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Attorneys for Plaintiffs, CHARLENE AMERICA MURILLO
and ALONDRA TACHIQUIN, on behalf of themselves and
all others similarly situated and aggrieved

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

CHARLENE AMERICA MURILLO and
ALONDRA TACHIQUIN, as individuals,
and on behalf of all others similarly situated,

Plaintiffs,

v.

IKON MOTORSPORTS, INC., a California
corporation, SUITABLE STAFFING
SOLUTIONS, INC., a California corporation;
and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 22STCV30656

[Assigned to the Hon. Timothy Patrick
Dillon in Dept. 15]

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS AND
REPRESENTATIVE ACTION
SETTLEMENT AND PROVISIONAL
CLASS CERTIFICATION FOR
SETTLEMENT PURPOSES ONLY;
DECLARATIONS OF BRANDON M.
CHANG, DAVID D. BIBIYAN,
CHARLENE AMERICA MURILLO,
ALONDRA TACHIQUIN, AND
ANTHONY ROGERS IN SUPPORT
THEREOF**

HEARING INFORMATION:

DATE: December 4, 2025

TIME: 10:00 a.m.

DEPT: 15

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

2 **PLEASE TAKE NOTICE** that on December 4, 2025 at 10:00 a.m., or as soon thereafter as
3 they may be heard in Department 15 of the Superior Court of the State of California for the County
4 of Los Angeles, Spring Street Courthouse, plaintiffs Charlene America Murillo and Alondra
5 Tachiquin (collectively, “Plaintiffs”), on behalf of themselves and all others similarly situated and
6 aggrieved, will and hereby do move for this Court for entry of an Order:

7 1. Preliminarily certifying the following settlement class (“Class,” “Settlement Class
8 Members” or “Class Members”) for the purpose of settlement only: all persons currently or formerly
9 employed by defendant Advance Tuning, LLC, dba Ikon Motorsports, Inc. (“Ikon”), either directly
10 or through any subsidiary, staffing agency, or professional employer organization, including
11 defendant Suitable Staffing Solutions, Inc. (“Suitable,” collectively with Ikon, the “Defendants”),
12 as non-exempt, hourly-paid employees during the period from September 19, 2018, through August
13 19, 2024 (“Class Period”) in the State of California.

14 2. Preliminarily approving Plaintiffs as Class Representatives.

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

17 4. Preliminarily approving the settlement claims under the terms set forth in the Settlement
18 Agreement.

19 5. Preliminarily approving payment of the Gross Settlement Amount of \$610,500.00, which
20 is subject to escalation pursuant to the Settlement Agreement.

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

22 7. Appointing ILYM Group, Inc. (“ILYM”), to administer the Settlement, including
23 distribution of the Class Notice, as set forth in the Settlement Agreement.

24 8. Preliminarily approving the payment of not to exceed \$7,250.00 for settlement
25 administration to ILYM from the Gross Settlement Amount.

26 9. Preliminarily approving a service award of up to \$7,500.00 each to plaintiffs Charlene
27 America Murillo and Alondra Tachiquin, for a total of \$15,000.00 to Plaintiffs, in consideration for
28 Plaintiffs’ extensive efforts in prosecuting this case.

1 10. Preliminarily approving payment of reasonable attorneys' fees to Class Counsel in the
2 amount of thirty-five percent (35%) of the Gross Settlement Amount which, unless escalated
3 pursuant to the Settlement Agreement, amounts to \$213,675.00.

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

6 12. Preliminarily approving PAGA penalties in the amount of \$40,000.00, seventy-five percent
7 (75%) or \$30,000.00 of which will be paid to the Labor and Workforce Development Agency
8 ("LWDA") out of the Gross Settlement Amount, and twenty-five percent (25%) or \$10,000.00 of
9 which will be distributed to "Aggrieved Employees," defined as all persons currently or formerly
10 employed by Ikon, either directly or through any subsidiary, staffing agency, or professional
11 employer organization, including Suitable, as non-exempt, hourly-paid employees during the period
12 from September 9, 2021 through the end of the Class Period ("PAGA Period") in the State of
13 California.

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

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

18 This Motion will be based on this Notice of Motion, the Memorandum of Points and
19 Authorities filed herewith, the Declarations of Brandon M. Chang, David D. Bibiyan, Charlene
20 America Murillo, Alondra Tachiquin, and Anthony Rogers, and exhibits attached thereto, arguments
21 of counsel and upon such other materials contained in the file and pleadings of this action.

23 Dated: June 17, 2025

BIBIYAN LAW GROUP, P.C.

24 /s/ *Brandon M. Chang*

25 _____
26 BRANDON M. CHANG
27 Attorneys for Plaintiffs, CHARLENE AMERICA
28 MURILLO and ALONDRA TACHIQUIN, on
 behalf of themselves and all others similarly
 situated and aggrieved

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Charlene America Murillo and Alondra Tachiquin (collectively, “Plaintiffs”), on
4 behalf of themselves and all others similarly situated and aggrieved, hereby apply for preliminary
5 approval of the Class and PAGA Settlement Agreement (“Settlement,” “Agreement” or
6 “Settlement Agreement”) upon the terms and conditions set forth in the Settlement Agreement,
7 attached to the Declaration of Brandon M. Chang as Exhibit “1.”

8 On September 19, 2022, plaintiff Charlene America Murillo filed with the LWDA and
9 served on Defendants a notice under Labor Code section 2699.3, stating she intended to serve as a
10 proxy of the LWDA to recover civil penalties on behalf of Aggrieved Employees for alleged Labor
11 Code violations (the “Murillo PAGA Notice”). A true and correct copy of the Murillo PAGA Notice
12 is attached to the Declaration of Brandon M. Chang as Exhibit “2.”

13 Also, on September 19, 2022, plaintiff Charlene America Murillo commenced this action by
14 filing a complaint alleging causes of action against Defendants for: (1) failure to pay overtime
15 wages; (2) failure to pay minimum wages; (3) failure to provide meal periods or compensation in
16 lieu thereof; (4) failure to provide rest periods or compensation in lieu thereof; (5) failure to pay all
17 wages due upon separation from employment; (6) failure to provide accurate wage statements; (7)
18 failure to timely pay wages during employment; and (8) engaging in unfair competition (the
19 “Action”).

20 On January 17, 2023, plaintiff Alondra Tachiquin filed with the LWDA and served on
21 Defendants a notice under Labor Code section 2699.3, stating she intended to serve as a proxy of
22 the LWDA to recover civil penalties on behalf of Aggrieved Employees for alleged Labor Code
23 violations (the “Tachiquin PAGA Notice”). A true and correct copy of the Tachiquin PAGA Notice
24 is attached to the Declaration of Brandon M. Chang as Exhibit “3.” The Murillo PAGA Notice and
25 the Tachiquin PAGA Notice are hereinafter collectively referred to as the “PAGA Notices.”

26 On April 13, 2023, after sixty-five (65) days had passed without any action by the LWDA
27 with respect to the Labor Code violations alleged in the PAGA Notice, Plaintiffs filed a separate
28 representative action under the California Private Attorneys General Act (“PAGA”) against

1 Defendants in the Los Angeles County Superior Court, captioned *Charlene America Murillo, et al.*
2 *v. Ikon Motorsports, Inc. et al.*, Case No. 23STCV08228, for the Labor Code violations set out in
3 the PAGA Notice (the “PAGA Action”).

4 On May 8, 2023, plaintiff Charlene America Murillo filed a First Amended Complaint in the
5 Class Action, adding plaintiff Alondra Tachiquin as a named plaintiff in the Class Action.

6 Thereafter, Plaintiffs and Defendants (collectively, the “Parties”) agreed to exchange
7 informal discovery and attend mediation.

8 Prior to mediation, Plaintiffs obtained, through informal discovery: (1) payroll records from
9 defendant Advance Tuning, LLC, for approximately 100% of the estimated 124 putative class
10 members from September 20, 2021 through June 5, 2023, and time and payroll records from
11 defendant Sutable Staffing Solutions, Inc., for approximately 100% of the estimated 124 putative
12 class members from January of 2022 through May 21, 2023; (2) data points, including the number
13 of putative class members, Workweeks and shifts from August 31, 2016 through May 21, 2023, the
14 number of employees separated from employment from August 31, 2017, the average hourly rate
15 of pay, and the number of PAGA Pay Periods; (3) all relevant policy documents of Defendants; and
16 (4) all documents pertaining to Plaintiffs available to Defendants.

17 Plaintiffs’ investigation was sufficient to satisfy the criteria for court approval set forth in
18 *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.*
19 (2008) 168 Cal. App. 4th 116, 129-130 (“Dunk/Kullar”).

20 On May 21, 2024, the Parties participated in a full-day mediation presided over by Marc
21 Feder, Esquire, a well-regarded mediator experienced in mediating complex labor and employment
22 matters. With the aid of the mediator’s evaluation, the Parties successfully reached a global
23 settlement to resolve the actions.

24 Pursuant to the Agreement, on June 5, 2025, Plaintiffs filed a Second Amended Complaint
25 in the Class Action, adding the claims alleged in the PAGA Action. Upon the acceptance of the
26 Second Amended Complaint in the Class Action, Plaintiffs will file a request for dismissal of the
27 PAGA Action without prejudice, thereby effectively consolidating the PAGA Action within the
28

1 Class Action for the purpose of settlement approval. The Second Amended Complaint in the Class
2 Action is the Operative Complaint in the Action.

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

11 **II. THE SETTLEMENT**

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

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

- 18 • Certification of a class ("Settlement Class," "Settlement Class Members" or "Class
19 Members") defined as: all persons currently or formerly employed by defendant
20 Advance Tuning, LLC, dba Ikon Motorsports, Inc. ("Ikon"), either directly or through
21 any subsidiary, staffing agency, or professional employer organization, including
22 defendant Suitable Staffing Solutions, Inc. ("Suitable," collectively with Ikon, the
23 "Defendants"), as non-exempt, hourly-paid employees during the period from
24 September 19, 2018, through August 19, 2024 ("Class Period") in the State of
25 California.
- 26 • Defendants will pay \$610,500.00 ("Gross Settlement Amount") to resolve the matter.
- 27 • Defendants represent that there are no more than 12,200 Workweeks (11,645
28 Workweeks attributable to Ikon and 555 Workweeks attributable to Suitable) worked

1 during the Class Period. In the event the number of Workweeks during the Class Period
2 increases by more than 10% (i.e., an additional 1,220 Workweeks), then, at Defendants'
3 election: (1) the Gross Settlement Amount shall be increased proportionally by the
4 Workweeks in excess of 13,420 multiplied by the Workweek Value, on a pro-rata basis
5 between the Defendant(s) responsible for such increase; or (2) the Class Period shall end
6 on the date the number of Workweeks reaches 13,420. The Workweek Value shall be
7 calculated by dividing the Gross Settlement Amount by 12,200. The Parties agree that
8 the Workweek Value amounts to \$50.00 per Workweek (\$610,500.00 / 12,200
9 workweeks). Thus, for example, should there be 13,500 Workweeks in the Class Period,
10 and Defendants elect option (1) above, then the Gross Settlement Amount shall be
11 increased by \$4,000 (13,500 Workweeks – 13,420 Workweeks x \$50.00/Workweek).
12 Should Defendants elect option (2) above, Defendants must provide written notice to
13 Class Counsel within seven (7) days of receiving sufficient information that the
14 Workweeks exceed 13,420. Untimely notice shall cause Defendants' election to shorten
15 the Class Period to have no force or effect. Defendant's option (2) pursuant to this section
16 expires upon the Court's entry of the Preliminary Approval Order.

- 17 • Defendants will pay the employer's share of taxes separate and apart from the Gross
18 Settlement Amount.
- 19 • This is a non-reversionary settlement.
- 20 • Class Members will be paid their *pro rata* share of the class action settlement based
21 on the total number of Workweeks¹ worked during the Class Period.
- 22 • The Settlement Administration costs, estimated not to exceed \$7,250.00, will be paid
23 out of the Gross Settlement Amount.
- 24 • Class Counsel, comprised of David D. Bibiyan and Vedang J. Patel of Bibiyan Law
25 Group, P.C., may apply for, and Defendants will not oppose, attorneys' fees of *up to*
26

27 ¹ "Workweek" means any week during which a Class Member worked for Defendants, for at least one day during the
28 Class Period, based on hire dates, re-hire dates (as applicable), and termination dates (as applicable).

thirty-five percent (35%) of the Gross Settlement Amount, which, unless escalated pursuant to the Settlement Agreement, amounts to \$213,675.00, and actual costs, not to exceed \$25,000.00, all of which will be paid out of the Gross Settlement Amount.

- Class Counsel hereby apply for, and Defendant will not oppose, a service award of up to \$7,500.00 each to plaintiffs Charlene America Murillo and Alondra Tachiquin, for a total of \$15,000.00 to Plaintiffs, which will be paid out of the Gross Settlement Amount.
- “Aggrieved Employees” means all persons currently or formerly employed by Ikon, either directly or through any subsidiary, staffing agency, or professional employer organization, including Suitable, as non-exempt, hourly-paid employees during the period from September 9, 2021 through the end of the Class Period (“PAGA Period”) in the State of California.
- Defendants have agreed to pay \$40,000.00 as PAGA penalties, seventy-five percent (75%) or \$30,000.00 of which will be paid to the LWDA out of the Gross Settlement Amount, and twenty-five percent (25%) or \$10,000.00 of which will be distributed to the Aggrieved Employees.
- For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date (180 days after the date of mailing), the Administrator shall transmit the funds represented by such checks to the California Controller’s Office, Unclaimed Property Fund, in the name of the Class Member, thereby leaving no “unpaid residue” subject to the requirements of California Code of Civil Procedure section 384, subd. (b).

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

Any settlement of class litigation must be reviewed and approved by the Court. (*See* Cal. Rules of Court, rule 3.769). This is done in two steps: (1) an early (preliminary) review by the trial court; and (2) a final review after notice has been distributed to the class members for their comment or objections. (*See id.*). Courts presume the absence of fraud or collusion in the

1 negotiation of a settlement unless evidence to the contrary is offered. In short, there is a
2 presumption that the negotiations were conducted in good faith. (Newberg on Class Actions, §
3 11.51; *In re Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability*
4 *Litigation* (N.D. Cal. May 17, 2017) No. 16-cv-00295, 2017 WL 2214655, quoting *United States*
5 *v. Oregon* (9th Cir. 1990) 913 F.2d 576, 580.)

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

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

11 Attached to the Declaration of Brandon M. Chang as Exhibit “1” thereto is the Settlement
12 Agreement between the Parties. Attached to the Settlement Agreement as internal Exhibit “A” is the
13 proposed Class Notice to be distributed to Class Members in English and Spanish. The proposed
14 Class Notice satisfies these requirements.

15 The Parties respectfully request that this Court approve the above-referenced Class Notice
16 and dissemination of the Class Notice to the Class Members, consistent with the manner and timing
17 as set forth in the Settlement Agreement. The Parties have agreed to use ILYM Group, Inc.
18 (“ILYM”), an experienced Settlement Administrator, to administer the settlement.

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

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

22 The Settlement that has been reached, subject to this Court’s approval, is a product of
23 substantial efforts by the Parties and their counsel. The Settlement was reached after extensive
24 factual and legal investigation and research; the exchange of informal discovery; substantial
25 negotiation regarding the scope of informal discovery; exchange of documents and information that
26 included review of time and pay records and analysis thereof with the aid of Plaintiffs and expert
27 consultant; analysis of shifts and Workweeks worked by Class Members in the Class Period, analysis
28 of the number of pay periods and number of Aggrieved Employees in the PAGA Period for

1 calculating PAGA penalties, number of Class Members eligible for wage statement penalties and
2 waiting time penalties; an analysis of Plaintiffs' employment records; extensive correspondence and
3 communication between counsel; a review of pleadings, evidence and rulings in similar actions
4 litigated elsewhere in the state; a review of similar cases in the same industry elsewhere in the
5 country; and preparation for and attendance at a full-day mediation, followed by further discussions
6 and coordination to finalize the terms and conditions of the general settlement parameters agreed to
7 by the Parties.

8 While Class Counsel believe in the chance of success of certifying the claims, Class Counsel
9 recognized the potential risk, expense and complexity posed by further litigation. Moreover,
10 litigating Plaintiffs' claims in this litigation—claims that involve approximately 124 Class Members
11 during the Class Period—would require substantial preparation and discovery, and ultimately would
12 involve the deposition and presentation of numerous more witnesses (including Class Members and
13 expert witnesses), as well as the consideration, preparation and analysis of expert reports. Therefore,
14 should litigation have progressed any further, there would have been significant expense incurred
15 by each side (above and beyond the expense already incurred).

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

17 The settlement amount reached in this case provides significant recovery to Class Members
18 and Aggrieved Employees, and easily falls within the range of reasonableness. Based on documents
19 and information provided by Defendants, Class Counsel understand, as of the date of the mediation,
20 there are no more than 12,200 Workweeks during the Class Period.

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

22 Class Counsel theorized, based on Plaintiffs' narrative evidence and documents produced
23 by Defendants, that Defendants failed to pay all wages due to Class Members because Defendants
24 required Class Members to work off-the-clock or Class Members spent time off-the-clock under
25 Defendants' control, including, without limitation: (1) Defendants' practice of recording synthetic
26 time entries, i.e., recording scheduled work hours instead of actual hours worked, and rounding to
27 the nearest hour or half-hour instead of actual hours worked, which gives rise to a reasonable
28

1 presumption of unrecorded and unpaid hours worked; and (2) requiring Class Members to
2 continue working after their shifts off-the-clock to complete tasks, without pay.

3 One theory advanced by Class Counsel alleged, based on Plaintiffs' narrative evidence,
4 that Class Members worked off-the-clock for approximately 15 minutes each shift throughout the
5 Class Period, without pay. Class Counsel understand, based on time and payroll records produced
6 by Defendants and analysis thereof by expert data consultants retained by Class Counsel, that
7 there were approximately 58,879 shifts throughout the Class Period, Class Members had an
8 average hourly rate of pay of \$17.04, and due to the synthetic nature of Defendants' time entries,
9 Class Counsel contends all 58,879 shifts were greater than eight hours (8) in length. Thus, one
10 calculation performed by Class Counsel, assuming all shifts throughout the Class Period were at
11 least eight (8) hours in length, resulted in **Defendants' exposure for unpaid off-the-clock work**
12 **in a conservative amount of approximately \$376,237** (58,879 shifts x 0.25 hours per shift x
13 \$17.04 x 1.5 overtime rate).

14 Class Counsel understand that Defendants make the following defenses in connection with
15 this claim: Defendants contend that their policies specifically prohibit off-the-clock work.
16 Defendants contend that they did not require Class Members to work off-the-clock and, rather, they
17 were paid for all time suffered or permitted to work. Defendants contend that any allegations that
18 Class Members were required to be under Defendants' control off-the-clock would necessitate an
19 individualized inquiry into when and why, making this claim not subject to class treatment and any
20 trial in this litigation unmanageable. Thus, Defendants contend that no damages can be recovered
21 here, and, even if, *arguendo*, they could, an estimate of fifteen (15) minutes of unpaid time for *every*
22 *single* shift worked by all Class Members during the Class Period is a *wild* exaggeration of time
23 spent working off-the-clock if *any* such time was spent.

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

25 Class Counsel theorized, based on Plaintiffs' narrative evidence and documents produced
26 by Defendants, that Defendants' meal period practices throughout the Class Period were non-
27 compliant because meal periods were late, short or missed due to: (1) Defendants' practice of
28 recording synthetic time entries for meal periods, i.e., recording exactly 30 minutes for meal periods

1 instead of actual time taken for meal periods regardless of if Class Members actually had meal
2 period and regardless of its duration, all beginning exactly at the top of the hour or at the half hour,
3 giving rise to a reasonable presumption that meal periods were late, short, interrupted, or missed
4 entirely; and (2) requiring Class Members to continue working even during their meal periods to
5 complete tasks by the end of their shifts. Notably, there were no meal period premiums ever issued
6 throughout the Class Period.

7 Class Counsel theorized, based on Plaintiffs' narrative evidence, that Class Members would
8 continue working even during their meal periods to complete tasks by the end of their shifts, for a
9 very conservative estimate of twice a week, or 40% of shifts throughout the Class Period, assuming
10 five (5) workdays each Workweek and all shifts were meal-eligible. Thus, one calculation advanced
11 by Class Counsel resulted in **Defendant's exposure for non-compliant meal periods in a**
12 **conservative amount of \$401,319** (58,879 shifts x 0.40 violation rate x \$17.04/hour).

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

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

23 Class Counsel theorized, based on Plaintiffs' narrative evidence and documents produced
24 by Defendants, that Defendants' rest period practices throughout the Class Period were non-
25 compliant because rest periods were late, short or missed due to the overwhelming workload and
26 Defendants' demands that work is completed before Class Members were allowed to leave,
27 combined with Defendants' practice of recording synthetic time entries to avoid paying Class
28 Members' full wages. As a result, Class Members were forced to choose between skipping their rest

1 breaks or continue working past their scheduled work times, without pay. Notably, there were no
2 rest period premiums ever issued throughout the Class Period.

3 Thus, one calculation performed by Class Counsel at mediation resulted in, assuming all
4 shifts throughout the Class Period were rest-eligible and a conservative 40% violation rate,
5 **Defendants' exposure for failure to provide compliant rest periods in a conservative amount**
6 **of \$401,319** (58,879 shifts x .40 violation rate x \$17.04/hour).

7 Class Counsel understand that Defendants make the following defenses in connection with
8 this claim: Defendants argue that they had compliant rest period policies and practices. Defendants
9 argue that Class Members took timely and full rest periods. Defendants contend that their policy
10 requires their employees to take timely and full rest periods. Defendants further contend that any
11 instance of a Class Member failing to take a compliant rest period was voluntary, in violation of
12 their rest period policy, would necessitate an individualized inquiry and would not lend itself to a
13 manageable trial. Finally, Defendants contend that a 40% violation rate is a wild exaggeration of
14 non-compliant rest periods, if there were any. Thus, Defendants contend that *no* monies are owed
15 for this account but, even if any amounts were due, the amount calculated by Class Counsel is
16 excessive.

17 4. Wage Statement Violations

18 Class Counsel theorized that Class Members are entitled to recover penalties for
19 Defendants' alleged failure to issue compliant wage statements under Labor Code section 226,
20 subdivision (e), for the derivative impact of the failure to pay all wages owed on providing
21 accurate information on wage statements. Specifically, Class Counsel theorized that penalties are
22 owed under Labor Code section 226 due to, at minimum, Defendants' failure to pay premium
23 wages. A non-exempt employee suffering injury as a result of a knowing and intentional failure
24 by an employer to comply with Labor Code section 226, subdivision (a), is entitled to recover the
25 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
26 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period.
27 Class Counsel understand from the data provided by Defendants that there were 2,894 pay periods
28 during the relevant statutory time period for Class Members. If, in fact, Class Members worked

1 every off-the-clock every shift as set forth above, and no rest premiums were paid, every wage
2 statement would thus, Class Counsel theorized, violate Labor Code section 226. Thus, one
3 calculation performed by Class Counsel, resulted in **Defendants' maximum exposure for wage**
4 **statement violations in the amount of \$289,400** (2,894 pay periods x \$100/pay period).

5 Class Counsel understand that Defendants make the following defenses in connection with
6 this claim: Defendants contend that the wage statements issued to the employees fully complied
7 with Labor Code section 226. Defendants contend that because they believe no wages are unpaid
8 that, thus, there can be no derivative penalties. However, Class Counsel also understand the risks
9 inherent in this claim if the above claims were not certified. Class Counsel also had to factor in,
10 and did factor in, the risk that the Court would find there was no injury to Class Members even if
11 the wage statements were inaccurate or that Defendants' conduct was not intentional, both of
12 which are requirements of Labor Code section 226 before penalties can issue. Class Counsel also
13 note that the calculation used does not take into account the first pay period violation only being
14 \$50 and the fact that all Class Members did not work all pay periods and, therefore, do not qualify
15 for the maximum penalty of \$4,000 as calculated in Plaintiffs' exposure model used at mediation.

16 5. Waiting Time Penalties

17 Pursuant to Labor Code sections 201, 202 and 203, each employee in the relevant statutory
18 period (*i.e.*, three years before the filing of the initial Complaint) is entitled to 30 days' worth of
19 wages as waiting time penalty for not being paid all wages due upon separation from employment.
20 Class Counsel theorized, based on relevant documents provided by Defendants, that, under Labor
21 Code section 203, Defendants are liable to pay each Class Member, who was terminated during the
22 relevant statutory period, a full 30-day worth of wages as waiting time penalty for failure to pay
23 compensation in lieu of compliant meal and rest periods, and failure to timely pay all wages due at
24 the time of termination or resignation. Based on relevant documents provided by Defendants, there
25 were approximately 88 Class Members who were terminated or resigned during the relevant
26 statutory period. Thus, one calculation performed by Class Counsel resulted in **Defendants'**
27 **exposure for waiting time penalties to be approximately \$359,885** (88 separated Class Members
28 x \$17.04/hour x 8 hours x 30 days).

1 Class Counsel understand that Defendants contend that there is no credence to Plaintiffs'
2 off-the-clock theory and that, thus, no waiting time penalties are owed based on that theory.
3 Finally, Defendants contend that their actions were not "willful" and that, thus, waiting time
4 penalties cannot be awarded. Thus, Defendants argued that no waiting time penalties are owed.

5 **6. Failure to Reimburse for Business Expenses**

6 Class Counsel initially theorized that Defendants failed to properly compensate Class
7 Members for business expenses. However, after diligent investigation and exchange of informal
8 discovery, Class Counsel did not attribute significant value to this claim for purposes of mediation.

9 **7. PAGA Penalties**

10 Class Counsel understand, as of the date of the mediation, from the time and payroll data
11 provided by Defendants that Aggrieved Employees collectively worked 2,894 pay periods in the
12 PAGA Period. Plaintiffs' claims in the Actions under PAGA are substantially similar to those
13 described herein. PAGA penalties include penalties for initial violations and subsequent
14 violations. Defendants contend that only initial violation rates may be used instead of the
15 subsequent violation rates initially used by Class Counsel. With this in mind and because Class
16 Counsel through investigation and discovery did not come to the conclusion that Defendants at
17 any time were notified by any governmental entity that they violated any Labor Code sections
18 presented in the PAGA Notice and PAGA claims, Class Counsel adjusted the exposure model for
19 Defendants to include only initial violation rates.

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

23 a. Overtime Violations: Labor Code section 558 prescribes penalties of \$50 for an
24 initial violation and \$100 for each subsequent violation. Using the initial pay period rate for all
25 violations, and a violation every single pay period for every single non-exempt employee in the
26 PAGA Period, this amounts to a maximum exposure of \$144,700 (2,894 pay periods x \$50).

27 b. Minimum Wage Violations: Labor Code section 1197.1 prescribes penalties of
28 \$100 for an initial violation and \$250 for each subsequent violation. Using the initial pay period

1 rate for all violations and a violation every single pay period for every single Aggrieved Employee
2 in the PAGA Period, this amounts to a maximum exposure of \$289,400 (2,894 pay periods x
3 \$100).

4 c. Meal Period Violations: Labor Code section 558 prescribes penalties of \$50 for an
5 initial violation and \$100 for each subsequent violation. Using the initial pay period rate for all
6 violations and a violation every single pay period for every single non-exempt employee in the
7 PAGA Period, this amounts to a maximum exposure of \$144,700 (2,894 pay periods x \$50).

8 d. Rest Period Violations: Labor Code section 558 prescribes penalties of \$50 for an
9 initial violation and \$100 for each subsequent violation. Using the initial pay period rate for all
10 violations and a violation every single pay period for every single non-exempt employee in the
11 PAGA Period, this amounts to a maximum exposure of \$144,700 (2,894 pay periods x \$50).

12 e. Wage Statement Violations: According to *Gunther v. Alaska Airlines, Inc.* (2021)
13 287 Cal.Rptr.3d 229, in this instance, Labor Code section 2699 would be the appropriate penalty
14 for wage statement violations that are inaccurate, which prescribes penalties of \$100 for an initial
15 violation and \$200 for each subsequent violation (*Id.* at 247-248). Using the initial pay period rate
16 for all violations and a violation every single pay period for every single Aggrieved Employee in
17 the PAGA Period, this amounts to a maximum exposure of \$289,400 (2,894 pay periods x \$100).

18 f. Waiting Time Penalties: Labor Code section 2699 prescribes penalties of \$100 for
19 an initial violation and \$200 for each subsequent violation. Because this violation is merited only
20 at separation of employment, a 100% violation rate would likely include just one violation per
21 employee. The data produced by Defendants indicate that there were 40 Aggrieved Employees
22 whose employment was separated during the PAGA Period. This amounts to a maximum exposure
23 of \$5,000 (50 Aggrieved Employees x \$100).

24 g. Conclusion: In sum, Class Counsel calculated Defendants' total maximum
25 exposure for PAGA violations if the Court were to find a 100% violation rate for every Aggrieved
26 Employee every pay period and not exercise its discretion to reduce any of those penalties to be
27 \$1,017,900. Class Counsel understand that Defendants argued the following in connection with
28 this claim: Defendants contend that no PAGA penalties are likely to be awarded and, even if they

1 were, the maximum exposure calculated by Class Counsel is vastly overstated. First, Defendants
2 defend that PAGA penalties cannot and should not be stacked. Second, Defendants assert that
3 individualized issues predominate the PAGA claims, making the claims unmanageable for trial.
4 Third, Defendants deny that a violation for each pay period can be established. Fourth, Defendants
5 contend that a Court is unlikely to exercise its discretion to award civil penalties under PAGA
6 where, as here, there is no conduct shown by Plaintiffs that would show any Labor Code violation
7 by Defendants is knowing and intentional. Defendants insist that this is especially true in the
8 Actions where class action damages are available to Class Members, rendering an award of PAGA
9 penalties in addition to class action damages to be double recovery.

10 Class Counsel maintain that it is possible to recover the subsequent violation rate for
11 penalties, that stacking is permissible, and that there is no manageability requirement under PAGA
12 (citing *Estrada v. Royalty Carpet Mills, Inc.*). As such, Class Counsel believe a 90% valuation of
13 this claim to be reasonable, resulting in **\$101,790** as a reasonable estimate of the likelihood of what
14 Plaintiffs may recover at trial for PAGA penalties ($\$1,017,900 \times 0.1$).

15 7. Conclusion

16 When including derivative penalties, such as waiting time penalties, wage statement
17 violations, and discretionary PAGA penalties, Class Counsel theorized Defendant's maximum
18 exposure to be approximately **\$1,929,950**. In all, Class Counsel obtained a Gross Settlement
19 Amount of **\$610,500.00**. Particularly in light of the risks involving obstacles to class certification,
20 all issues and risks related to liability, the issues with manageability at trial, the discretionary
21 nature of PAGA penalties, and considering the case law regarding fair, reasonable and adequate
22 settlements, Class Counsel strongly believe that the settlement reached is fair, reasonable and
23 adequate, and in the best interest of Class Members.

24 Moreover, \$40,000.00 of the Gross Settlement Amount was attributed to PAGA penalties.
25 This allocation was decided mutually by the Parties and the mutual decision was based on: (1) the
26 fact that damages are available for the failure to pay wage claims while only penalties are available
27 for the PAGA claims; (2) the risk that the Court may exercise its discretion to decline to stack
28 PAGA penalties; (3) the risk that the Court may exercise its discretion to not award the full amount

1 of PAGA penalties available; and (4) the risk that the Court may decline to award any PAGA
2 penalties at all in light of the fact that damages are available for Class Members and it may find
3 any further liability against Defendants unnecessarily punitive.

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

5 Class Counsel seek an attorneys' fees award of thirty-five percent (35%) of the Gross
6 Settlement Amount, which, unless escalated pursuant to this Agreement, would amount to
7 \$213,675.00. Class Counsel may also seek less than 35% at the time of final approval. Class Counsel
8 also seek reimbursement of costs not to exceed \$25,000.00. The requested fees fall well within the
9 historical range of attorney's fees awards under the common fund theory, which is generally from
10 25% to 50%. The requested fee is fair compensation for undertaking complex, risky, expensive and
11 time-consuming litigation on a contingent fee basis. Thus, the Court should preliminarily approve
12 the requested attorneys' fees and costs, which are justified by the results achieved, the complexity of
13 the issues, the difficulty of the case and the great risks undertaken by Class Counsel. The requested
14 attorneys' fees will not be opposed by Defendants and are well within established guidelines.

15 **VIII. THE REQUESTED ENHANCEMENT AWARDS TO THE NAMED**
16 **PLAINTIFFS AND CLASS REPRESENTATIVES ARE REASONABLE**

17 Plaintiffs are entitled to an enhancement award for their service as class representatives, for
18 answering extensive questions by Class Counsel, for being available and answering questions during
19 mediation, for the risks in being the named plaintiffs and for providing Defendants with a more
20 expansive release of claims, including a waiver based upon California Civil Code section 1542, in
21 exchange for the enhancement award. Defendants do not oppose the requested enhancement to
22 Plaintiffs. Plaintiffs risked intrusive discovery and the payment of employer costs. In the experience
23 of Class Counsel, the typical enhancement award in wage and hour class actions ranges from
24 approximately \$10,000.00 to \$25,000.00, although some awards are higher. In contrast, Class
25 Counsel seek an extremely limited enhancement of \$7,500.00 each to plaintiffs Charlene America
26 Murillo and Alondra Tachiquin, for a total of \$15,000.00 to Plaintiffs.

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

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

1 In California, there are two certification prerequisites: (1) the existence of an “ascertainable
2 class;” and (2) “a well-defined community of interest in the questions of law and fact involved
3 affecting the parties to be represented.” (*Sotelo v. MediaNews Group, Inc.* (2012) 207 Cal.App.4th
4 639, 647.) To certify a class, the party advocating class treatment must demonstrate: (1) a numerous
5 class; (2) predominant common questions of law or fact; (3) class representatives with claims or
6 defenses typical of the class; and (4) class representatives who can adequately represent the class.”
7 (*Williams v. Sup. Ct.* (2013) 221 Cal.App.4th 1353, citing *Brinker Restaurant Corp. v. Sup. Ct.*
8 (2012) 53 Cal.4th 1004, 1021.) Each of the criteria for class certification is satisfied in this instance:

9 **1. Ascertainability** – “Ascertainability” is a due process requirement that
10 ensures it is possible to decide who will be bound by the judgment (*res judica* effect). The
11 determination is made by examining the class definition and the size of the class. Here, the Class
12 Members definition (*i.e.*, all persons who are or were employed as hourly paid, non-exempt
13 employees in the State of California at any time during the Class Period by Defendants) is derived
14 from the operative complaint, which complains of alleged violations of Labor Code sections that
15 are chiefly and, in some instances, solely applicable to non-exempt, hourly paid employees. There
16 is no difficulty ascertaining who is a Class Member based on the above-described definition as it is
17 readily apparent to all involved who is a non-exempt, hourly-paid employee who worked in
18 California for Defendants during the Class Period based solely from Defendants’ payroll records,
19 which amounts to approximately 124 persons.

20 **2. Numerosity** – According to the California Supreme Court, a putative class is
21 sufficiently numerous to achieve the numerosity requirement if their joinder is impracticable and
22 thus substantial benefits accrue both to litigants and the courts if the action proceeds as a class action.
23 (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435, 446.) Numerosity is presumed satisfied if
24 there are forty (40) putative class members. (*Miri v. Dillon* (E.D. MI 2013) 292 F.R.D. 454, 461.)
25 However, as few as 10 class members has been found sufficient. (*See, e.g., Bowles v. Sup. Ct.* (1955)
26 44 Cal.2d 574.) Class Counsel understand from documents provided that Defendants identified at
27 least 124 Class Members. That is sufficiently numerous to establish the numerosity requirement.

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

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

8 **4. Typicality** – Typicality requires only that the named plaintiff’s interests in
9 the action be significantly similar to those of other class members. (*Williams v. Sup. Ct.* (2013)
10 221 Cal.App.4th 1353, citing *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1021.)
11 Plaintiffs contend that their claims are typical of those of other Class Members as Plaintiffs: (1)
12 are non-exempt, hourly-paid employees like other Class Members; (2) complain of not being paid
13 for all time under Defendants’ control or suffered and/or permitted to work for Defendants; (3)
14 did not receive premium pay for meal periods that were not compliant with the Labor Code; (4)
15 did not receive premium pay for rest periods that were not provided, among others as set forth
16 above. Thus, Plaintiffs’ claims are typical of other Class Members.

17 **5. Adequacy of Representation** - To maintain a class action, the representative
18 plaintiff must adequately protect the interests of the class. (*Williams v. Sup. Ct.* (2013) 221
19 Cal.App.4th 1353, citing *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1021.)
20 Adequacy of representation consists of two components. First, there must be no disabling conflicts
21 of interest between the class representatives and the class. Second, the class representative must be
22 represented by counsel who are competent and experienced in the kind of litigation to be undertaken.
23 (*See McGhee v. Bank of Am.* (1976) 60 Cal.App.3d 442, 450; *accord In re Juniper Networks, Inc.*
24 *Securities Litigation* (N.D. Cal. 2009) 264 F.R.D. 584, 590.) Plaintiffs contend, and Defendants do
25 not dispute for Settlement only, both criteria are met in this instance:

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

28 No conflicts, disabling or otherwise, exists between Plaintiffs and Class Members because

1 Plaintiffs allege to have been damaged by the same alleged conduct of Defendants (*i.e.*, Plaintiffs
2 classified as non-exempt, hourly-paid employees, not paid premium pay, etc.) and thus have the
3 incentive to fairly represent all Class Members' claims to achieve the maximum possible recovery.

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

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

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

11 It deals with common issues that are most efficiently adjudicated together, as indicated
12 above. Moreover, Plaintiffs assert that, with at least 124 Class Members, presentation of all of them
13 before this Court may be problematic, impractical, and burdensome. On the contrary, a class action
14 allows claims of many individuals to be resolved at the same time, eliminates the possibility of
15 repetitious litigation and affords small claimants with a method of obtaining redress for claims
16 which otherwise would be too insufficient to warrant individual litigation.

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

20 **X. CONCLUSION**

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

23 Dated: June 17, 2025

BIBIYAN LAW GROUP, P.C.

24 */s/ Brandon M. Chang*

25 _____
BRANDON M. CHANG

26 Attorneys for Plaintiffs, CHARLENE AMERICA
27 MURILLO and ALONDRA TACHIQUIN, on
28 behalf of themselves and all others similarly
situated and aggrieved

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