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on behalf of himself and all others similarly situated and aggrieved

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

ANGEL MEN CHAN an individual and on
behalf of all others similarly situated,

Plaintiff,

v.

PANERA, LLC., a Delaware limited liability
company and BEVERLY NGUYEN, an
individual; and DOES 1 through 100,
inclusive

Defendants.

CASE NO.: 23STCV09024

[Assigned to the Hon. William F. Highberger
in Dept. 10]

**PLAINTIFF’S NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS AND
REPRESENTATIVE ACTION
SETTLEMENT; DECLARATIONS OF
VEDANG J. PATEL, DAVID D. BIBIYAN,
PLAINTIFF, AND SEAN HARTRANFT
IN SUPPORT THEREOF**

HEARING INFORMATION:

DATE: _____, 2025

TIME: __:__.M.

DEPT: 10

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on _____, 2025 at __:__.M. or as soon thereafter as they may be heard in Department 10 of the Superior Court of the State of California for the County of Los Angeles, Spring Street Courthouse, Plaintiff Angel Men Chan ("Plaintiff"), on behalf of himself and all others similarly situated and aggrieved, will and hereby does move for this Court for entry of an Order:

1. Preliminarily certifying the following settlement class ("Settlement Class," "Settlement Class Members" or "Class Members") for the purpose of settlement only: all individuals who performed work in any non-exempt position for Defendant Panera, LLC at any time from April 21, 2019 through October 22, 2024 (the "Class Period") in the State of California.

2. Preliminarily approving Plaintiff as the Class Representative.

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

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

5. Preliminarily approving payment of the Gross Settlement Amount of \$6,000,000.00, which is subject to escalation pursuant to the Settlement Agreement.

6. Approving the form and content of the Notice of Class Action Settlement ("Class Notice") submitted herewith.

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

8. Preliminarily approving the payment of not to exceed \$96,990.00 for settlement administration to the Settlement Administrator 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 not more than thirty-five (35%) of the Gross Settlement Amount which, unless increased

1 pursuant to the Settlement Agreement, amounts to \$2,100,000.00.

2 11. Preliminarily approving reimbursement of Class Counsel's costs in an amount, according
3 to proof, not to exceed \$100,000.00.

4 12. "Aggrieved Employees" are all individuals who performed work in any non-exempt
5 position for Defendant at any time from April 21, 2022 through October 22, 2024 (the "PAGA
6 Period") in the State of California.

7 13. Preliminarily approving PAGA penalties in the amount of \$200,000.00, seventy-five
8 percent (75%) or \$150,000.00 of which will be paid to the Labor and Workforce Development
9 Agency ("LWDA") out of the Gross Settlement Amount, and twenty-five percent (25%) or
10 \$50,000.00 of which will be distributed to Aggrieved Employees.

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

13 Good cause exists for granting this Motion in that the proposed settlement is fair, reasonable
14 and adequate. This Motion will be based on this Notice of Motion, the Memorandum of Points and
15 Authorities filed herewith, the Declarations of Vedang J. Patel, David D. Bibiyan, Plaintiff, and
16 Anthony Rogers, and exhibits attached thereto, arguments of counsel and upon such other materials
17 contained in the file and pleadings of this action.

18
19 Dated: May 19, 2025

BIBIYAN LAW GROUP, P.C.

20 /s/ Vedang J. Patel

21 _____
22 VEDANG J. PATEL
23 Attorneys for Plaintiff, on behalf of
24 himself and all others similarly situated
25 and aggrieved
26
27
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Angel Men Chan (“Plaintiff”) on behalf of himself and all others similarly situated
4 and aggrieved, hereby applies for preliminary approval of the proposed Class and PAGA
5 Settlement Agreement (“Settlement,” “Agreement” or “Settlement Agreement”) upon the terms
6 and conditions set forth in the Settlement Agreement, attached to the Declaration of Vedang J.
7 Patel (“Patel Decl.”) attached as Exhibit “1.”

8 On April 21, 2023, Plaintiff filed this action against Panera, LLC and Beverly Nguyen in
9 the Superior Court of California, County of Los Angeles, Case No. 23STCV09024 alleging the
10 following: (1) Failure to Pay Overtime Wages; (2) Failure to Pay Minimum Wages; (3) Failure
11 to Provide Meal Periods; (4) Failure to Provide Rest Periods; (5) Waiting Time Penalties; (6)
12 Wage Statement Violations; (7) Failure to Timely Pay Wages; (8) Failure to Indemnify; and (9)
13 Unfair Competition (“Class Action”).

14 October 21, 2023, Plaintiff filed a separate action under the Private Attorneys General Act
15 of 2004 (“PAGA”) against Defendant Panera, LLC (“Defendant”) in Superior Court of the State
16 of California, County of Los Angeles, Case No. 23STCV21531, asserting claims under California
17 Labor Code sections 210, 226.3, 558, 1174.5, 1197.1 and 2699 (“PAGA Action”).

18 Thereafter, Plaintiff and Defendant (collectively, the “Parties”) agreed to exchange
19 informal discovery and attend mediation in the Class Action and PAGA Action simultaneously.
20 Prior to the mediations, Plaintiff obtained, through informal discovery: (a) a 30% sampling of time
21 and payroll records for Class Members and Aggrieved Employees; (b) a list of Class Members
22 including their hire dates, termination dates, positions worked, and contact information; (c)
23 Defendant’s employee handbook; and (d) all documents pertaining to Plaintiff. On April 30, 2024,
24 the Parties attended mediation with Michael Dickstein, Esq. The mediation was unsuccessful, and
25 the Parties resumed litigation.

26 After further litigation, the Parties ultimately elected to attend a second mediation.
27 Plaintiff, with the assistance of expert data consultants, were able to extrapolate data for Class
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1 Members and Aggrieved Employees through the second mediation. The Parties attended a second
2 mediation on November 22, 2024, with Michael Dickstein, Esq. The mediation was successful
3 and the Parties were able to reach the Agreement.

4 As part of the Settlement, the Parties agreed to stipulate to Plaintiff filing a First Amended
5 Complaint in the Class Action to include all claims alleged in the PAGA Action, and thereafter
6 dismiss the PAGA Action without prejudice, thereby effectively consolidating the Class Action
7 and the PAGA Action into one Action (the "Action").

8 **II. THE SETTLEMENT**

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

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

- 15 • Certification of a class ("Settlement Class," "Settlement Class Members" or "Class
16 Members") defined as: all individuals who performed work in any non-exempt position
17 for defendant Panera, LLC at any time from April 21, 2019 through October 22, 2024
18 (the "Class Period") in the State of California.
- 19 • Defendant will pay \$6,000,000.00 ("Gross Settlement Amount") to resolve the matter.
- 20 • The Settlement was negotiated based on Defendant's representation that there are no
21 more than 997,857 Workweeks worked during the Class Period. In the event the number
22 of Workweeks worked increases by more than 10%, or an additional 99,785 Workweeks
23 worked, then the Gross Settlement Amount shall be increased proportionally by the
24 Workweeks worked in excess of 1,097,732 (997,857 + 99,785) multiplied by the
25 Workweek Value. The Workweek Value shall be calculated by dividing the Gross
26 Settlement Amount by 997,857. The Parties agree that the Workweek Value amounts
27 to, and the settlement amounts to, \$6.01 per Workweek (\$6,000,000 / 997,857
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Workweeks). Thus, for example, should there be 1,100,000 Workweeks in the Class Period, then the Gross Settlement Amount shall be increased by \$13,630.68. ((1,100,000 Workweeks – 1,047,749 Workweeks) x \$6.01/Workweek.).

- Defendant will pay the employer’s share of taxes separate and apart from the Gross Settlement Amount.
- This is a non-reversionary settlement.
- Class Members will be paid their *pro rata* share of the class action settlement based on the total number of Workweeks¹ worked during the Class Period.
- The Settlement Administration costs, estimated not to exceed \$96,990.00 will be paid out of the Gross Settlement Amount.
- Class Counsel will apply for, and Defendant will not oppose, attorneys’ fees of not more than thirty-five (35%) of the Gross Settlement Amount, which, unless escalated pursuant to the Settlement Agreement, amounts to \$2,100,000.00, and actual costs, not to exceed \$100,000.00 all of which will be paid out of the Gross Settlement Amount. Class Counsel may seek less than 35% in fees at the time of final approval.
- Class Counsel will apply for, and Defendant will not oppose, a service award in the amount of \$7,500.00 to the Class Representative, which will be paid out of the Gross Settlement Amount.
- “Aggrieved Employees” are all individuals who performed work in any non-exempt position for Defendant at any time from April 21, 2022 through October 22, 2024 (the “PAGA Period”) in the State of California.
- Defendant has agreed to pay \$200,000.00 out of the Gross Settlement Amount as PAGA penalties, seventy-five percent (75%) or \$ 150,000.00 of which will be paid to the LWDA and twenty-five percent (25%) or \$50,000.00 of which will be distributed to the Aggrieved Employees.

¹ “Workweek” means any week during which a Class Member was employed by Defendant for at least one day in a non-exempt, hourly-paid position during the Class Period in California, based on hire dates, re-hire dates (as applicable), and termination dates (as applicable).

- For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date (180 days), the Administrator shall transmit the funds represented by such checks to California Controller's Office, Unclaimed Property Fund.

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

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

IV. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS

A notice of settlement of a class action "must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement." (Cal. Rules of Court, rule 3.769, subd. (f).) Attached to the Patel Decl. as Exhibit "1" is the Settlement Agreement between the Parties. Attached to the Settlement Agreement as internal Exhibit "A" is the proposed Class Notice to be distributed to Class Members in English and Spanish. The proposed Class Notice satisfies these requirements. The Parties respectfully request that this Court approve the above-referenced Class Notice and dissemination of the Class Notice to the Class Members, consistent with the manner and timing as set forth in the Settlement Agreement. The Parties have agreed to use Apex Class Action, LLC, an experienced settlement administrator, to administer the Settlement.

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

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

4 The Settlement that has been reached, subject to this Court's approval, is a product of
5 substantial efforts by Class Counsel. The Settlement was reached after extensive factual and legal
6 investigation and research; substantial negotiation regarding the scope of informal discovery; motion
7 practice including removal to Federal Court and a motion to compel arbitration; a *Belaire-West*
8 process, interviews with Class Members, formal discovery, depositions, an exchange of documents
9 and information that included review of time and pay records and analysis thereof with the aid of
10 Plaintiff and expert consultants; an analysis of shifts and Workweeks worked by Class Members in
11 the Class Period, analysis of the number of pay periods and number of PAGA Members in the PAGA
12 Period for calculating PAGA penalties, number of Class Members eligible for wage statement
13 penalties and waiting time penalties; an analysis of Plaintiff's employment records; extensive
14 correspondence and communication between counsel; a review of pleadings, evidence and rulings
15 in similar actions litigated elsewhere in the state; a review of similar cases in the same industry
16 elsewhere in the country; and preparation for and attendance at two full-day sessions of mediations,
17 followed by months of further discussions and coordination to finalize the terms and conditions of
18 the general settlement parameters agreed to by the Parties.

19 While Class Counsel believes in the chance of success of certifying the claims, Class
20 Counsel recognized the potential risk, expense and complexity posed by further litigation.
21 Moreover, litigating Plaintiff's claims in this Litigation—claims that involve approximately 18,363
22 Class Members during the Class Period—would require enormous preparation and discovery, and
23 ultimately would involve the deposition and presentation of numerous more witnesses (including
24 Class Members and expert witnesses), as well as the consideration, preparation and analysis of
25 expert reports. Therefore, should litigation have progressed any further, there would have been
26 significant expense incurred by each side (above and beyond the expense already incurred).

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

1 The settlement amount reached in this case provides significant recovery to Class Members
2 and PAGA Members and easily falls within the range of reasonableness. Based on documents and
3 information provided by Defendant, Class Counsel understand there are approximately 997,857
4 Workweeks during the Class Period.

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

6 Class Counsel theorized at the mediation, based on Plaintiff's and Class Members'
7 narrative evidence, that Defendant's practices during the Class Period resulted in off-the-clock
8 work. Class Counsel theorized that Class Members spent time off-the-clock by donning and
9 doffing their uniform off the clock, waiting in line prior to clocking in, waiting for customer
10 transactions to be resolved prior to clocking in, completing tasks after clocking out to avoid
11 incurring overtime, and completing mandatory online training and certification courses off the
12 clock.

13 Class Counsel advanced a theory that all Class Members worked off-the-clock for an
14 estimate of 5 minutes each shift throughout the Class period, without pay. Class Counsel
15 understands from the data provided and analyzed by expert data consultants that there were
16 3,468,610 shifts during the Class Period, 4.7% of shifts worked were over 8 hours, and that Class
17 Members were paid an average of \$14.62 per hour. Thus, one theory advanced by Class Counsel
18 resulted in Defendant's exposure for unpaid overtime wages due to failure to track and pay for all
19 time worked of \$296,736 (0.083 hr. x \$14.62/hr x 1.5 OT rate x 3,468,610 shifts x 0.047 shifts
20 over 8 hrs.). Additionally, Class Counsel theorized Defendant's exposure for unpaid minimum
21 wages is \$8,022,391 (0.083 hr. x \$14.62/hr x 2 in liquidated damages x 3,468,610 shifts x 0.953
22 shifts over 8 hrs.). Thus, Class Counsel theorized Defendant's total exposure for failure to pay for
23 all time worked at the time of mediation was **\$8,319,127**.

24 Class Counsel understands from the mediator and the mediation process that Defendant
25 made the following defenses in connection with this claim: Defendant ardently opposes the merits
26 of this case, denies Plaintiff's factual allegations, and maintains that Plaintiff faces substantial risk
27 with respect to certifying his/her claims (for any purpose other than settlement), proving liability for
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1 any of the alleged Labor Code violations or recovering any penalties sought in connection with
2 his/her derivative claims. Defendant contends, among other things, that Plaintiff and the Class
3 Members have been paid proper wages. Defendant contends that its policies specifically prohibit
4 off-the-clock work. Defendant contends that it did not require Class Members to work off-the-clock
5 and, rather, they were paid for all time suffered or permitted to work. Defendant also states that it
6 provided numerous registers for Class Members to clock in and out, and therefore its employees
7 would not have to wait in line. Furthermore, Defendant argues that any allegations that Class
8 Members were required to be under Defendant's control off-the-clock would necessitate an
9 individualized inquiry into when and why, making this claim not subject to class treatment and any
10 trial in this litigation unmanageable. Thus, Defendant contends that no damages can be recovered
11 here, and, even if, *arguendo*, they could, an estimate of five (5) minutes of unpaid work off-the-
12 clock of Class Members for every single shift during the Class Period is a wild exaggeration of time
13 spent working off-the-clock if any such time was spent.

14 **2. Recovery of Damages for Non-Compliant Meal Periods**

15 Class Counsel theorized, based on the narrative evidence of Plaintiff, as well as documents
16 produced by Defendant, that Defendant's meal period policies and practices throughout the Class
17 Period were non-compliant as Plaintiff and Class Members did not receive full, timely and
18 uninterrupted meal periods. Class Counsel theorized that Plaintiff and Class Members were not
19 provided a separate area for them to use during their meal periods and therefore were required to
20 share space with customers, which when combined with their orange uniforms, resulted in customers
21 interrupting Class Members during their meal periods. Furthermore, Class Counsel theorized that
22 Class Members' meal periods were cut short by supervisors to address immediate needs.

23 Class Counsel understands from the documents produced by Defendant and analyzed by
24 expert data consultants that there were 74,318 unique meal period violations (*i.e.* meal periods that
25 were late, short, or missed) during the Class Period through the mediation. Class Counsel also
26 understands that some meal period premiums were paid during the Class Period. Thus, one theory
27 advanced by Class Counsel, based solely on facial and unique violations, resulted in Defendant's
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1 liability for unpaid meal premiums of **\$549,683** [\$14.62/hr x (74,318 unique meal period violations
2 – 36,720 meal period premiums paid)].

3 Class Counsel understands from the mediator and the mediation process that Defendant
4 makes the following defenses in connection with this claim: Defendant argues that it had
5 compliant meal period policies and practices. Defendant argues that Class Members were provided
6 with the opportunity to take all meal periods to which they were entitled, and that Class Members
7 took timely and full meal periods. Defendant contends that its policy requires its employees to
8 take timely and full meal periods. Defendant further contends that any instance of a Class Member
9 failing to take a compliant meal period was voluntary, in violation of its meal period policy, would
10 necessitate an individualized inquiry and would not lend itself to a manageable trial. Thus,
11 Defendant contends that *no* monies are owed for this account but, even if any amounts were due,
12 the amount calculated by Class Counsel is excessive.

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

14 Class Counsel theorized at mediation, based on Plaintiff and Class Members' narrative
15 evidence, that Class Members did not receive compliant rest periods throughout the Class Period
16 based on many of the reasons stated above for meal period violations, including that they were cut
17 short or interrupted. Notably, no rest period premiums were paid during the Class Periods through
18 the mediation. One calculation performed by Class Counsel resulted in, assuming a conservative
19 20% violation rate for rest-eligible shifts, of **\$10,142,216** (\$14.62/hr. x 3,468,610 shifts x 0.20
20 violation rate).

21 Class Counsel understands from the mediator and the mediation process that Defendant
22 make the following defenses in connection with this claim: Defendant argues that it had compliant
23 rest period policies and practices and that its policy requires its employees to take timely and full
24 rest breaks. Defendant argues that Class Members were provided with the opportunity to take all
25 timely rest periods to which they were entitled, and that Class Members took timely and full rest
26 breaks or received the required rest period premium for each instance of rest period violations.
27 Defendant further contends that any instance of a Class Member failing to take a compliant rest
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1 period was voluntary and therefore would necessitate an individualized inquiry and would not lend
2 itself to a manageable trial. Thus, Defendant contends that *no* monies are owed for this account but,
3 even if any amounts were due, the amount calculated by Class Counsel is excessive.

4 **4. Wage Statement Violations**

5 Class Counsel theorized that Class Members are entitled to recover penalties for
6 Defendant's alleged failure to issue compliant wage statements under Labor Code section 226,
7 subdivision (e), because shifts involved off-the-clock work that was not included on wage
8 statements. Further, many shifts included meal period and rest period violations for which
9 premiums were not paid. Thus, Defendant is liable for wage statement violations for each pay
10 period. Class Counsel understands from the data provided by Defendant that there were 250,548
11 pay periods in the wage statement liability period. Thus, Class Counsel theorized Defendant's
12 exposure for this claim, assuming a 20% violation rate, to be **\$5,010,960**. (250,548 pay periods in
13 the wage statement period x \$100 penalty x .20 violation rate).

14 Class Counsel understands from the mediator and the mediation process that Defendant
15 makes the following defenses in connection with this claim: Defendant contends that the wage
16 statements issued to the employees fully complied with Labor Code section 226. Defendant
17 contends that because they believe no wages are unpaid that, thus, there can be no derivative
18 penalties. Defendant further asserts that, to the extent that Plaintiff received wage statements that
19 were allegedly inaccurate, Plaintiff suffered no actual damage or harm as a result. However, Class
20 Counsel also understands the risks inherent in this claim if the above claims were not certified.
21 Class Counsel also had to factor in, and did factor in, the risk that a Court would find there was
22 no injury to Class Members even if the wage statements were inaccurate or that Defendant's
23 conduct was not intentional, both of which are requirements of Labor Code section 226 before
24 penalties can issue. Class Counsel also notes that the calculation used does not consider the first
25 pay period violation only being \$50 and the fact that all Class Members did not work all pay
26 periods.

27 **5. Waiting Time Penalties**

1 Pursuant to Labor Code sections 201, 202 and 203, each employee in the relevant statutory
2 period (*i.e.*, three years before the filing of the initial Complaint) is entitled to 30 days' worth of
3 wages as waiting time penalty for not being paid all wages due upon separation of employment.
4 Class Counsel theorized at mediation, based on relevant documents provided by Defendant, that,
5 under Labor Code section 203, Defendant is liable to pay each Class Member, who was terminated
6 during the relevant statutory period, a full 30-day worth of wages as waiting time penalty for failure
7 to pay compensation in lieu of compliant meal and rest periods, and failure to timely pay all wages
8 due. Class Counsel understands from documents provided by Defendant that there were 12,079
9 separated employees during the relevant statutory period. Thus, Class Counsel theorized
10 Defendant's exposure for this claim, assuming a 20% violation rate, to be **\$8,476,559** (12,079
11 separated Class Members x \$14.62/hr. x 8 hrs x 30 days x .20 violation rate).

12 Class Counsel understands from the mediator and the mediation process that Defendant
13 contends that there is no credence to Plaintiff's off-the-clock theory and that, thus, no waiting time
14 penalties are owed based on that theory. Defendant further alleges that its good-faith belief that it
15 paid all wages precluded the imposition of waiting time penalties since Plaintiff could not prove that
16 Defendant alleged failure to pay all final wages at the time of separation was "willful." Thus,
17 Defendant argues that no waiting time penalties are owed.

18 **6. Failure to Reimburse Work Expenses**

19 Class Counsel initially theorized that Class Members are owed reimbursement for using
20 their personal electronic devices (*i.e.* computers, cell phones, etc.) to access and complete training
21 requirements for Defendant. However, after investigation and discovery, Class Counsel did not
22 attribute significant damages for this claim for purposes of mediation.

23 **7. PAGA Penalties**

24 Class Counsel understands from the time and payroll data provided by Defendant that there
25 were 250,548 pay periods in the PAGA Period. Plaintiff claims in the Action under PAGA are
26 substantially similar to those described herein. PAGA penalties include penalties for initial
27 violations and subsequent violations. Defendant contends that only initial violation rates may be
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1 used instead of the subsequent violation rates initially used by Class Counsel. With this in mind
2 and because Class Counsel through investigation and discovery did not come to the conclusion
3 that Defendant at any time was notified by any governmental entity that they violated any Labor
4 Code sections presented in the PAGA Notice and PAGA claims, Class Counsel adjusted the
5 exposure model for Defendant to include only initial violation rates.

6 While Class Counsel is informed and believe that reasonable minds differ with regard to
7 calculation of PAGA penalties, Class Counsel believes it is reasonable to calculate Defendant's
8 maximum exposure in PAGA penalties as follows:

9 a. Overtime Violations: Labor Code section 558 prescribes penalties of \$50 for an
10 initial violation and \$100 for each subsequent violation. Using the initial pay period rate for all
11 violations, and a violation every single pay period for every single non-exempt employee in the
12 PAGA Period, this amounts to a maximum exposure of \$12,527,400 (250,548 pay periods x \$50).

13 b. Minimum Wage Violations: Labor Code section 1197.1 prescribes penalties of
14 \$100 for an initial violation and \$250 for each subsequent violation. Using the initial pay period
15 rate for all violations and a violation every single pay period for every single non-exempt
16 employee in the PAGA Period, this amounts to a maximum exposure of \$25,054,800 (250,548
17 pay periods x \$100).

18 c. Meal Period Violations: Labor Code section 558 prescribes penalties of \$50 for an
19 initial violation and \$100 for each subsequent violation. Using the initial pay period rate for all
20 violations and a violation every single pay period for every single non-exempt employee in the
21 Settlement Period, this amounts to a maximum exposure of \$12,527,400 (250,548 pay periods x
22 \$50).

23 d. Rest Period 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 Settlement Period, this amounts to a maximum exposure of \$12,527,400 (250,548 pay periods x
27 \$50).

1 e. Waiting Time Penalties: Labor Code section 2699 prescribes penalties of \$100 for
2 an initial violation and \$200 for each subsequent violation. Because this violation is merited only
3 at separation of employment, a 100% violation rate would likely include just one violation per
4 employee. The data produced by Defendant indicates that there were 7,291 Aggrieved Employees
5 whose employment was separated during the PAGA Period. This amounts to a maximum exposure
6 of \$729,100 (7,291 Aggrieved Employees x \$100).

7 f. Wage Statement Violations: According to *Gunther v. Alaska Airlines, Inc.* (2021)
8 287 Cal.Rptr.3d 229, in this instance, Labor Code section 2699 would be the appropriate penalty
9 for wage statement violations that are inaccurate, which prescribes penalties of \$100 for an initial
10 violation and \$200 for each subsequent violation (*Id.* at 247-248). Using the initial pay period rate
11 for all violations and a violation every single pay period for every single non-exempt employee in
12 the PAGA Period, this amounts to a maximum exposure of \$25,054,800 (250,548 pay periods x
13 \$100).

14 g. Conclusion: In sum, Class Counsel calculated Defendant's total maximum
15 exposure for PAGA violations if the Court were to find a 100% violation rate for every PAGA
16 Member every pay period and not exercise its discretion to reduce any of those penalties to be
17 \$88,420,900. Class Counsel understands from the mediator and the mediation process that
18 Defendant argues the following in connection with this claim: Defendant contends that no PAGA
19 penalties are likely to be awarded and, even if they were, the maximum exposure calculated by
20 Class Counsel is vastly overstated. First, Defendant defends that PAGA penalties cannot and
21 should not be stacked. Second, Defendant asserts that individualized issues predominate the
22 PAGA claims, making the claims unmanageable for trial. Third, Defendant denies that a violation
23 for each pay period can be established. Fourth, Defendant contends that a Court is unlikely to
24 exercise its discretion to award civil penalties under PAGA where, as here, there is no conduct
25 shown by Plaintiff that would show any Labor Code violation by Defendant is knowing and
26 intentional. Defendant insists that this is especially true in this Action where class action damages

1 are available to Class Members, rendering an award of PAGA penalties in addition to class action
2 damages to be double recovery.

3 Class Counsel maintains that it is possible to recover the subsequent violation rate for
4 penalties, that stacking is permissible, and that there is no manageability requirement under PAGA
5 (citing *Estrada v. Royalty Carpet Mills, Inc.*). As such, Class Counsel believes a 95% discount of
6 this claim to be reasonable, resulting in a valuation of **\$4,421,045** as a reasonable estimate of the
7 likelihood of what Plaintiff may recover at trial for PAGA penalties (\$88,420,900 x .05).

8 **8. Conclusion**

9 When including derivative penalties, such as waiting time penalties, wage statement
10 violations, and discretionary PAGA penalties, Class Counsel theorized Defendant's maximum
11 exposure to be approximately **\$36,919,590**. In all, Class Counsel obtained a Gross Settlement
12 Amount of **\$6,000,000**. Particularly in light of the risks involving obstacles to class certification,
13 all issues and risks related to liability, the issues with manageability at trial, the discretionary
14 nature of PAGA penalties, and considering the case law regarding fair, reasonable and adequate
15 settlements, Class Counsel strongly believes that the settlement reached is fair, reasonable and
16 adequate, and in the best interest of Class Members.

17 Moreover, \$200,000 of the Gross Settlement Amount was attributed to PAGA penalties.
18 This allocation was decided mutually by the Parties and the mutual decision was based on: (1) the
19 fact that damages are available for the failure to pay wage claims while only penalties are available
20 for the PAGA claims; (2) the risk that the Court may exercise its discretion to decline to stack
21 PAGA penalties; (3) the risk that the Court may exercise its discretion to not award the full amount
22 of PAGA penalties available; and (4) the risk that the Court may decline to award any PAGA
23 penalties at all in light of the fact that damages are available for Class Members and it may find
24 any further liability against Defendant unnecessarily punitive.

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

26 Class Counsel seek an attorneys' fees award of *not more than* thirty-five percent (35%) of
27 the Gross Settlement Amount, which, unless escalated pursuant to this Agreement, would amount to
28

1 \$2,100,000. Class Counsel may seek less than 35% at the time of final approval. Class Counsel also
2 seeks reimbursement of costs not to exceed \$85,000.00. The requested fees fall well within the
3 historical range of attorney's fees awards under the common fund theory, which is generally from
4 25% to 50%. The requested fee is fair compensation for undertaking complex, risky, expensive and
5 time-consuming litigation on a contingent fee basis. Thus, the Court should preliminarily approve
6 the requested attorneys' fees and costs, which are justified by the results achieved, the complexity of
7 the issues, the difficulty of the case and the great risks undertaken by Class Counsel. The requested
8 attorneys' fees will not be opposed by Defendant and are well within established guidelines.

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12 **VIII. THE REQUESTED ENHANCEMENT AWARD TO THE NAMED**
13 **PLAINTIFF AND CLASS REPRESENTATIVE IS REASONABLE**

14 Plaintiff is entitled to enhanced awards for her service as class representative, for answering
15 extensive questions by Class Counsel, for being available and answering questions during
16 mediation, for the risks in being the named plaintiff and for providing Defendant with a more
17 expansive release of claims, including a waiver based upon California Civil Code section 1542, in
18 exchange for the enhancement award. Defendant does not oppose the requested enhancement to
19 Plaintiff. Plaintiff risked intrusive discovery and the payment of employer costs. Class Counsel
20 seeks an extremely limited enhancement of \$7,500.00 for Plaintiff.

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

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

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

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

1. Ascertainability – “Ascertainability” is a due process requirement that ensures it is possible to decide who will be bound by the judgment (*res judica* effect). The determination is made by examining the class definition and the size of the class. Here, the Class Members definition (*i.e* all individuals who performed work in any non-exempt position for Defendant at any time during the Class Period) in the State of California) is derived from the operative complaint, which complains of alleged violations of Labor Code sections that are chiefly and, in some instances, solely applicable to non-exempt employees. Plaintiff maintains there is no difficulty ascertaining who is a Class Member based on the above-described definition as it is readily apparent to all involved who is a non-exempt employee who worked in California for Defendant during the Class Period based solely from Defendant; payroll records, which amounts to approximately 18,363 persons.

2. Numerosity – According to the California Supreme Court, a putative class is sufficiently numerous to achieve the numerosity requirement if their joinder is impracticable and thus substantial benefits accrue both to litigants and the courts if the action proceeds as a class action. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435, 446.) Numerosity is presumed satisfied if there are forty (40) putative class members. (*Miri v. Dillon* (E.D. MI 2013) 292 F.R.D. 454, 461.) However, as few as 10 class members has been found sufficient. (*See, e.g., Bowles v. Sup. Ct.* (1955) 44 Cal.2d 574.) Class Counsel understands from documents provided that Defendant identified at least 18,363 Class Members. Therefore, Plaintiff contends that is sufficiently numerous to establish the numerosity requirement.

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

This Litigation is brought to resolve common issues that include whether Defendant failed

to pay for all hours worked; whether Defendant provided full, timely and un-interrupted meal and rest periods, whether Class Members are entitled to premium pay for incomplete, untimely or interrupted meal or rest periods, among other claims as set forth above. Plaintiff contends her claims satisfy all three requirements.

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

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

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

No conflicts, disabling or otherwise, exist between Plaintiff and Class Members because Plaintiff alleges to have been damaged by the same alleged conduct of Defendant (*i.e.*, Plaintiff was classified as a non-exempt, hourly-paid employee, not paid premium pay, etc.) and thus has the incentive to fairly represent all Class Members' claims to achieve the maximum possible recovery.

(ii) Class Counsel are Experienced Class Action Attorneys

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

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

7 It deals with common issues that are most efficiently adjudicated together, as indicated
8 above. Moreover, with at least 18,363 Class Members, presentation of all of them before this Court
9 may be problematic, impractical, and burdensome. On the contrary, a class action allows claims of
10 many individuals to be resolved at the same time, eliminates the possibility of repetitious litigation
11 and affords small claimants with a method of obtaining redress for claims which otherwise would
12 be too insufficient to warrant individual litigation.

13 **7. Conclusion** – Thus, because this Action meets all criteria for certification
14 and a lesser standard of scrutiny applies when evaluating these criteria for settlement purposes, it
15 should be certified for purposes of effectuating this settlement.

16 **X. CONCLUSION**

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

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20 Dated: May 19, 2025

BIBIYAN LAW GROUP, P.C.

21 /s/ Vedang J. Patel

22 _____
23 VEDANG J. PATEL
24 Attorneys for Plaintiff, on behalf of
25 themselves and all others similarly situated
26 and aggrieved
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