 9. Class Counsel had strong positions at mediation regarding the certifiability of
23 Plaintiff's claims, the merits thereof, the manageability of a trial, and the likelihood of recovering
24 civil penalties. Nevertheless, Plaintiff's counsel concluded, after considering the sharply disputed
25 factual and legal issues involved in this litigation, the risks associated with further prosecution, and
26 the substantial benefits to be received pursuant to the compromise and settlement of the lawsuit as
27
28

1 set forth in the Settlement Agreement, that settlement on the terms set forth herein is in the best
2 interest of Plaintiff, putative class members, and Defendants, and is fair, reasonable, and adequate.

3 **The Proposed Settlement**

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

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

- 10 • Certification of a class (“Settlement Class,” “Settlement Class Members” or “Class
11 Members”) defined as: all persons currently or formerly employed by Raising Cane’s,
12 as hourly-paid, non-exempt employees in the State of California at any time during the
13 period from August 26, 2018 through May 22, 2023 (“Class Period”).
- 14 • Defendants will pay \$4,226,000.00 (“Gross Settlement Amount”) to resolve the matter.¹
- 15 • The Settlement was negotiated based on Defendants’ representation that, as of the date
16 of mediation, Class Members worked approximately 1,070,180 Workweeks. If the data
17 reported to the Settlement Administrator for Class Period reflects an increase of more
18 than 5% of the 1,070,180 approximation (i.e., if there are more than 1,123,689
19 Workweeks worked by all Class Members during the Class Period), Defendants shall
20 have the option to: (a) increase the Gross Settlement Amount in proportion to the
21 increase in Workweeks (for example, if there is a 7% increase in the total number of
22 Workweeks worked by all Class Members, the Gross Settlement Amount shall increase
23 by 2% (i.e., \$84,520)) or (b) limit the end date of the Class Period (and PAGA Period)
24 so that the cumulative Workweeks do not exceed 1,123,689. Defendants have elected to
25 exercise their option under the Settlement Agreement to limit the end of the Class Period

26
27 ¹ At the same time the Parties to this Settlement reached their agreement in principle to resolve the class and PAGA
28 claims that are the subject of this Motion, Class Counsel also negotiated settlements with Defendants on behalf of other
individuals Class Counsel represents in arbitrations filed against Defendants.

(and PAGA Period) to May 22, 2023, so that the cumulative Workweeks do not exceed 1,123,689.

- Defendants will pay the employer's share of payroll 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 Workweeks² worked during the Class Period.
- The Settlement Administration costs, estimated not to exceed \$99,950.00 will be paid out of the Gross Settlement Amount.
- Class Counsel will apply for, and Defendants will not oppose, attorneys' fees of up to no more than thirty-five (35%) of the Gross Settlement Amount, which amounts to \$1,487,500 and actual costs, not to exceed \$60,000.00, 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 of not to exceed \$10,000.00 for the Class Representative, which will be paid out of the Gross Settlement Amount.
- The "PAGA Members" means all persons currently or formerly employed by Raising Cane's as hourly-paid, non-exempt employees in the State of California at any time during the period from December 4, 2021 through May 22, 2023 ("PAGA Period").
- Defendants have agreed to pay PAGA penalties in the amount of \$200,000.00, seventy-five percent (75%) or \$150,000.00 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 \$50,000.00 of which will be distributed to PAGA Members.
- For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the Controller of the State of California

² "Workweek" means any workweek during the Class Period in which a Class Member worked for Raising Cane's in California.

1 to be held by the Unclaimed Property Fund in the name of the individual to whom the
2 uncashed check was addressed.

3 **Settlement Agreement and Accompanying Documents**

4 11. Attached hereto as Exhibit “1” is the Settlement Agreement. Attached to the
5 Settlement Agreement as Exhibit A is the proposed “Class Notice” to be distributed to Class
6 Members in English and Spanish.

7 12. Class Counsel has selected to use Phoenix Settlement Administrators, an experienced
8 Settlement Administrator, to administer the settlement.

9 13. On or about June 3, 2025, I submitted a copy of the Settlement Agreement to the
10 California Labor and Workforce Development Agency (“LWDA”) in compliance with Labor Code
11 section 2699, subdivision (1)(2). A true and correct copy of each confirmation from the LWDA in
12 connection with Plaintiff is attached hereto as Exhibit 3.

13 **The Settlement Is Fair and Reasonable Based Upon Objective Evidence**

14 **The Settlement was Negotiated at Arm’s-Length and is not Collusive**

15 14. The Settlement that has been reached, subject to this Court’s approval, is a product
16 of substantial efforts by Class Counsel. The Settlement was reached after extensive factual and legal
17 investigation and research; substantial negotiation regarding the scope of informal discovery; an
18 exchange of documents and information that included review of time and pay records and analysis
19 thereof with the aid of Plaintiff and expert consultants; interviews with tens of Class Members; an
20 analysis of shifts and Workweeks worked by Class Members in the Class Period, analysis of the
21 number of pay periods and number of Aggrieved Employees in the PAGA Period for calculating
22 PAGA penalties, number of Class Members eligible for wage statement penalties and waiting time
23 penalties; an analysis of Plaintiff’s employment records; extensive correspondence and
24 communication between counsel; a review of pleadings, evidence and rulings in similar actions
25 litigated elsewhere in the state; a review of similar cases in the same industry elsewhere in the
26 country; and preparation for and attendance at a full-day session of mediation, followed by more
27 than one (1) year of further discussions and coordination to finalize the terms and conditions of the
28

1 general settlement parameters agreed to by the Parties.

2 15. While Class Counsel believe in the chance of success of certifying the claims, Class
3 Counsel recognized the potential risk, expense and complexity posed by further litigation.
4 Moreover, litigating Plaintiff's claims in this Litigation — claims that involve approximately 28,243
5 Class Members during the Class Period — would require enormous preparation and discovery, and
6 ultimately would involve the deposition and presentation of numerous more witnesses (including
7 Class Members and expert witnesses), as well as the consideration, preparation and analysis of
8 expert reports. Therefore, should litigation have progressed any further, there would have been
9 significant expense incurred by each side (above and beyond the expense already incurred).

10 **The Settlement Amount is Well Within Range of Reasonableness**

11 16. Class Counsel settlement amount reached in this case provides significant recovery
12 to Class Members and Aggrieved Employees, and easily falls within the range of reasonableness.
13 Based on documents and information provided by Defendants, Class Counsel understand there are
14 approximately 1,123,689 Workweeks during the Class Period..

15 **Unpaid Wages for Failure to pay Off-the-Clock Work**

16 17. Class Counsel theorized at the mediation, based on Plaintiff's and Class Members'
17 narrative evidence, that Defendants practices during the Claas Period resulted in off-the-clock
18 work. Based upon interviews conducted with Plaintiff and Class Members, Class Counsel
19 theorized that Class Members spent time off-the-clock because they were required to wait in line
20 to clock in for their shifts, undergo Covid-19 screenings i.e., filling out questionnaires from their
21 personal cell phones before starting their shift, perform post-shift duties, and walk to and from
22 meal breaks, all off-the-clock and while under Defendants' control. Class Counsel theorized that
23 cumulatively these practices resulted in unpaid overtime and minimum wages for which Class
24 Members are owed compensation.

25 18. Class Counsel advanced a theory that all Class Members worked off-the-clock for
26 an estimate of 3 minutes each shift throughout the Class period, without pay. Class Counsel
27 understand from the data provided and analyzed by expert data consultants that there were
28

1 3,573,327 shifts during the Class Period, 7% of shifts worked were over 8 hours, and that Class
2 Members were paid an average of \$13.50 per hour. Thus, one theory advanced by Class Counsel
3 resulted in Defendants' exposure for unpaid overtime wages due to failure to track and pay for all
4 time worked is \$253,259 (0.05/hr x \$13.50/hr x 1.5 OT rate x 3,573,327 shifts x 0.07 shifts over
5 8 hrs). Additionally, Class Counsel theorized Defendants' exposure for unpaid minimum wages
6 is \$4,486,312 (0.05/hr x \$13.50/hr x 2 liquidated damages x 3,573,327 shifts x 0.93 shifts under
7 8 hrs). Thus, Class Counsel theorized Defendants' total exposure for failure to pay for all time
8 worked is \$4,486,312.

9 19. Class Counsel understand from the mediator and the mediation process that
10 Defendants made the following defenses in connection with this claim: Defendants contend that
11 their policies specifically prohibit off-the-clock work. Defendants contend that they did not
12 require Class Members to work off-the-clock and, rather, they were paid for all time suffered or
13 permitted to work. Defendants also state that they provided numerous computers for Class
14 Members to clock in and out, and therefore they would not have to wait in line. Defendants also
15 argued that the time it took to go through Covid-19 screenings was *de minimis* and was only in
16 place during a portion of the Class Period. Finally, Defendants contend that any allegations that
17 Class Members were required to be under Defendants' control off-the-clock would necessitate an
18 individualized inquiry into when and why, making this claim not subject to class treatment and
19 any trial in this litigation unmanageable. Thus, Defendants contend that no damages can be
20 recovered here, and, even if, *arguendo*, they could, an estimate of five (5) minutes of unpaid work
21 off-the-clock of Class Members for every single shift during the Class Period is a wild
22 exaggeration of time spent working off-the-clock if any such time was spent. Finally, Defendants
23 argued that Class Members signed valid arbitration agreements, and thus no class action is even
24 tenable here.

25 Recovery of Damages for Non-Compliant Meal Periods

26 20. Class Counsel theorized, based on the narrative evidence of Plaintiff and Class
27 Members, as well as documents produced by Defendants, that Defendants' meal period policies
28

1 and practices throughout the Class Period were non-compliant. Class Counsel theorized that
2 Defendants' policies did not inform Class Members that they are entitled to meal periods. Class
3 Counsel theorized Defendants' practices were non-compliant in various respects, including due to
4 the interrupted meal periods, lack of a suitable break room, and missed or short meal periods.
5 However, Defendants did provide some meal period premiums throughout the Class Period.

6 21. Class Counsel understands from the documents produced by Defendants and
7 analyzed by expert data consultants that there were 2,189,408 meal period eligible shifts during
8 the Class Period through the mediation. Thus, one theory advanced by Class Counsel, based upon
9 a 20% violation rate, resulted in Defendants' liability for unpaid meal premiums of **\$5,911,401**
10 [$\$13.50/\text{hr} \times (2,189,408 \text{ unique meal period violations} \times .20)$].

11 22. Class Counsel understand from the mediator and the mediation process that
12 Defendants make the following defenses in connection with this claim: Defendants argued that
13 they had compliant meal period practices. Defendants argued that Class Members took timely and
14 full meal periods. Defendants contend that their policy requires their employees to take timely and
15 full meal periods. Defendants point to the thousands meal period premiums paid as evidence of
16 their compliant policies. Defendants also contend that many Class Members signed valid meal
17 period waivers, thereby further reducing Defendants potential liability. Defendants further
18 contend that any instance of a Class Member failing to take a compliant meal period was
19 voluntary, in violation of its meal period policy, would necessitate an individualized inquiry and
20 would not lend itself to a manageable trial. Finally, Defendants argued that Class Members signed
21 valid arbitration agreements, and thus no class action is even tenable here. Thus, Defendants
22 contend that *no* monies are owed for this account but, even if any amounts were due, the amount
23 calculated by Class Counsel is excessive.

24 **Recovery of Damages for Non-Compliant Rest Periods**

25 23. Class Counsel theorized at mediation, based on Plaintiff's narrative evidence, that
26 Class Members did not receive compliant rest periods throughout the Class Period based on many
27 of the reasons stated above for meal period violations, including that they were cut short due to
28

1 lack of a break area and were just not provided in many instances. Class Counsel understand that
2 Defendants' policy on rest periods does not state that Class Members may leave the premises or
3 that these are duty-free. Notably, no rest period premiums were paid during the Class Periods
4 through the mediation. One calculation performed by Class Counsel resulted in, with a 20%
5 violation rate for rest-eligible shifts, of \$8,466,387 (\$13.50/hr. x 3,135,699 shifts x 0.20 violation
6 rate).

7 24. Class Counsel understand from the mediator and the mediation process that
8 Defendants make the following defenses in connection with this claim: Defendants argued that
9 they had compliant rest period policies and practices and that its policy requires their employees
10 to take timely and full rest breaks. Defendants argued that Class Members took timely and full
11 rest breaks or received the required rest period premium for each instance of rest period violations.
12 Defendants further contend that any instance of a Class Member failing to take a compliant rest
13 period was voluntary and therefore would necessitate an individualized inquiry and would not
14 lend itself to a manageable trial. Finally, Defendants argued that Class Members signed valid
15 arbitration agreements, and thus no class action is even tenable here. Thus, Defendants contend
16 that *no* monies are owed for this account but, even if any amounts were due, the amount calculated
17 by Class Counsel is excessive.

18 **Failure to Reimburse Business Expenses**

19 25. Class Counsel theorized that Defendants failed to indemnify Class Members for
20 business expenses because Defendants required Class Members to pay for their uniforms and use
21 their personal cellphones for work-related purposes. Class Counsel theorized, based on Plaintiff's
22 and Class Members' narrative evidence, that every Class member was required to wear the
23 uniform which included, specific colors of undershirts underneath the Raising Cane's polo or
24 tailored shirts; non-slip shoes, and belts. No uniform pieces other than the shirts with the Raising
25 Canes logo and hats were provided. New employees were only given one shirt and one hat. Due
26 to the nature of the work, additional uniform pieces needed to be purchased. Class Counsel
27 theorized that each Class Member spent at least \$25 on purchasing additional uniform items,
28

1 amounting to at least \$706,075 (28,243 Class Members × \$25.00).

2 26. Class Counsel also theorized that Plaintiff and the putative Class Members were
3 required to use their personal cell phones to download an app, complete the COVID questionnaire,
4 make corrections to their timesheets, and sign employment-related documents. Plaintiff mentioned
5 that she was contacted at least twice a week on her personal cell phone by her supervisors.
6 Defendants did not provide any reimbursements for the cell phone usage. Thus, Class Counsel
7 theorized a conservative estimate of \$3 per week for cell phone usage, which amounts to at least
8 \$5,350,900 (\$3 x 1,070,180 workweeks). Altogether, Plaintiff's damages for reimbursements
9 amount to \$3,916,615.

10 27. Class Counsel understand from the mediator and the mediation process that
11 Defendants argued the following: Defendants argued that Class Members are not owed
12 compensation for their uniform because Class Members primarily used their uniform for personal
13 purposes. Defendants argued that there is no requirement that Class Members be compensated for
14 work shoes, citing *Townley v. BJ's Restaurants, Inc.* (2019) 37 Cal.App.5th 179, as well as the
15 federal OSHA regulations that expressly exempt employers from reimbursing employees from
16 non-specialty shoes which the employer permits to be worn off the job site. Defendants further
17 defend that they did not require Class Members to use their cell phones for work-related purposes
18 and that Class Members used cell phones solely for personal use. Defendants also argued that they
19 reimbursed all employees for all expenses incurred in furtherance of work. Finally, Defendants
20 argued that Class Members signed valid arbitration agreements, and thus no class action is even
21 tenable here. Thus, Defendants contend that no monies under this theory, either.

22 **Wage Statement Violations**

23 28. Class Counsel theorized that Class Members are entitled to recover penalties for
24 Defendants' alleged failure to issue compliant wage statements under Labor Code section 226,
25 subdivision (e), because shifts involved off-the-clock work that was not included on wage
26 statements. Further, many shifts included meal period and rest period violations for which
27 premiums were not paid. Furthermore, there were different pay rates such as shift differentials for
28

1 working the late-night shift. The plaintiff discovered entries on wage statements that show
2 “Overtime Premium Hours” worked but no rate as to which those hours were paid. Thus,
3 Defendants are liable for wage statement violations for each pay period. Class Counsel understand
4 from the data provided by Defendants that there were 339,285 pay periods in the wage statement
5 liability period. Thus, Class Counsel theorized Defendants’ maximum exposure for wage
6 statement violations, assuming a 20% violation rate, would be \$8,482,125. (339,285 pay periods
7 in the wage statement period x \$100 penalty x 0.25).

8 29. Class Counsel understand from the mediator and the mediation process that
9 Defendants make the following defenses in connection with this claim: Defendants contend that
10 the wage statements issued to the employees fully complied with Labor Code section 226.
11 Defendants contend that because they believe no wages are unpaid that, thus, there can be no
12 derivative penalties. However, Class Counsel also understand the risks inherent in this claim if
13 the above claims were not certified. Class Counsel also had to factor in, and did factor in, the risk
14 that a Court would find there was no injury to Class Members even if the wage statements were
15 inaccurate or that Defendants’ conduct was not intentional, both of which are requirements of
16 Labor Code section 226 before penalties can issue. Class Counsel also note that the calculation
17 used does not consider the first pay period violation only being \$50 and the fact that all Class
18 Members did not work all pay periods. Finally, Defendants argued that Class Members signed
19 valid arbitration agreements, and thus no class action is even tenable here.

20 **Waiting Time Penalties**

21 30. Pursuant to Labor Code sections 201, 202 and 203, each employee in the relevant
22 statutory period (*i.e.*, three years before the filing of the initial Complaint) is entitled to 30 days’
23 worth of wages as waiting time penalty for not being paid all wages due upon separation of
24 employment. Class Counsel theorized at mediation, based on relevant documents provided by
25 Defendants, that, under Labor Code section 203, Defendants are liable to pay each Class Member,
26 who was terminated during the relevant statutory period, a full 30-day worth of wages as waiting
27 time penalty for failure to pay compensation in lieu of compliant meal and rest periods, and failure
28

1 to timely pay all wages due. Since Naranjo, penalties may be earned for unpaid premiums. Class
2 Counsel understands from documents provided by Defendants that there were 19,637 separated
3 employees during the relevant statutory period. Thus, Class Counsel theorized Defendants'
4 maximum exposure, assuming a 20% violation rate, for this claim to be \$12,724,776 (19,637
5 separate Class Members x \$13.50/hr. x 8 hrs x 30 days x .20).

6 31. Class Counsel understand from the mediator and the mediation process that
7 Defendants contend that there is no credence to Plaintiff's off-the-clock theory and that, thus, no
8 waiting time penalties are owed based on that theory. Additionally, Defendants contend that their
9 actions were not "willful" and that, thus, waiting time penalties cannot be awarded. Finally,
10 Defendants argued that Class Members signed valid arbitration agreements, and thus no class
11 action is even tenable here. Thus, Defendants argued that no waiting time penalties are owed.

12 **FCRA/ICRAA/CCRAA Violations**

13 32. Class Counsel theorized at mediation, based on documents produced by
14 Defendants, that Defendants failed to provide a compliant disclosure form in obtaining Class
15 Members' background and credit history because Defendants did not identify the consumer report
16 that will be used, identify the specific basis for the use of the report, inform Class Members of
17 their credit report score, nor provide an option for the Class Member to receive a copy of their
18 report, thereby violating the Fair Credit Reporting Act ("FCRA"), Investigative Consumer
19 Reporting Agency Act ("ICRAA") and California Consumer Credit Reporting Agencies Act
20 ("CCRAA"). In a class action, the ICRAA permits recovery of actual damages (See Civ. Code, §
21 1786.50). The penalty for violating the FCRA can be as low as \$100 and as high as \$1,000 per
22 violation (See 15 U.S.C. § 1681n, subdivision (a)(1)(A)).

23 33. Based on Defendants' defenses, one theory advanced by Class Counsel was to
24 attribute statutory damages of \$100 per Class Member as a reasonable estimate of potential
25 damages that may be recovered in light of Defendants' defenses. Class Counsel understand, based
26 on the information provided by Defendants, that there were 27,243 Class Members on whom a
27 background check was performed. Thus, one theory advanced by Class Counsel at mediation was
28

1 an exposure of \$2,724,300 as a reasonable analysis of Defendants' exposure (\$100 statutory
2 damages x 27,243 Class Members.

3 34. Class Counsel understand from the mediator and the mediation process that
4 Defendants argued all background checks and credit checks were compliant with the FCRA,
5 ICRAA and CCRAA. Defendant defended that the FCRA, ICRAA, and CCRAA were not violated
6 because the disclosure was clear and conspicuous. It further defends that the violation was not
7 willful and, thus, no penalties are owed. Defendants further defend that each of these claims
8 mandate a required, separate statute of limitation and, as such, Plaintiff cannot certify a class based
9 on these claims. Finally, Defendants argued that Class Members signed valid arbitration
10 agreements, and thus no class action is even tenable here. Thus, Defendant contends that *no*
11 monies are owed in connection with this theory, either.

12 **PAGA Penalties**

13 35. Class Counsel understand from the time and payroll data provided by Defendants
14 that there were 339,285 pay periods in the PAGA Period. Plaintiff's claims in the Action under
15 PAGA are substantially similar to those described herein. PAGA penalties include penalties for
16 initial violations and subsequent violations. Defendants contend that only initial violation rates
17 may be used instead of the subsequent violation rates initially used by Class Counsel. With this in
18 mind and because Class Counsel through investigation and discovery did not come to the
19 conclusion that Defendants at any time was notified by any governmental entity that they violated
20 any Labor Code sections presented in the PAGA Notice and PAGA claims, Class Counsel adjusted
21 the exposure model for Defendants to include only initial violation rates.

22 36. a. Overtime Violations: Labor Code section 558 prescribes penalties of \$50
23 for an initial violation and \$100 for each subsequent violation. Using the initial pay period rate
24 for all violations, and a violation every single pay period for every single non-exempt employee
25 in the PAGA Period, this amounts to a maximum exposure of \$16,964,250 (339,285 pay periods
26 x \$50).

1 37. b. Minimum Wage Violations: Labor Code section 1197.1 prescribes penalties
2 of \$100 for an initial violation and \$250 for each subsequent violation. Using the initial pay period
3 rate for all violations and a violation every single pay period for every single PAGA Member in
4 the PAGA Period, this amounts to a maximum exposure of \$33,928,500 (339,285 pay periods x
5 \$100).

6 38. c. Meal Period Violations: Labor Code section 558 prescribes penalties of
7 \$50 for an initial violation and \$100 for each subsequent violation. Using the initial pay period
8 rate for all violations and a violation every single pay period for every single non-exempt
9 employee in the Settlement Period, this amounts to a maximum exposure of \$16,964,250 (339,285
10 pay periods x \$50).

11 39. d. Rest Period Violations: Labor Code section 558 prescribes penalties of \$50
12 for an initial violation and \$100 for each subsequent violation. Using the initial pay period rate
13 for all violations and a violation every single pay period for every single non-exempt employee in
14 the Settlement Period, this amounts to a maximum exposure of \$16,964,250 (339,285 pay periods
15 x \$50).

16 40. e. Waiting Time Penalties: Labor Code section 2699 prescribes penalties of
17 \$100 for an initial violation and \$200 for each subsequent violation. Because this violation is
18 merited only at separation of employment, a 100% violation rate would likely include just one
19 violation per employee. The data produced by Defendants indicate that there were 10,234
20 Aggrieved Employees whose employment was separated during the PAGA Period. This amounts
21 to a maximum exposure of \$1,023,400 (10,234 Aggrieved Employees x \$100).

22 41. f. Wage Statement Violations: According to *Gunther v. Alaska Airlines, Inc.*
23 (2021) 287 Cal.Rptr.3d 229, in this instance, Labor Code section 2699 would be the appropriate
24 penalty for wage statement violations that are inaccurate, which prescribes penalties of \$100 for
25 an initial violation and \$200 for each subsequent violation (*Id.* at 247-248). Using the initial pay
26 period rate for all violations and a violation every single pay period for every single Aggrieved
27 Employee in the PAGA Period, this amounts to a maximum exposure of \$33,928,500 (339,285
28

1 pay periods x \$100).

2 42. g. Failure to Reimburse Business Expenses: Labor Code section 2699 would
3 be the appropriate penalty for failure to reimburse work expenses, which prescribes penalties of
4 \$100 for an initial violation and \$200 for each subsequent violation. Using *only* the initial pay
5 penalty of \$100 for all violations, and a violation every pay period for each Aggrieved Employee
6 in the PAGA Period, this amounts to exposure of \$33,928,500 (339,285 pay periods x \$100).

7 43. h. Conclusion: In sum, Class Counsel calculated Defendants' total maximum
8 exposure for PAGA violations if the Court were to find a 100% violation rate for every Aggrieved
9 Employee every pay period and not exercise its discretion to reduce any of those penalties to be
10 \$153,701,650. Class Counsel understand from the mediator and the mediation process that
11 Defendants argued the following in connection with this claim: Defendants contend that no PAGA
12 penalties are likely to be awarded and, even if they were, the maximum exposure calculated by
13 Class Counsel is vastly overstated. First, Defendants defend that PAGA penalties cannot and
14 should not be stacked. Second, Defendants assert that individualized issues predominate the
15 PAGA claims, making the claims unmanageable for trial. Third, Defendants deny that a violation
16 for each pay period can be established. Fourth, Defendants contend that a Court is unlikely to
17 exercise its discretion to award civil penalties under PAGA where, as here, there is no conduct
18 shown by Plaintiff that would show any Labor Code violation by Defendants is knowing and
19 intentional. Defendants insist that this is especially true in this Action where class action damages
20 are available to Class Members, rendering an award of PAGA penalties in addition to class action
21 damages to be double recovery.

22 44. Class Counsel maintain that it is possible to recover the subsequent violation rate for
23 penalties, that stacking is permissible, and that there is no manageability requirement under PAGA
24 (citing *Estrada v. Royalty Carpet Mills, Inc.*). As such, Class Counsel believe a 95% discount of this
25 claim to be reasonable, resulting in a valuation of **\$7,685,082** as a reasonable estimate of the
26 likelihood of what Plaintiff may recover at trial for PAGA penalties (\$153,701,650 x .05).

27 8. Conclusion

1 45. When including derivative penalties, such as waiting time penalties, wage statement
2 violations, and discretionary PAGA penalties, Class Counsel theorized Defendants' maximum
3 exposure to be approximately \$52,700,573. In all, Class Counsel obtained a Gross Settlement
4 Amount of \$4,226,000. Particularly in light of the risks involving obstacles to class certification,
5 all issues and risks related to liability, the issues with manageability at trial, the discretionary
6 nature of PAGA penalties, and considering the case law regarding fair, reasonable and adequate
7 settlements, Class Counsel strongly believe that the settlement reached is fair, reasonable and
8 adequate, and in the best interest of Class Members.

9 46. Moreover, \$200,000.00 of the Gross Settlement Amount was attributed to PAGA
10 penalties. This allocation was decided mutually by the Parties and the mutual decision was based
11 on: (1) the fact that damages are available for the failure to pay wage claims while only penalties
12 are available for the PAGA claims; (2) the risk that the Court may exercise its discretion to decline
13 to stack PAGA penalties; (3) the risk that the Court may exercise its discretion to not award the
14 full amount of PAGA penalties available; and (4) the risk that the Court may decline to award any
15 PAGA penalties at all in light of the fact that damages are available for Class Members and it may
16 find any further liability against Defendants unnecessarily punitive.

17 **Proposed Attorneys' Fees and Costs Are Reasonable**

18 47. Class Counsel seek an attorneys' fee amount of not more than one-third of the Gross
19 Settlement Amount, which, unless escalated pursuant to this Agreement, would amount to
20 \$1,487,500.00 Class Counsel also seek reimbursement of costs not to exceed \$60,000.00. The
21 requested fees fall well within the historical range of attorney's fees awards under the common fund
22 theory, which is generally from 25% to 50%. The requested fee is fair compensation for undertaking
23 complex, risky, expensive and time-consuming litigation on a contingent fee basis.

24 **The Requested Enhancement Award to The Named Plaintiff and Class Representative Is**
25 **Reasonable**

26 48. Class Counsel believe Plaintiff is entitled to an enhanced award for his service as
27 class representative, for answering extensive questions by Class Counsel, for being available and
28

1 answering questions during mediation, for the risks in being the named Plaintiff and for providing
2 Defendants with a more expansive release of claims, including a waiver based upon California Civil
3 Code section 1542, in exchange for the enhancement award.

4 49. I am informed and believe Defendants do not oppose the requested enhancement to
5 Plaintiff. Plaintiff risked intrusive discovery and the payment of employer costs. Class Counsel
6 seeks a limited enhancement of not to exceed \$10,000.00 to the Plaintiff for her services.

7 **Conditional Certification for Settlement Purposes**

8 **Ascertainability**

9 50. The Class Member definition (i.e., all persons currently or formerly employed by
10 Defendants, as hourly-paid, non-exempt employees at any time during the Class Period in the State
11 of California) is derived from the operative complaint, which complains of alleged violations of
12 Labor Code sections that are chiefly and, in some instances, solely applicable to non-exempt and
13 hourly-paid employees. Pursuant to Defendants' payroll records, approximately 28,243 non-
14 exempt, hourly paid employees.

15 **Numerosity**

16 51. Class Counsel understand from documents provided that Defendants identified at
17 least 28,243 Class Members.

18 **Commonality**

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

23 **Typicality**

24 53. I believe Plaintiff: (1) was a non-exempt employee like other Class Members; (2)
25 complains of not being paid for all time under Defendants' control or suffered and/or permitted to
26 work for Defendants; (3) did not receive full premium pay for meal periods that were not
27 compliant with the Labor Code; (4) did not receive premium pay for rest periods that were not
28

1 provided, among others as set forth above.

2 **Adequacy of Vedang J. Patel**

3 54. I graduated with Bachelor of Arts degree in Economics from the University of
4 California, Davis in 2016.

5 55. I received my Juris Doctorate from the UCLA School of Law in 2019.

6 56. After graduating from law school, I practiced law as a member of Murchison &
7 Cumming, LLP on a variety of matters on behalf of defendants.

8 57. Thereafter, I joined Bibiyan Law Group, P.C., practicing law on behalf plaintiffs in
9 matters of employment law, and specifically on issues of unpaid wages and class action settlements.

10 58. I am currently a Senior Attorney at Bibiyan Law Group, P.C. Among other tasks, I
11 oversee and manage all class action and PAGA action settlements at Bibiyan Law Group, P.C. I
12 have led settlement negotiations and the approval process for class action and PAGA settlements
13 in countless matters, including many of those listed in the declaration of David D. Bibiyan filed
14 concurrently.

15 59. I have also been appointed as Class Counsel in the past in the following actions:

16 • *Ramirez v. Sea-win*, Case No. 21STCV22026, California Superior Court, County of Los
17 Angeles, Honorable Lawrence P. Riff presiding;

18 • *Ortega Chavez v. Winpak Lane, Inc.* Case No. CIVSB2202274, California Superior
19 Court, County of San Bernardino, Honorable Jessica Morgan presiding;

20 • *Taat v. Acell. Inc.* Case No. 37-2022-00005437-CU-OE-CTL, California Superior
21 Court, County of San Diego, Honorable Matthew Brainer presiding;

22 • *Jordan v. The Martin-Brower Company*. Case No. 21STCV41435, California Superior
23 Court, County of Los Angeles, Honorable Stuart Rice presiding;

24 • *Williams v. Marrs*. Case No. 21STCV23775, California Superior Court, County of Los
25 Angeles, Honorable Stuart Rice presiding;

26 • *Russell v. Staffmark*. Case No. CVRI2103921, California Superior Court, County of
27 Riverside, Honorable Harold Hopp presiding;

- 1 • *Ortega Chavez v. Winpak Lane, Inc., et al. Case No. CIVSB2202274*, California
- 2 Superior Court, County of San Bernardino, Honorable Jessica Morgan presiding;
- 3 • *Carrasco v O.H. Barkhordar D.D.S., Inc., et al. Case No. 22STCV21188*, California
- 4 Superior Court, County of Los Angeles, Honorable Lawrence Riff presiding;
- 5 • *Correia v. Gallo Glass Company, et al. Case No. CV-21-006459*, California Superior
- 6 Court, County of Stanislaus, Honorable Sonny S. Sandhu presiding;
- 7 • *Hernandez v Bromley Foods, Inc., et al. Case No. 56-2021-00561326-CU-OE-VTA*,
- 8 California Superior Court, County of Ventura, Honorable Henr Walsh presiding;
- 9 • *Moreno v. Infiniti Group LLC., et al. Case No. CIVSB2223551*, California Superior
- 10 Court, County of San Bernardino, Honorable Joseph T. Ortiz presiding;
- 11 • *Kelley v. Applus Technologies, Inc., et al. Case No. CIVSB2204889*, California Superior
- 12 Court, County of San Bernardino, honorable Jessica Morgan presiding;
- 13 • *Helaire, et al. v. Smithfield Packaged Meats Corp., et al. Case No. JCCP5244*, California
- 14 Superior Court, County of San Bernardino, Honorable Jesica Morgan, presiding;
- 15 • *Davood v. NKSFB, LLC. Case No. 22STCV17305*, California Superior Court, County of
- 16 Los Angeles, Honorable Christopher Lui presiding.

17 60. I have also settled matters on a “PAGA Only” basis for aggrieved employees in the
18 past, including in:

19 • *Bailey v. Cannon Constructors*, Case No. 21STCV38274, California Superior Court,
20 County of Los Angeles, Honorable Carolyn Kuhl presiding.

21	Adequacy of Plaintiff
----	-----------------------

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

1 I declare under penalty of perjury under the laws of the state of California that the
2 foregoing is true and correct this June 3, 2025, at Los Angeles, California.

3
4 /s/ Vedang J. Patel

Vedang J. Patel