ZAGHI & CHRZAN, LLP
Zachary T. Chrzan (SBN 329159)
zach@zclawyers.com
Brian Zaghi (SBN 343599)
brian@zclawyers.com
10880 Wilshire Blvd., Suite 1101
Los Angeles, CA 90024
Tel: (310) 230-5353

Attorneys for Plaintiff, LUZMY BARRIENTOS,
on behalf of herself and all others similarly situated and aggrieved

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF CONTRA COSTA

LUZMY BARRIENTOS, an individual and on behalf of all others similarly situated,

Plaintiff,

v.

SHENG KEE OF CALIFORNIA., a California Corporation; and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: C25-01001

[Assigned to the Hon. Benjamin T. Reyes, II in Dept. 39]

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 Zachary T. Chrzan, Brian Zaghi, Jodey Lawrence, Luzmy Barrientos, and [Proposed] Order Filed Concurrently Herewith]

<u>HEARING INFORMATION:</u>
DATE: [_____________, 2026]
TIME: 9:00 a.m.
DEPT: 39

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on _____________, 2026, at 9:00 a.m., or as soon thereafter as she may be heard in Department 39 of the Superior Court of the State of California, County of Contra Costa, plaintiff LUZMY BARRIENTOS ("Plaintiff"), on behalf of herself 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 ("Class," "Settlement Class," "Settlement Class Members" or "Class Members") for the purpose of settlement only: all persons currently or formerly employed by defendant SHENG KEE OF CALIFORNIA ("Defendant") either directly or through any subsidiary, staffing agency, or professional employer organization, as non-exempt, hourly-paid employees in California at any time during the period from April 8, 2021 through November 8, 2025 ("Class Period").

2. Preliminarily approving Plaintiff as Class Representative.

3. Preliminary approving Zachary T. Chrzan and Brian Zaghi of Zaghi & Chrzan, LLP, as Class Counsel.

4. Preliminarily approving the Settlement terms set forth in Plaintiff's proposed Class and PAGA Settlement Agreement, the principal terms of which are fully based on the Memorandum of Understanding executed by Plaintiff and Defendant ("Settlement").

5. Preliminarily approving payment of the Gross Settlement Amount of $1,225,000.00.

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

7. Appointing Phoenix Class Action Administration Solutions ("Phoenix") to administer the Settlement, including distribution of the Class Notice, as set forth in the Settlement.

8. Preliminarily approving the payment of not to exceed $12,500.00 for settlement administration to Phoenix from the Gross Settlement Amount.

9. Preliminarily approving a service award of $7,500.00 to Plaintiff in consideration for Plaintiff's extensive efforts in prosecuting this case.

10. Preliminarily approving payment of reasonable attorneys' fees to Class Counsel in the amount of up to thirty-five (35%) of the Gross Settlement Amount, which amounts to $428,750.00.

11. Preliminarily approving reimbursement of Class Counsel's costs in an amount, according to proof, not to exceed $25,000.00.

12. Preliminarily approving PAGA penalties in the amount of $25,000.00, sixty-five percent (65%) or $16,250.00 of which will be paid to the Labor and Workforce Development Agency ("LWDA") out of the Gross Settlement Amount, and thirty-five percent (35%) or $8,750.00 of which will be distributed to Aggrieved Employees, defined as persons employed by Defendant in California who worked for Defendant as non-exempt, hourly-paid employees in California at any time during the period from April 8, 2024 through the date on which the Court grants preliminary approval of the Settlement. ("PAGA Period").

13. Entering an Order preliminarily approving the settlement consistent with the terms of the Settlement.

Good cause exists to grant 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 Zachary T. Chrzan, Brian Zaghi, and Jodey Lawrence and exhibits attached thereto, arguments of counsel, and upon such other materials contained in the file and pleadings of this action.

Dated: July 10, 2026

ZAGHI & CHRZAN, LLP

/s/ Zachary T. Chrzan __________
Zachary T. Chrzan, Esq.
Attorneys for Plaintiff, LUZMY BARRIENTOS, on behalf of herself and all others similarly situated and aggrieved

I. INTRODUCTION

Plaintiff LUZMY BARRIENTOS ("Plaintiff"), on behalf of herself and all others similarly situated and aggrieved, hereby applies for preliminary approval of the proposed Class and Representative Action Settlement Agreement ("Settlement,") upon the terms and conditions set forth in the Settlement Agreement, attached to the Declaration of Zachary T. Chrzan as Exhibit 1.

On April 8, 2025, Plaintiff filed with the LWDA and served on Defendant a notice under Labor Code section 2699.3 ("PAGA Notice"). (Chrzan Decl. ¶ 9, Ex. 2.) That same day, Plaintiff filed a class action alleging various labor code violations (the "Class Action). (*Id.* ¶ 10) On June 10, 2025, Plaintiff filed a First Amended Complaint in the Class Action adding all claims alleged in the PAGA Notice (the "Action," "Litigation" or "Lawsuit"). (*Id.* ¶ 11.)

The Parties agreed to exchange informal discovery and attend an early mediation. Defendant provided: (1) time and payroll records of 112 class members (21%); (2) class data points for 112 class members (21%), consisting of their hire dates, termination dates, and workweeks and pay periods worked; and (3) Defendant's wage and hour policy documents. (*Id.* ¶ 12.)

On February 9, 2026, the Parties mediated with Tagore Subramaniam, Esq., a well-regarded mediator with substantial experience mediating complex labor and employment matters. (*Id.* ¶ 13.) Following extensive, arms-length negotiations, and with the assistance of the mediator's evaluation and settlement proposal, the Parties reached an agreement in principle, which was later memorialized in a written Memorandum of Understanding and, ultimately, the Settlement. (*Id.*)

II. THE SETTLEMENT

Pursuant to Code of Civil Procedure section 382 and Rules of Court, rule 3.769, *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 (Chrzan Decl., Exhibit 1; ¶ 14.):

- Certification of a class ("Class," "Settlement Class," "Settlement Class Members" or "Class Members"), for settlement purposes only, defined as: all persons currently or formerly employed by defendant Sheng Kee of California ("Defendant"), either directly or through any subsidiary, staffing agency, or professional employer organization, as non-exempt, hourly-paid employees in California at any time during the period from April 8, 2021 through November 8, 2025 ("Class Period").

- Defendant will pay $1,225,000.00 ("Gross Settlement Amount") to resolve the matter. This is a non-reversionary settlement.
- The Gross Settlement Amount is based on Defendant's representation that Class Members worked no more than 42,808 Workweeks during the Class Period. Consistent with Paragraph 24 of the Parties' executed MOU (Chrzan Decl., Ex 3.), Defendant elected to reduce the release period rather than increase the Gross Settlement Amount, resulting in a Class Period ending on November 8, 2025. Accordingly, no escalator provision is included in the Settlement Agreement or these moving papers.
- Defendant will pay the employer's share of taxes separate and apart from the Gross Settlement Amount.
- Class Members will be paid their *pro rata* share of the class action settlement based on the total number of Qualifying Workweeks[1] worked during the Class Period.
- The Settlement Administration costs, estimated not to exceed $12,500.00, will be paid out of the Gross Settlement Amount.
- Class Counsel, Zachary T. Chrzan and Brian Zaghi of Zaghi & Chrzan, LLP, will apply for attorneys' fees of up to thirty-five percent (35%) of the Gross Settlement Amount, or $428,750.00, and actual costs, not to exceed $25,000.00, which will be paid out of the Gross Settlement Amount.
- Class Counsel will apply for a service award of $7,500.00 for the Class Representative, which will be paid out of the Gross Settlement Amount.
- After deducting attorneys' fees, litigation costs, the service award, settlement administration costs, and the PAGA penalties, the estimated Net Settlement Amount is approximately $726,250.00, yielding an estimated average Individual Class Payment of approximately $1,393.95 across the 521 Class Members. Because Individual Class Payments are calculated on a *pro rata* basis according to each Class Member's Qualifying Workweeks, actual payments will vary.
- "Aggrieved Employees" means all non-exempt, hourly-paid employees who worked for Defendant in California at any time between April 8, 2024 through the date on which the Court

[1] "Qualifying Workweek" means a workweek during which the Class Member was employed by, and worked on one or more days for, Defendant in a non-exempt, hourly position during the Class Period.

grants preliminary approval of the Settlement ("PAGA Period"). The Parties have agreed to allocate $25,000.00 of the Gross Settlement Amount as PAGA penalties, sixty-five percent (65%) or $16,250.00 of which will be paid to the LWDA, and thirty-five percent (35%) or $8,750.00 of which will be distributed to the Aggrieved Employees.

- Aggrieved Employees will be paid their *pro rata* share of the thirty-five percent (35%) of the PAGA Penalties based on the total number of Qualifying Pay Periods.[2]
- Participating Class Members will receive an Individual Settlement Payment, and Aggrieved Employees will receive an Individual PAGA Payment. Checks shall remain valid and negotiable for one hundred eighty (180) days. Thereafter, checks shall be canceled, and the funds associated with such checks shall be deemed unpaid residue pursuant to Code of Civil Procedure § 384 ("Unpaid Residue"). The Unpaid Residue, with any accrued interest, shall be transmitted by the Settlement Administrator to Legal Aid at Work for use in Contra Costa County, in accordance with Code of Civil Procedure § 384. The Settlement Administrator shall prepare a report regarding the distribution of the Unpaid Residue pursuant to Code of Civil Procedure section 384, which shall be submitted to the Court by Class Counsel along with a proposed amended judgment. Participating Class Members and Aggrieved Employees shall nevertheless be bound by the Settlement and the Final Approval Order regardless of whether their settlement payments are negotiated.
- Plaintiff waived all rights under Civil Code § 1542; Class Members did not.

III. <u>THE TWO-STEP APPROVAL PROCESS</u>

Any settlement of class litigation must be reviewed and approved. (*See* Cal. Rules of Court, rule 3.769). This is done in two steps: (1) a 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.*) The Settlement in this case is fair, reasonable and in the best interest of Class Members.

IV. <u>THE PRESUMPTION OF FAIRNESS</u>

Courts presume the absence of fraud or collusion in the negotiation of a settlement unless

[2] "Qualifying Pay Period" means a pay period worked by an Aggrieved Employee during which he or she was employed by, and worked on one or more days for, Defendant in a non-exempt, hourly position during the PAGA Period.

there is evidence to the contrary. Here, 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) 2017 WL 2214655, quoting *United States v. Oregon* (9th Cir. 1990) 913 F.2d 576, 580.) Courts do not substitute their judgment for that of the proponents, particularly where, as here, settlement has been reached with the participation of experienced counsel familiar with the litigation. (*Hammon v. Barry* (D.D.C. 1990) 752 F.Supp. 1087, 1093, citing Newberg on Class Actions, § 11.44, p. 457.)

V. SETTLEMENT AND ACCOMPANYING DOCUMENTS

A notice "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 Settlement as internal Exhibit "A" is the proposed Class Notice to be distributed to Class Members, which satisfies Rules of Court, rule 3.769, subd. (f). The Notice will be provided in English, Spanish, Mandarin, and Cantonese. (Chrzan Decl. ¶ 4.)

Plaintiff requests the 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. The Parties have agreed to use Phoenix Class Action Administration Solutions ("Phoenix" or "Settlement Administrator"), an experienced Settlement Administrator, to administer the settlement.

VI. THE SETTLEMENT IS FAIR AND REASONABLE

A. The Settlement Was Negotiated at Arm's-Length and Is not Collusive

While the recommendations of counsel proposing the settlement are not conclusive, the Court can take them into account, particularly where, as here, they have been involved in litigation for some period of time, are competent, have experience with this type of litigation, and have obtained data from the opposing party. (*See* Newberg on Class Actions, § 11.47.) Here, the Settlement was reached following meaningful arms-length negotiations between experienced counsel, informed by Class Counsel's investigation of the facts and applicable law. (Chrzan Decl. ¶ 15.)

Pursuant to *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802, Class Counsel thoroughly evaluated the claims and defenses, including review and expert analysis of a 21%[3] sampling of time and payroll records, as well as applicable policies. (Chrzan Decl. ¶ 15.) The Parties participated in a full-day mediation before Tagore Subramaniam, Esq., an experienced neutral mediator specializing in complex labor and employment matters. (*Id.*) After extensive negotiations, the mediator issued a proposal, which after careful consideration, was accepted by both Parties and formed the basis of the Settlement. (*Id.*) In short, the Settlement reflects a reasonable compromise of disputed claims and is fair, reasonable, and adequate in light of the risks, uncertainties, and expense associated with continued litigation, including the risks of motion practice, class certification, trial, and appeal. (*Id.*) Moreover, the Settlement was followed by further discussions and coordination to finalize the terms and conditions of the general settlement parameters. (*Id.*)

Class Counsel recognized the potential risk, expense and complexity posed by further litigation. (Chrzan Decl. ¶ 16.) Moreover, litigating Plaintiff's claims—which involve approximately 521 Class Members—would require substantial preparation and discovery, and ultimately would involve the deposition and presentation of numerous additional witnesses, as well as the consideration, preparation, and analysis of expert reports. (*Id.*) Therefore, should litigation have progressed any further, there would have been significant expense incurred by each side (above and beyond the expense already incurred). (*Id.*)

B. <u>The Settlement Amount Is Well Within Range of Reasonableness</u>

Below is an analysis of the claims addressed at mediation, the maximum realistic potential recovery for each claim, and the defenses asserted by Defendant, consistent with *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.

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

Class Counsel theorized at mediation, based on narrative evidence of Plaintiff and Class Members, and documents produced by Defendant, that Defendant failed to pay all wages due to

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[3] A 21% sample is statistically reliable in this context. The putative class consists of approximately 521 members. At a 90% confidence level, a sample of 112 class members (21%) yields an approximate margin of error of 7%, which is reasonable for purposes of evaluating liability and damages exposure at the settlement stage.

Class Members due to a policy and/or practice of: (1) maintaining a rounding policy that favored Defendant by failing to compensate employees for all time worked; (2) requiring Class Members to perform compensable pre-shift and post-shift work off the clock without pay; and (3) failing to accurately record and compensate employees for all hours worked. (Chrzan Decl. ¶ 18.)

Class Counsel estimated five (5) minutes of off-the-clock work each shift. (Chrzan Decl. ¶ 19.) There were approximately 216,738 shifts during the Class Period, 13% of which were over eight (8) hours in length, and Class Members had an average regular rate of pay of $18.17 and an average hourly rate of pay of $17.85. (*Id.*) Thus, **Defendant's exposure for unpaid off-the-clock work is $622,466.87** [overtime (216,738 shifts x 0.13 shifts over eight hours x 0.083 hours x $18.17 x 1.5 overtime rate) **$63,738.63** + **$558,728.24** minimum wage (216,738 shifts x 0.87 shifts under eight hours x 0.083 hours x $17.85 x 2 in liquidated damages)]. (*Id.*)

Defendant disputed these allegations, contending: (1) Class Members were paid for all hours worked and its written policies prohibited off-the-clock work and required employees to accurately record all time worked; (2) any alleged off-the-clock work or uncompensated time was isolated, voluntary, and contrary to company policy; (3) its rounding policy was facially neutral and did not undercompensate employees; (4) Plaintiff's arguments are speculative and unsupported by competent evidence; and (5) any determination of liability would require individualized inquiries into whether uncompensated work was performed, the circumstances under which it occurred, whether Defendant knew or should have known of the work, and the amount of uncompensated time, if any. (Chrzan Decl. ¶ 20.) Accordingly, Defendant maintains that it has no liability for unpaid wages and further contends that Plaintiff's damages model materially overstates any potential off-the-clock work allegedly performed by Class Members. (*Id.*)

2. Recovery of Damages for Non-Compliant Meal Periods

Class Counsel argued that Defendant's meal period policies were facially non-compliant because they failed to advise employees that meal periods must be duty-free, omitted any reference to premium pay for violative meal periods, improperly shifted responsibility to employees to schedule meal periods, and relied on unenforceable meal-period waivers. (Chrzan Decl. ¶ 21.) Class Counsel further contended that Defendant: (1) maintained unlawful meal period rounding practices;

(2) kept inaccurate, synthetic meal-period entries; (3) maintained practices that resulted in late, missed, short, interrupted, and second meal period violations; and (4) failed to pay meal-period premiums despite widespread violations reflected in Defendant's own timekeeping records. (*Id.*)

Class Counsel estimated, that 149,101 of the 180,299 (83%) eligible shifts during the Class Period had unique meal break violations. (Chrzan Decl. ¶ 22.) Notably, Defendant issued no meal period premiums throughout the Class Period. (*Id.*) Thus, one conservative calculation advanced at mediation by Class Counsel resulted in Defendant's exposure for non-compliant meal periods in an amount of **$2,709,165.17** (149,101 x $18.17/hour). (*Id.*)

Defendant asserted it maintained legally compliant meal policies and practices throughout the Class Period, including lawful meal-period waivers where applicable; its meal period records accurately reflected actual meal periods taken, and any rounding practices complied with law; employees were provided timely, uninterrupted, duty-free meal periods and any alleged violative meal periods were isolated, voluntary, waived, or contrary to Defendant's policies; no meal-period premiums were owed because no violations occurred; and Plaintiff's meal period theories would require individualized inquiries into each employee's meal periods, any applicable waivers, the circumstances of any alleged violation, and whether premium pay was owed, rendering the claims unsuitable for class treatment or a manageable trial. (Chrzan Decl. ¶ 23.) Accordingly, Defendant maintains that it has no liability for meal-period violations and further contends that Class Counsel's damages model substantially overstates any potential exposure. (*Id.*)

3. Recovery of Damages for Non-Compliant Rest Periods

Class Counsel theorized Defendant's rest period policies throughout the Class Period were facially non-compliant because they failed to advise that rest periods are duty-free, and omitted any reference to premium pay for violative rest periods. (Chrzan Decl. ¶ 24.) Class Counsel further contended Defendant's timekeeping records demonstrated rest period violations, including widespread first, second, and third rest period violations; Plaintiff and Class Members were not authorized and permitted to take compliant rest periods in practice; and Defendant failed to pay a single rest-period premium. (*Id.*)

Based on these contentions, one damages calculation performed by Class Counsel at mediation—assuming a conservative 20% violation rate for rest-eligible shifts—estimated **Defendant's potential exposure for failure to provide compliant rest periods at $783,573.98** (215,623 shifts × 0.20 × $18.17 per hour). (Chrzan Decl. ¶ 25.)

Defendant denied these allegations, asserting: (1) it maintained legally compliant rest period policies and practices; (2) Class Members were authorized and permitted to take compliant, duty-free rest periods, and its records accurately reflect this; (3) any violaive rest periods were isolated, voluntary, or contrary to Defendant's policies and did not entitle employees to premium pay; and (4) Plaintiff's rest-period claims would require individualized inquiries into whether any violation occurred, the circumstances surrounding any alleged violation, and whether premium pay was owed, rendering the claims unsuitable for class treatment or a manageable trial. (Chrzan Decl. ¶ 26.) Accordingly, Defendant maintains that it has no liability for rest-period violations and further contends that Class Counsel's damages model substantially overstates any potential exposure. (*Id.*)

4. Wage Statement Violations

Defendant's alleged failure to pay all wages owed—including meal and rest period premiums—had a derivative impact on the accuracy of wage statements under Labor Code § 226. Under Labor Code § 226, subdivision (e), a non-exempt employee who suffers injury as a result of a knowing and intentional failure to comply with subdivision (a) may recover the greater of actual damages or statutory penalties of fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) for each subsequent pay period, subject to a $4,000 cap per employee. Because penalties under section 226, subdivision (e) are subject to a one-year statute of limitations (Code Civ. Proc., § 340, subd. (a)), Class Counsel limited this claim to the applicable one-year limitations period, which corresponds to the PAGA Period. Assuming that Class Members worked off the clock and that no premiums were paid, each wage statement issued during that period would be non-compliant, and Defendant's maximum potential exposure for wage-statement penalties was estimated at $921,400 (9,214 pay periods × $100 per pay period). (Chrzan Decl. ¶¶ 27-28.)

Defendant contends (1) that the wage statements issued to Class Members fully complied with Labor Code § 226, and (2) because wages were paid, no derivative penalties are recoverable. (Chrzan Decl. ¶ 29.)

Class Counsel also considered the risks inherent in this claim, including the possibility that the underlying wage-and-hour claims might not be certified, that a court could find no cognizable injury even if inaccuracies existed, or that Defendant's conduct was not "knowing and intentional"—each of which is required. (*Id.*) The foregoing calculation does not account for the reduced $50 penalty applicable to initial violations or the fact that not all Class Members worked during every pay period, and therefore may not qualify for the statutory maximum penalty. (*Id.*)

5. Failure to Reimburse for Business Expenses

Class Counsel contended Defendant failed to reimburse Class Members for necessary business expenses incurred in the course of their employment. (Chrzan Decl. ¶ 30.) Specifically, Class Counsel argued that Plaintiff and Class Members were required to purchase mandatory, non-slip work boots at their own expense and to use their personal cellular phones for work-related purposes, including communicating with managers regarding production issues, scheduling, work assignments, and other job-related matters, without reimbursement. (*Id.*)

Thus, one calculation performed by Class Counsel estimated **Defendant's potential exposure for unreimbursed non-slip work boots at $428,080.00** ($10.00 per workweek × 42,808 workweeks) **and for unreimbursed cell phone expenses at $214,040.00** ($5.00 per workweek × 42,808 workweeks), for a total estimated exposure of **$642,120.00** for failure to reimburse business expenses. (Chrzan Decl. ¶ 31.) The per-workweek figure for the non-slip work boots reflects Class Counsel's assumption that each pair costs approximately $120.00 and lasts approximately twelve (12) weeks, yielding an estimated cost of $10.00 per workweek. (*Id.*)

Defendant argued: (1) Class Members were reimbursed for all necessary business expenses as required by law and Defendant's policies; (2) employees were not required to purchase any equipment or use personal phones for work-related purposes; and (3) any reimbursement claims would require individualized inquiries into whether an expense was actually incurred, whether it was necessary, whether Defendant knew of the expense, and whether reimbursement was requested, rendering the claims unsuitable for class treatment or a manageable trial. (Chrzan Decl. ¶ 32.) Accordingly, Defendant maintains that it has no liability for unreimbursed business expenses. (*Id.*)

6. Waiting Time Penalties

Class Counsel theorized that Defendant was liable for waiting-time penalties under Labor Code section 203 based on both direct and derivative violations. (Chrzan Decl. ¶ 33.) Class Counsel contended that Defendant failed to timely pay all wages due upon separation, and Defendant allegedly failed to pay all wages earned during employment—including off-the-clock wages and meal and rest period premiums—so Defendant necessarily failed to pay all wages due at termination, giving rise to derivative waiting-time penalties. (*Id.*)

Using a full 30-day penalty at an average regular rate of pay of $18.17 for eight hours per day, one damages calculation performed by Class Counsel at mediation estimated **Defendant's maximum potential exposure for waiting-time penalties at $1,277,714.40** (293 separated Class Members × $18.17 per hour × 8 hours × 30 days). (*Id.* ¶ 34.)

Defendant argued: (1) Plaintiff’s underlying theories—including the off-the-clock, meal period, and rest period violations—lack merit and cannot support derivative waiting-time penalties; (2) all wages due at separation were timely paid; (3) any failure to timely pay wages was the result of a good-faith dispute so was not “willful” under Labor Code section 203; and (4) any waiting-time penalty claim would require individualized inquiries into each employee’s separation, wages allegedly owed, and the circumstances of the final payment. (Chrzan Decl. ¶ 35.) Accordingly, Defendant maintains that no waiting-time penalties are recoverable. (*Id.*)

7. Additional Released Class Claims

Class Counsel also evaluated potential claims under Labor Code sections 96, 98.6, 210, 212–213, 221, 223, 226.3, 227.3, 232, 232.5, 245 *et seq.*, 432 *et seq.*, 558, 1102.5, 1174, 1174.5, 1182.12, 1197.1, 1197.5, 1198.5, 2810.3, 2810.5, 3366, 6401 *et seq.*, 6432, and 8397.4, as well as California Business and Professions Code sections 16600 *et seq.*, 16700 *et seq.*, and 17200 *et seq.*, California Government Code section 12952, and the applicable Industrial Welfare Commission Wage Order provisions. (Chrzan Decl. ¶ 36.) While that investigation did not identify evidence of systemic, classwide violations, because these statutory theories could plausibly have been asserted, the Settlement includes them to provide comprehensive finality as to all claims that were asserted or reasonably could have been asserted in this Action, without increasing the settlement consideration or reducing Class Members' recovery. (*Id.*)

8. PAGA Penalties

There were 9,214 pay periods and 322 Aggrieved Employees in the PAGA Period. (Chrzan Decl. ¶ 37.) Plaintiff's PAGA claims are similar to those described above. (*Id.*) PAGA provides for civil penalties for initial violations and higher penalties for subsequent violations. (*Id.*) Defendant contends only initial-violation penalties apply. (*Id.*) Because Class Counsel's investigation and discovery did not establish that Defendant was ever previously cited or otherwise formally notified of violations of the Labor Code provisions alleged in the PAGA Notice, Class Counsel adjusted the PAGA exposure model to apply only initial-violation penalties. (*Id.*) Class Counsel believes it is reasonable and appropriate to estimate Defendant's maximum potential exposure for PAGA penalties as follows:

a. Overtime Violations: Applying the initial-violation rate to all pay periods, and assuming a violation in every pay period during the PAGA Period, Class Counsel calculated a maximum potential exposure of $921,400 (9,214 pay periods × $100). (Chrzan Decl. ¶ 38.)

b. Minimum Wage Violations: Using the initial-violation rate, and assuming a violation in every pay period during the PAGA Period, Class Counsel calculated a maximum potential exposure of $921,400 (9,214 pay periods × $100). (Chrzan Decl. ¶ 39.)

c. Meal Period Violations: Using the initial-violation rate and assuming a violation in every pay period during the PAGA Period, Class Counsel calculated a maximum potential exposure of $921,400 (9,214 pay periods × $100). (Chrzan Decl. ¶ 40.)

d. Rest Period Violations: Using the initial-violation rate and assuming a violation in every pay period during the PAGA Period, Class Counsel calculated a maximum potential exposure of $921,400 (9,214 pay periods × $100). (Chrzan Decl. ¶ 41.)

e. Waiting Time Penalties: Defendant's data reflect that approximately 113 Aggrieved Employees separated during the PAGA Period. Class Counsel calculated a maximum potential exposure of $11,300 (113 Aggrieved Employees × $100). (Chrzan Decl. ¶ 42.)

f. <u>Wage Statement Violations</u>: Using the initial-violation rate and assuming a violation in every pay period during the PAGA Period, this amounts to a maximum exposure of $921,400 (9,214 pay periods × $100). (Chrzan Decl. ¶ 43.)

g. <u>Failure to Reimburse Work Expenses</u>: Using the initial-violation rate and assuming a violation in every pay period during the PAGA Period, this amounts to a maximum exposure of $921,400 (9,214 pay periods × $100). (Chrzan Decl. ¶ 44.)

Class Counsel also evaluated Labor Code §§ 96, 98.6, 98.7, 1102.5, 1174, 1174.5, 1198.5, 232, 232.5, 432 *et seq.*, 6401 *et seq.*, 6432, 3366, and 8397.4, and California Business and Professions Code sections 16600 *et seq.*, 16700 *et seq.*, and 17200 *et seq.*, as well as Government Code section 12952 and the applicable Wage Order provisions. (Chrzan Decl. ¶ 45.) That investigation did not identify evidence supporting violations warranting additional PAGA penalties beyond the theories addressed above. (*Id.*) But, because these statutory theories could have been asserted or further developed from the same factual nucleus, the Settlement includes them in the PAGA Release to provide comprehensive finality as to all PAGA civil-penalty claims that were asserted or reasonably could have been asserted based on the facts alleged in the Operative Complaint and/or PAGA Notice, without increasing the settlement consideration. (*Id.*)

In sum, Class Counsel estimated a total maximum exposure for PAGA violations (assuming a 100% violation rate every pay period and no reduction of any penalties) to be $5,539,700. (Chrzan Decl. ¶ 46.) Defendant contends that no PAGA penalties are likely to be awarded and, even if they were, the maximum exposure calculated is vastly overstated. (*Id.* ¶ 47.) Defendant argues that PAGA penalties cannot and should not be stacked. (*Id.*) Second, Defendant asserts that individualized issues predominate the PAGA claims, making the claims unmanageable for trial. (*Id.*) Third, Defendant denies that a violation for each pay period can be established. (*Id.*) Fourth, Defendant contends that a Court is unlikely to award civil penalties under PAGA where, as here, there is no conduct shown by Plaintiff that would show any "knowing" or "intentional" misconduct. (*Id.*) 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. (*Id.* ¶ 48.) Class Counsel believe a 90% discount of this claim to be reasonable, resulting in a valuation of $553,970 as a reasonable estimate of the likelihood of what Plaintiff may recover at trial for PAGA penalties ($5,539,700 × .10). (*Id.*)[4]

When including derivative penalties and discretionary PAGA penalties, Class Counsel theorized Defendant's maximum exposure to be approximately **$12,496,140.42**. (*Id.* ¶ 49.) In all, Class Counsel obtained a Gross Settlement Amount of **$1,225,000**, which is nearly 10% of Defendant's maximum exposure. In light of the obstacles to class certification, risks related to liability, issues with manageability at trial, the discretionary nature of PAGA penalties, and the case law regarding fair, reasonable, and adequate settlements, the Settlement is fair, reasonable, adequate, and in the best interest of Class Members.

VII. THE PROPOSED ATTORNEYS' FEES AND COSTS ARE REASONABLE

Class Counsel seek attorneys' fees of up to thirty-five percent (35%) of the Gross Settlement Amount, which would amount to $428,750.00. (Chrzan Decl. ¶ 50.) Class Counsel also seek reimbursement of costs not to exceed $25,000.00. (*Id.*) 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%. (*Id.*) The requested fee is fair compensation for undertaking complex, risky, expensive and time-consuming litigation on a contingent fee basis. (*Id.*)

VIII. THE REQUESTED ENHANCEMENT AWARD IS REASONABLE

Plaintiff requests an award for her service as class representative, for answering extensive questions by Class Counsel, being available and answering questions during mediation, the risks in being the named plaintiff, and providing Defendant with a waiver based upon California Civil Code section 1542, in exchange for the enhancement award. Plaintiff risked intrusive discovery and the payment of employer costs. Class Counsel seek an enhancement of $7,500.00 to Plaintiff for her service. (*See generally*, declaration of Luzmy Barrientos.)

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[4] The allocation of $25,000.00 to resolve the PAGA claims is fair and reasonable. PAGA penalties are discretionary, subject to reduction, and intended primarily to vindicate the State's interests rather than provide full compensatory relief. (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77.) In light of risks of continued litigation, the relatively limited PAGA exposure, and the fact that Aggrieved Employees also recover through the class settlement, the agreed-upon allocation reflects a reasonable compromise that adequately serves PAGA's enforcement and deterrent purposes.

IX. CONDITIONAL CERTIFICATION FOR SETTLEMENT PURPOSES

There are two certification prerequisites: (1) an "ascertainable class;" and (2) "a well-defined community of interest." (*Sotelo v. MediaNews Group, Inc.* (2012) 207 Cal.App.4th 639, 647.) The party advocating class treatment must demonstrate: (1) a numerous class; (2) predominant common questions of law or fact; (3) typicality; and (4) adequacy. (*Williams v. Sup. Ct.* (2013) 221 Cal.App.4th 1353, citing *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1021.)

1. Ascertainability – "Ascertainability" 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. There is no difficulty ascertaining who is a Class Member based on the above-described definition, as it is readily apparent from Defendant's payroll records. (Chrzan Decl. ¶ 54.)

2. Numerosity – A putative class is sufficiently numerous where joinder of all members is impracticable and class treatment would promote judicial efficiency and economy. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435, 446.) Courts routinely find numerosity satisfied where a class exceeds forty members. (*Miri v. Dillon* (E.D. Mich. 2013) 292 F.R.D. 454, 461.) Based on payroll records produced by Defendant, the proposed Class includes at least 521 members, which is more than sufficient to satisfy the numerosity requirement. (Chrzan Decl. ¶ 55.)

3. Community of Interest – There is a well-defined community of interest because the claims arise from Defendant's uniform employment policies and practices and present common questions of law and fact capable of classwide resolution. (*Linder*, 23 Cal.4th at 435.) Class Members were employed by Defendant in non-exempt, hourly positions in California during the Class Period and were subject to the same policies and practices. (Chrzan Decl. ¶ 56.) The central questions—e.g., whether Defendant failed to pay all wages owed, failed to provide compliant meal and rest periods, and failed to pay required premiums—are common and predominate over any individualized issues. (*Id.*) Because the claims are based on standard policies and practices applicable to all Class Members, their resolution will turn on common proof, establishing a strong community of interest supporting conditional certification for settlement purposes. (*Id.*)

4. Typicality – Typicality requires that the named plaintiff's interests be substantially similar to those of the class. (*Williams v. Superior Court* (2013) 221 Cal.App.4th 1353, citing *Brinker*

Restaurant Corp. v. Superior Court (2012) 53 Cal.4th 1004, 1021.) Plaintiff's claims are typical because she, like all Class Members, was employed by Defendant in a non-exempt, hourly position and alleges injury arising from the same challenged practices. (Chrzan Decl. ¶ 57.)

5. Adequacy - The representative plaintiff must adequately protect the interests of the class. (*Williams v. Superior Court* (2013) 221 Cal.App.4th 1353, citing *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.) Adequacy has two components: (1) the absence of disabling conflicts of interest between the class representative and the class, and (2) representation by counsel who are competent and experienced in the litigation at issue. (*McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450.) Both requirements are satisfied here.

First, no conflicts exist between Plaintiff and the Class. (Chrzan Decl. ¶ 58.) Plaintiff alleges she was harmed by the same uniform employment practices challenged on behalf of the Class. (*Id.*) Plaintiff's interests are therefore fully aligned with those of absent Class Members, and she has every incentive to vigorously prosecute the Action and maximize recovery for the Class as a whole. (*See, e.g.*, *Soderstedt v. CBIZ Southern California, LLC* (2011) 197 Cal.App.4th 133, 155-56; *Jones v. Farmers Ins. Exchange* (2013) 221 Cal.App.4th 986, 998-999.)

Second, as set forth in the accompanying declarations of counsel, Class Counsel are experienced in prosecuting wage-and-hour class and representative actions and have been appointed as class counsel in numerous prior cases. (Chrzan Decl. ¶ 59.) Class Counsel possess the requisite experience, resources, and expertise to adequately represent the interests of the Class, and their involvement in this matter supports the conclusion that the Settlement is the product of informed, arm's-length negotiations. See *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.

6. Superiority of Class Action - With at least 521 Class Members, 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. (*Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1021.)

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X. CONCLUSION

For all the foregoing reasons, the proposed Settlement is fair, reasonable, and adequate, falls well within the range of reasonableness, and satisfies every prerequisite for provisional class certification for settlement purposes. Plaintiff respectfully requests that the Court grant this Motion for Preliminary Approval, provisionally certify the Settlement Class, approve the Class Notice, and set a final approval hearing.

Dated: July 10, 2026

ZAGHI & CHRZAN, LLP.

/s/ *Zachary T. Chrzan*
ZACHARY T. CHRZAN
BRIAN ZAGHI
Attorneys for Plaintiff LUZMY BARRIENTOS, and all others similarly situated and aggrieved

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF CONTRA COSTA

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my mailing address is 10880 Wilshire Blvd., Suite 1101, Los Angeles, CA 90024.

On July 10, 2026, I caused a true and correct copy of the foregoing document(s) described as **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT AND PROVISIONAL CLASS CERTIFICATION FOR SETTLEMENT PURPOSES ONLY** to be served via email as follows:

HIXSON NAGATANI LLP
2021 The Alameda, Suite 240
San Jose, CA 95126
Jay J. Wang, Esq.
jay@hnemploymentlaw.com
Alexa L. Morgan, Esq.
alexa@hnemploymentlaw.com

Attorneys for Defendants.

☒ **BY E-MAIL OR ELECTRONIC TRANSMISSION:**
Based on a Court order or on an agreement by the parties to accept service by e-mail or electronic transmission, I caused the document(s) described above to be electronically served to the persons at the e-mail addresses listed. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on July 10, 2026 at Los Angeles, California.

/s/ Mary Bolaños
Mary Bolaños