Kane Moon (SBN 249834)
E-mail: kmoon@moonlawgroup.com
Lilit Ter-Astvatsatryan (SBN 320389)
E-mail: lilit@moonlawgroup.com
Nichelle Christopherson (SBN 349221)
E-mail: nchristopherson@moonlawgroup.com
MOON LAW GROUP, PC
725 S. Figueroa St., 31st Floor
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125

Attorneys for Plaintiff DEJON MARQUIS BENNETT

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN JOAQUIN

DEJON MARQUIS BENNETT, individually, and on behalf of all others similarly situated,

Plaintiff,

vs.

INTERSTATE TRUCK CENTER, LLC, a limited liability company; and DOES 1 through 10, inclusive,

Defendants

Case No.: STK-CV-UOE-2023-0006709

CLASS AND REPRESENTATIVE ACTION

[*Assigned for All Purposes to the Honorable George J. Abdallah, Department 10A*]

DECLARATION OF KANE MOON IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT

[*Filed with Plaintiff's Notice of Motion and Memorandum of Points and Authorities, the Declaration of Plaintiff Dejon Marquis Bennett, the Declaration of Lisa Mullins, the Declaration of [Defendant], and [Proposed] Preliminary Approval Order*]

PRELIMINARY APPROVAL HEARING:
Date: June 12, 2025
June 13, 2025
June 15, 2025
June 16, 2025
June 17, 2025
Time: 9:00 a.m.
Dept.: 10A

Action Filed: June 29, 2023
FAC Filed: September 25, :023
Trial Date: Not Set

DECLARATION OF KANE MOON

I, KANE MOON, declare as follows:

1. I am an attorney at law duly licensed to practice as such before all Courts of the State of California and am one of the attorneys of record for Plaintiff Dejon Marquis Bennett ("Plaintiff") and the putative Class. I have personal knowledge of the matters set forth herein and if called as a witness, I could and would testify competently to the facts described herein.

CASE BACKGROUND AND PROCEDURAL HISTORY

2. This is a wage and hour class action and representative action for alleged Labor Code violations and claims for civil penalties pursuant to the California Private Attorneys General Act, Labor Code sections 2698, *et seq.* ("PAGA"). Plaintiff seeks to represent a class of all current and former hourly-paid or non-exempt employees of Defendant Interstate Truck Center, LLC ("Defendant") in California employed during the period from June 29, 2019, through either (a) the date of the Court's preliminary approval of class settlement, or June 4, 2025, whichever is sooner (the "Class Release Period"). Defendant is a one-stop dealership for truck service, parts, leasing, and sales. Plaintiff worked for Defendant as a janitor from approximately April 2019 to June 2020. Throughout his employment Plaintiff was employed in an hourly paid, non-exempt position. Plaintiff contends he and his coworkers were subjected to the same unlawful labor practices, including failure to pay wages for all hours worked.

3. Plaintiff's claim for unpaid wages stems in part, from Defendant's alleged policy of requiring employees to work off-the-clock, uncompensated, and from Defendant's alleged failure to incorporate the regular rate of pay when calculating overtime, meal break premiums, and sick pay. Moreover, Plaintiff brings claims against Defendant for meal and rest period violations, unreimbursed business expenses, and derivative claims for waiting time penalties, wage statement violations, unfair business practices, and civil penalties under PAGA.

4. Because of the foregoing alleged violations of various provisions of the Labor Code, Plaintiff filed a class action on June 29, 2023, which, as amended, alleges Defendant systematically: (1) failed to pay minimum wages, (2) failed to pay overtime compensation, (3) failed to provide meal periods, (4) failed to authorize and permit rest periods, (5) failed to indemnify necessary business expenses, (6) failed to pay final

wages at termination, (7) failed to provide accurate itemized wage statements, (8) engaged in unfair business practices, and (9) violated civil penalty provisions recoverable as PAGA penalties pursuant to Labor Code sections 2698, *et seq*.

5. On June 24, 2023, Plaintiff gave written notice to the California Labor and Workforce Development Agency (the "LWDA") of the alleged Labor Code violations, with certified mail service on Defendant, and paid the required filing fee. A true and correct copy of Plaintiff's PAGA Notice letter to Defendant and the LWDA is attached hereto as **Exhibit 2**. On September 25, 2023, Plaintiff filed the First Amended Complaint (the "Operative Complaint") to allege PAGA claims, and subsequently submitted a copy to the LWDA in compliance with Labor Code section 2699, subd. (*l*)(1). To date, the LWDA has not indicated its intent to investigate the alleged violations or intervene in this Action.

6. Defendant ardently opposes the merits of this case and denies Plaintiff's factual allegations. Defendant asserts it complied with all of its compensation obligations, including compensating Class Members for all off-the-clock work, and therefore, Plaintiff and other Class Members were paid all wages owed. Defendant also argues that Defendant did not fail to incorporate any bonuses into Plaintiff's and Class Member's regular rate for purposes of overtime and sick pay as such bonuses were discretionary. Defendant maintains compliance with all its meal and rest period obligations. Defendant asserts it complied with all of its reimbursement obligations, and therefore, Plaintiff and other Class Members were compensated for any and all necessary business expenses incurred. To the extent Class Members received wage statements that were allegedly inaccurate, Defendant asserts employees suffered no actual damage or harm as a result. (*See, e.g.*, *Angeles v. U.S. Airways, Inc.* (N.D. Cal. Feb. 19, 2013, No. C 12–05860 CRB) 2013 WL 622032, at *10 ["A plaintiff must adequately plead an injury arising from an employer's failure to provide full and accurate wage statements, and the omission of the required information alone is not sufficient."].) With respect to Plaintiff's claim for waiting time penalties, Defendant alleges its good-faith belief that it paid all wages precludes the imposition of waiting time penalties since Plaintiff cannot prove Defendant's alleged failure to pay all final wages at the time of separation was "willful." (*See, e.g.*, *Pedroza v. PetSmart, Inc.* (C.D. Cal. June 14, 2012, No. ED CV 11–298 GHK (DTBx)) 2012 WL 9506073, *5.) For these reasons, among others, Defendant denies all of Plaintiff's claims and allegations, and further claims it did not engage

in any unfair business practices and denies liability under PAGA. Defendant also maintains the claims are improper for class treatment, in part, due to the individualized and testimony-intensive nature of the wage claims that could bar class certification or significantly reduce Defendant's overall liability.

DISCOVERY AND INVESTIGATION

7. The Parties agreed to mediate the instant action, and participated in private mediation with Kelly Knight, Esq., an experienced class and PAGA action mediator. In preparation for mediation, the Parties agreed to a protocol for an informal exchange of documents and information before mediation. Prior to mediation, Plaintiff obtained from Defendant, through formal and informal discovery, electronic time and pay records, policy documents, and data that were necessary and helpful to evaluate the claims asserted in this action. Defendant produced an approximate 100% sample of the time and pay records for the putative Class, Plaintiff's personnel file, and Defendant's written policies. Defendant also provided information regarding the estimated number of current and formerly employed Class Members, Aggrieved Employees, and PAGA Pay Periods.

8. In preparation for mediation, Plaintiff's Counsel reviewed and analyzed all the information Defendant provided, including the sample records and documents regarding Defendant's wage and hour policies. Plaintiff's Counsel retained a statistics expert to analyze the sample records and prepare a damage analysis prior to the mediation. The sample time and pay records analyzed contained 150,143 actual shifts in the Class Period (representing roughly 99.1% of total shifts in the Class Period), which allowed Plaintiff's expert to prepare an analysis ***with a high degree of certainty***. In conjunction with their extensive factual investigation, Plaintiff's Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. Accordingly, Plaintiff's Counsel was able to evaluate the probability of class certification, success on the merits, and Defendant's maximum and realistic monetary exposure for all claims. Thus, Plaintiff's and his Counsel's familiarity with the facts of the case and the legal issues raised by the pleadings allowed them to act intelligently in negotiating the Settlement.

SETTLEMENT NEGOTIATIONS

9. On March 4, 2025, the Parties participated in a full day of private mediation before Kelly Knight, Esq. The negotiations were at arm's length and, although conducted in a professional manner, were

adversarial. The Parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their position through trial and appeal if a settlement had not been reached. After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiff's claims and Defendant's defenses, a settlement was reached by the Parties. The material terms of the settlement are set out in the Class Action and PAGA Settlement Agreement and Class Notice ("Settlement"). A true and correct copy of the Settlement is attached to the instant Declaration as **Exhibit 1**. Additionally, the proposed class notice is attached to the Settlement as **Exhibit A**.

10. To the best of my knowledge, I am not aware of any individual, representative, or class action in this jurisdiction, or any other court or jurisdiction, asserting claims similar to those asserted in this action on behalf of a class or group of individuals who would also be members of the putative Class, as defined in this matter. I have come to this conclusion after a reasonable inquiry and review of the LWDA's PAGA Case Search website, this Court's case search website, and other information reasonably available online. Additionally, Defendant has not indicated there is any related case pending as of the date of this declaration. As such, I am unable to name any case, the nature of any claims asserted in such case, or the definition of a class of parties on whose behalf any action was brought that would overlap with the putative Class or would otherwise be adversely affected by approval of this Settlement.

11. In compliance with Labor Code section 2699, subdivision (*l*)(2), Plaintiff's Counsel submitted to the LWDA a notice of settlement and a copy of the proposed Settlement. A true and correct copy of the LWDA's email confirming receipt thereof is attached hereto as **Exhibit 3**.

12. Class Members will not need to submit any claim form as a condition of receiving individual settlement payments. (Settlement, ¶ 3.1.) Each Class Member who does not opt-out will be entitled to a pro rata share of the Net Settlement Amount that is directly proportional to the number of Pay Periods worked during the Class Period. (*Id.* at ¶ 3.2.4.) Likewise, each Aggrieved Employee will be entitled to a pro rata share of the 25% share of the PAGA Penalties directly proportional to the number of PAGA Pay Periods. (*Id.* at ¶ 3.2.5.1.)

13. The Settlement provides a fee application of not more than 33.33% of the Gross Settlement Amount for reasonable attorneys' fees, plus reimbursement for actual litigation costs not to exceed

$25,000.00, payable from the Gross Settlement Amount. (*Id.* at ¶ 3.2.2.) In the event the amounts finally approved are less, the difference will revert to Participating Class Members. (*Id.*)

14. The Settlement includes a Class Representative Enhancement Payment up to $7,500.00 payable from the Gross Settlement Amount, subject to the Court's approval, to Plaintiff as the Class Representative, in addition to the amount he is eligible to receive as a Class Member. (*Id.* at ¶ 3.2.1.) This award is for Plaintiff initiating the Action and providing services in support of the Action. (*Id.* at ¶ 5.1.1.) In the event the award finally approved is less, the difference will revert to Participating Class Members. (*Id.* at ¶ 3.2.1.)

15. The Parties jointly appointed ILYM Group, Inc. as the neutral entity to administer this Settlement, agreed the Administrator will be paid the costs of administration work from the Gross Settlement Amount, and estimated administration costs will not exceed $20,000.00 (*Id.* at ¶¶ 1.2, 3.2.3., 7.1.) In the event the amount finally approved is less, the difference will revert to Participating Class Members. (*Id.* at ¶ 3.2.3.) At this time, the Administrator estimates costs will total $7,000.00, and a true and correct copy of the Administrator's costs estimate is attached hereto as **Exhibit 4**.

16. Defendant shall deposit into a Qualified Settlement Fund established by the Settlement Administrator the Gross Settlement Amount, within fourteen (14) court days of the Effective Date of the Settlement. (*Id.* at ¶ 4.3.)

THE PROPOSED SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

17. Plaintiff's Counsel have conducted a thorough investigation into the facts of this case. Based on the foregoing document and information exchange and on their own independent investigation and evaluation, Plaintiff's Counsel are of the opinion that the proposed Settlement is fair, reasonable, and adequate. Furthermore, considering all known facts and circumstances, the risk of significant delay, trial risk, appellate risk, and the defenses that Defendant may assert both to certification and on the merits, the Settlement is in the best interest of the Class.

18. Based on Plaintiff's Counsel's review of the time, payroll, and additional data provided by Defendant, on Plaintiff's expert's analysis of the sample records provided by Defendant, and on information from Plaintiff, Plaintiff's Counsel evaluated the estimated maximum and risk-adjusted exposure that Defendant faced. Based on a review of its records to date, Defendant estimates there are 289 Class Members

who collectively worked a total of 40,752 Workweeks during the Class Period, and approximately 184 Aggrieved Employees who worked a total of 9,239 PAGA Pay Periods during the PAGA Period. (*Id.* at ¶ 4.1.) Additionally, Plaintiff's expert estimated that Class Members' average hourly rate was $26.93; there were 118 former employees falling within the three-year statute of limitations ("SOL") period for waiting time penalties, and 184 employees falling within the one-year SOL period for inaccurate wage statement penalties and PAGA penalties.

Accordingly, we calculated Defendant's potential exposure as follows:

Claim	Relevant Time Period	Rate	Number of Violations	Realistic Exposure
Unpaid Wages (Off the Clock)	40,752 Workweeks	$26.93 average hourly rate	43,057 net unpaid hours (assuming 15 minutes per shift) (88% overtime)	**$166,858.70****
Unpaid Wages (Regular Rate)	40,752 Workweeks	$24.96 average regular rate	Based on expert analysis of records	**$23,396.00***
Meal Period Violations	40,752 Workweeks	$26.93 average hourly rate	38,234 unique meal break violations	**$257,410.41***
Rest Period Violations	40,752 Workweeks	$26.93 average hourly rate	Assuming 100% Break violations for break-eligible shifts	**$460,109.82****
Unreimbursed Business Expenses Violations	40,752 Workweeks	Assumes $25 per pay period	Based on expert analysis of records	**$48,705.00****
Labor Code § 203	Based on approx. 118 terminated employees within the 3-year SOL	$26.93 average hourly rate/30-day max.	Assumes 8.2 hours / day	**$39,279.30*****
Labor Code § 226	Based on approx. 184 employees within the 1-year SOL	$50 per initial pay period / $100 per subsequent pay periods / $4,000	Based on 9,239 pay periods within the 1-year SOL	**$36,800.00*****

		employee max.		
PAGA	Based on approx. 184 employees within the 1-year SOL	$100 per pay period	Based on 9,239 pay periods within the 1-year SOL	**$46,195.00*** **
Total				**$1,078,754.23**
* These figures are discounted based on a 25% probability of prevailing at class certification and on the merits. ** These figures are discounted based on a 10% probability of prevailing at class certification and on the merits. *** These figures are discounted based on a 5% probability of prevailing at class certification and on the merits.[1]				

19. Plaintiff's unpaid wages claim is due, in part, to allegations that Defendant did not compensate Class Members for all hours worked. Plaintiff alleges that Plaintiff and putative Class Members were required to work off-the-clock without compensation. For example, Plaintiff alleges that Plaintiff and Class Members were required to wait in line prior to clocking in at the beginning of their shifts and after returning from their meal breaks because there was only one time clock. Plaintiff also alleges that Plaintiff and Class Members often had to complete tasks before and after their shifts, such as clearing pallets or cleaning trucks. Therefore, Plaintiff's Counsel estimated Class Members spent an average 15 minutes off the clock per shift during the Class Period. Plaintiff's Counsel and its data expert then estimated Defendant failed to pay Class Members for approximately 43,057 hours. In light of the average regular and overtime rates of the Class Members and the calculation that 88% of unpaid work should have been paid at the overtime rate, Plaintiff's expert calculated that Defendant has a maximum potential liability of $1,668,587.00. Defendant contended that all time worked was compensated, and that proving any such claim would prove that this issue is highly individualized and not susceptible to class-wide treatment. Additionally, "off-the-clock" claims are difficult to be tried on a class wide basis because there is

[1] A discount for risk at certification and trial is reasonable because the Judicial Council of California found that only 21.4% of all class actions were certified either as part of a settlement *or* as part of a contested certification motion. (*See* Findings of the Study of California Class Action Litigation, 2000-2006, available at http://www.courts.ca.gov/documents/class-action-lit-study.pdf.) Moreover, discounting is particularly warranted in this case because of the individualized and testimony-intensive nature of the wage claims that could bar or limit the likelihood of any recovery whatsoever.

no apparatus that can be used to prove this claim – there are no records to be used as evidence. In light of these defenses, and for purposes of settlement, Class Counsel discounted the maximum potential liability by 90% ($1,668,587.00 * .10). **Plaintiff's realistic damage estimate for the unpaid wages claim due to off-the-clock work is therefore $166,858.70.**

20. Plaintiff's unpaid wage claim is also due to allegations that Defendant failed to pay overtime, meal break premiums, and sick pay at the proper regular rate of pay during the Class Period. Defendant's payroll records reflect pay codes for additional remunerations, which Plaintiff alleges were non-discretionary, and as such, should have been incorporated into employees' regular rate of pay. Plaintiffs' expert analyzed Defendant's sample records and estimated Defendant's liability for underpaid overtime to be $2,196.00, for unpaid meal break premiums to be $7,000.00, and for unpaid sick pay to be $84,388.00, for a total maximum exposure of 93,584.00. Defendant disagrees and contends that each of these payments were discretionary. Plaintiff's expert's analysis of the records also showed that the regular rate claim does not reach the severity of what was originally contemplated. For example, if there was any underpayment due to incorrect regular rate, only 3.1% of pay periods were affected by underpaid meal break premiums. Defendant also argues that this claim is improper for class treatment, in part, given the challenges in extrapolating this claim to the entire Class. Although I believe there is merit to this claim, with conflicting interpretations on the issue, potential defenses to certifying this claim, lack of written policies regarding criteria for bonus payments, and to account for potential difficulties in class certification, I discounted the maximum damage exposure by 75% ($93,584.00 * .25); accordingly, I arrived at **a realistic damage estimate of $23,396.00 for the regular rate of pay claim.**

21. Plaintiff's meal period claim is based on allegations that Defendant did not provide or maintain sufficient meal period practices, such that Class Members were not always permitted or able to take meal periods and/or were sometimes subjected to late, short and/or interrupted meal periods without compensation in lieu thereof. The sample of time and corresponding payroll records of the putative Class indicated that Defendant either failed to provide a meal period or provided a short and/or interrupted meal period 38,234 times throughout the Class Period, resulting in an 22.9% overall violation rate. Plaintiff's Counsel and its data expert then calculated that, in light of these violations and the average hourly rate of the putative Class,

Defendant had a potential liability of $1,029,641.62 (38,234 unique violations[2] * $26.93 per hour). Defendant nonetheless contended that many meal breaks were taken and, where a violation appears, it was a result of the Class Member voluntarily choosing to forego a meal period, to take it after the end of the fifth hour, or to stop his or her break early to return to work. Additionally, 19.7% of the meal break violations had a corresponding meal break waiver, which reduces the violation rate to just 3.2%. Moreover, certification and proof of this claim would require declarations from Class Members and obtaining such declarations potentially would reveal that each Class Member had a different experience with respect to meal periods. In light of these defenses, and for purposes of settlement, Plaintiff's Counsel discounted the potential liability by 75% ($1,029,641.62 * 0.25). **Plaintiff's realistic damage estimate for the meal period claim is therefore $257,410.41.**

22. The rest break claim is based on the allegation that Defendant did not provide or maintain sufficient rest break practices, such that Class Members were regularly required to work in excess of four consecutive hours a day, or a major fraction thereof, without authorization or permission to take a ten-minute, continuous and uninterrupted rest period or without compensation in lieu thereof. The precise number of rest break violations could not be calculated since Defendant neither documented, nor is required to document, when Class Members took their required rest breaks. Therefore, in preparation for mediation, Plaintiff's Counsel estimated that Defendant had a one-hundred percent violation rate for shifts greater than or equal to 3.5 hours in length. Plaintiff's expert then estimated that, in light of the estimated violation rate, 170,854 total rest breaks during the Class Period, and average hourly rate of the putative Class, Defendant had a potential liability of $4,601,098.22 (4,601,098.22 unique violations * $26.93 per hour). Defendant nonetheless contended that rest periods do not have to be recorded, that Class Members voluntarily chose to forego some rest breaks and, significant for purposes of class certification, that this claim is individualized in nature and therefore would require declarations indicating that Class Members shared a similar experience as to rest breaks. In light of these defenses, and for purposes of settlement, Class Counsel

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[2] Unique meal break violations are defined as shifts with at least one of the following: (1) recorded 1st meal break after the end of the 5th hour for shifts greater than 5 hours, (2) 1st meal break less than 30 minutes for shifts greater than 5 hours, (3) no 1st meal breaks for shifts greater than 5 hours, or 4) no 2nd meal breaks for shifts greater than 10 hours.

discounted the potential liability by 90% ($4,601,098.22 * 0.10). **Plaintiff's realistic damage estimate for the rest break claim is therefore $460,109.82.**

23. Plaintiff's claim for unreimbursed business expenses stems from Plaintiff's allegations that he and class members were required to use their personal cell phones for work purposes and that they were not reimbursed for the usage or replacement of their cell phones. For example, Plaintiff alleges that he had to use GPS on his personal cell phone to navigate to various locations and that he received calls from his supervisor for work purposes. Assuming $25 per pay period, Plaintiff estimates Defendants' **maximum potential exposure as $487,050.00**. While there is some merit to the claim, certifying and proving it presents significant risks, as it would require extensive individual declarations that could highlight varying experiences among employees' use of their personal cell phones and their associated expenses. In recognition of such, I applied a 90% discount arriving at **a realistic damage estimate of $48,705.00.**

24. With respect to Plaintiff's derivative claims for statutory and civil penalties, Plaintiff estimates Defendant's maximum potential exposure, prior to risk-adjustment, is $2,445,486.00, which breaks down as follows: **$1785,586.00** for waiting time penalties for approximately 118 terminated Class Members in the 3-year SOL; a **$736,000.00** penalty for inaccurate wage statements based on approximately 184 Class Members in the 1-year SOL; and **$923,900.00** for PAGA penalties based on approximately 9,239 Pay Periods and the Court assessing a $100 penalty for each pay period containing a violation. However, I believe it would be unrealistic to expect the Court to award the full exposure amount given the discretionary nature of awarding penalties and given Defendant's defenses, including without limitation, that any failure to pay all final wages at the time of separation was not willful or intentional and that to the extent Plaintiff received wage statements that were allegedly inaccurate, Plaintiff suffered no actual resulting damage or harm. Moreover, I understand the individualized and testimony-intensive nature of the wage claims could bar class certification or otherwise significantly reduce Defendant's overall liability for statutory and civil penalties. Furthermore, considering the underlying wage claims are realistically estimated to be $956,479.94, awarding such a disproportional amount in penalties would also raise Due Process concerns. Weighing these factors, I applied a 95% discount to each penalty (resulting in **$39,279.30** for waiting time penalties, **$36,800.00** for inaccurate

wage statement penalties, and **$46,195.00** for PAGA penalties) and accordingly arrived at **a realistic damage estimate of $122,274.30 for statutory and civil penalties**.

25. Using these estimated figures, Plaintiff predicted **the *realistic* (risk-adjusted) recovery for all claims, including penalties, is $1,078,754.23**. This means **the $740,000.00 gross settlement figure represents roughly 68.6% of the total realistic recovery**. This is an excellent result for the Class, particularly because, under the Settlement, Class Members will receive timely and guaranteed relief, avoiding the risk of not being able to recover anything.

26. With regards to the PAGA claims, Plaintiff and his Counsel believe the Settlement is a fair and reasonable resolution that satisfies PAGA's dual statutory purposes of deterrence and punishment, on the one hand, and providing Aggrieved Employees with genuine and meaningful relief, on the other. (Lab. Code §§ 2698, *et seq.*) As a result of this litigation, Defendant has had to hire legal counsel, engage in formal and informal discovery, and participate in mediation. Defendant is also now having to pay civil penalties to the LWDA under the Settlement, assuming final settlement approval is granted. (Settlement, ¶ 3.2.5.) Not including its own attorneys' fees and costs as well as the employer's share of payroll taxes, Defendant will pay no less than $740,000.00 to resolve this matter—of which $50,000.00 is allocated toward the PAGA claims and will be distributed, in compliance with Labor Code section 2699 as 75% ($37,500.00) to the LWDA and 25% ($12,500.00) to Aggrieved Employees—and the release obtained under the Settlement does not preclude Aggrieved Employees from seeking remedies based on any underlying individual claims they may have against Defendant or the other Released Parties. (Lab. Code § 2699(i).) Moreover, Plaintiff's Counsel are of the opinion that because the issues here are fairly contested, there is a possibility of the Court not awarding the PAGA penalties even if Plaintiff prevailed on the merits due to the largely discretionary nature of awarding PAGA penalties. Indeed, under Labor Code section 2699, subdivision (e)(2), a Court can reduce PAGA penalties "if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." (Lab. Code § 2699(e)(2).) In other words, were this matter to go to trial, any award granted would be at the discretion of the Court and subject to a substantial reduction.

27. While Plaintiff is confident in the merits of his claims, a legitimate controversy exists as to each cause of action. Plaintiff also recognizes that proving the amounts of wages owed to each Class Member would be an expensive, time-consuming, and uncertain proposition.

28. The Settlement obviates the significant risk that this Court may deny certification of all or some of Plaintiff's claims. Furthermore, even if Plaintiff was able to pursue his claims on a class-wide basis and obtain certification of all or some of the claims, continued litigation would be expensive, involving a trial and possible appeals, and would substantially delay and reduce any recovery by the Class.

29. This Settlement avoids the risks, burdens, and the accompanying expense of further litigation. Although the Parties have engaged in a significant amount of investigation, formal and informal discovery, and class-wide data analysis, they have not conducted extensive formal discovery, including depositions. Moreover, preparation for class certification and a trial would remain for the Parties as well as the prospect of appeals in the wake of a disputed class certification ruling for Plaintiff and/or any summary judgment ruling. As a result, the Parties would incur considerably more attorneys' fees and costs through trial.

30. The Net Settlement Amount available for settlement payments is estimated to be *no less than* **$165,858.00**[3] for an estimated Class of **289 individuals**. As a result, it is estimated each Participating Class Member will receive an average gross benefit of approximately **$573.90** prior to tax withholdings on the wage portion of payments. Considering Class Members' average hourly rate is $26.93, the average benefit is roughly **21.3 hours of work**. This amounts to **an estimated Workweek value of roughly $4.07** for the currently estimated **40,752 Workweeks**. Additionally, it is currently estimated there are **184 Aggrieved Employees** who will receive an estimated average of approximately **$67.93** from their $12,500.00 total share of the PAGA Penalties, which results in an estimated **Pay Period value of $1.35** per pay period based on the currently estimated **9,239 PAGA Pay Periods**. The actual amounts to Participating Class Members and Aggrieved Employees will vary based on each individual's duration of work during the Class Period or PAGA Period, respectively; thus, those who worked longer will receive a gross benefit greater than the

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[3] The Net Settlement Amount is at least $740,000.00 less the following: $7,500.00 for the Class Representative Service Payment, up to $20,000.00 for Administration Expenses Payment, $50,000.00 for the PAGA Penalties to the LWDA and Aggrieved Employees, $246,642.00 for the Class Counsel Fees Payment, and up to $30,000.00 for the Class Counsel Litigation Expenses Payment. (Settlement, ¶¶ 3.2.1-3.2.5.)

average estimated amount. At this time, the high and low range of payments to Class Members is unknown. These ranges will be calculated by the Administrator following preliminary approval and receipt and processing of the Class Data and will be provided to the Court in a motion for final approval.

31. The proposed Settlement of $740,000.00 therefore represents a substantial recovery when compared to Plaintiff's reasonably forecasted recovery. When considering the risks of litigation, the uncertainties involved in continued litigation, the burdens of proof necessary to establish liability, and the probability of appeal, it is clear the Settlement amount of $740,000.00 is within the "ballpark" of reasonableness, and that preliminary settlement approval is appropriate.

THE ENHANCEMENT PAYMENT TO PLAINTIFF IS REASONABLE

32. Throughout this litigation, Plaintiff, who was a former employee of Defendant, has cooperated immensely with my office and has taken many actions to protect the interests of the Class. Plaintiff provided valuable information regarding his hours worked, and what duties were performed during those hours. Plaintiff also provided information regarding meal periods taken and missed by Plaintiff and other Class Members. Plaintiff participated in decisions concerning this action and assisted in preparation for the mediation. Before we filed this case, Plaintiff worked with my office to determine the viability of his claims. Plaintiff also provided information and documents relating to his employment by Defendant. The information and documentation provided by Plaintiff was instrumental in establishing the wage and hour violations alleged in this action, and the recovery provided for in the Settlement would have been impossible to obtain without his participation.

33. At the same time, Plaintiff faced many risks in adding himself as the named Plaintiff in this matter. Plaintiff faced actual risks with his future employment, as putting himself on public record in an employment lawsuit could also very well affect his likelihood for future employment. For example, a search of Plaintiff's name will reveal this action, and as a result, many employers may likely forego hiring Plaintiff in learning he sued a former employer.

34. In turn, Class Members can now participate in a settlement, reimbursing them for wage violations they may have never known about or been willing to pursue on their own. If each Class Member would have tried to pursue legal remedies on their own, that would have resulted in each having to expend a

significant amount of their own monetary resources and time, not to mention limited judicial resources, which were obviated by Plaintiff putting himself on the line on behalf of the Class.

35. In the final analysis, this class action would not have been possible without the aid of Plaintiff, who put his own time and effort into this litigation and placed himself at risk for the sake of the Class. The requested service payment to Plaintiff for his service as the Class Representative is a relatively small amount of money considering the time and effort put into the litigation and compared to enhancements granted in other class actions. The requested service payment is therefore reasonable to compensate Plaintiff for his active participation in this lawsuit, in addition to his general release of claims, both known and unknown, and waiver of section 1542 rights.

MY EXPERIENCE AND QUALIFICATIONS

36. I received a B.A. in History in 1998 from UCLA, and my J.D. from Loyola Marymount Law School in 2006. I became an Active Member of the State Bar of California in June 2007 and have been an Active Member in good standing continuously since then. I have been selected to Super Lawyers each year from 2019 to 2023.

37. I co-founded Moon & Yang, APC—now Moon Law Group, PC—in March 2010. My practice is focused exclusively on advocating for the rights of employees in wage and hour litigation, almost entirely in class and/or representative actions.

38. For the past decade, I have built my practice to have an emphasis on employment and related civil litigation cases and have both prosecuted and defended employment-related litigation cases. I have been heavily, successfully, and continuously involved in active litigation and trial work, and have conducted bench and jury trials on behalf of both employees and employers in wage and hour cases.

39. My current billing rate is $950.00 per hour, which is my usual hourly rate in wage and hour litigations. A $950.00 per hour rate is reasonable considering my years of experience practicing in the highly specialized area of employment and labor law and my Laffey Matrix rate (The Laffey Matrix, http://www.laffeymatrix.com/see.html [last visited Jan. 2, 2025].) The Laffey Matrix is a "well-established objective source for rates that vary by experience" used by the District of Columbia. (*In re HPL Tech., Inc. Sec. Litig.* (N.D. Cal. 2005) 366 F. Supp 2d 912, 921.) A true and correct copy of the Laffey Matrix is

attached hereto as **Exhibit 5**. California Courts have adjusted the Laffey Matrix rate upwards based on "locality pay differentials" and the location of counsel's office in California to determine whether counsel's rates are reasonable. (*See, e.g.*, *id.* [applying a 9% upward adjustment to the Laffey Matrix rate based on an approximate difference of 9% between the locality pay differential of the District of Columbia and San Francisco, California, where counsel's office was located].) To determine the locality pay differential, the Court in *In re HPL Technologies, Inc.* utilized the locality pay differentials within the federal courts. (*Id.* at 921–22.) Using the same method here and based on my firm's location in Los Angeles, California, the locality pay differential of the Los Angeles-Long Beach area is 35.84% and the locality pay differential of the Washington-Baltimore-Arlington area is 33.26%, which results in a difference of approximately 2.6%. (*Compare* Judiciary Salary Plan of Los Angeles-Long Beach, CA, Effective January 1, 2024 *with* Judiciary Salary Plan of Washington-Baltimore-Arlington, Effective January 1, 2024.) True and correct copies of the Los Angeles-Long Beach, CA and Washington-Baltimore-Arlington salary plans are attached hereto as **Exhibit 6** and **Exhibit 7**, respectively. Based on my 17 years of experience, my Laffey Matrix rate with a 2.6% adjustment is $972.65 per hour ($948 Laffey Matrix rate + (2.6% x $948)). Accordingly, my current billing rate of $950.00 per hour is reasonable.

40. I am experienced in prosecuting and defending employment matters, particularly class actions and PAGA representative actions. My firm has focused a substantial percentage of its practice on wage, hour, and working conditions violations. In addition to the present case, I am also class counsel for other wage and hour class action lawsuits pending in various California counties, including in state and federal courts. The following is a list of some of our recent class action settlements that have received preliminary and final approval: *Aparicio v. Lineage Logistics, LLC* (LASC No. BC722764) (class size approx. 155; lead counsel); *Black v. Mission Healthcare Servs., Inc*. (LASC No. 19STCV04602) (class size approx. 1,000; lead counsel); *Campa v. Bloomingdeals, Inc*. (LASC No. BC700366) (class size approx. 1,500; lead counsel); *Garcia v. Comfy U.S.A. Apparel, Inc.* (LASC No. BC709630) (class size approx. 210; lead counsel); *Gomez v. H Mart Cos., Inc.* (LASC No. BC671525) (class size approx. 2,500; co-counsel); *Jones v. Citiguard, Inc.* (LASC No. BC664890) (class size approx. 587; lead counsel); *Jones v. Fitness Alliance, LLC* (Riverside No. PSC1404079) (class size approx. 1,000; lead counsel); *Lagos v. ThyssenKrupp Elevator Corp.* (LASC No.

BC682972) ($750,000 for 79 class members; lead counsel); *Mark Brulee et al. v. DAL Global Servs., LLC* (C.D. Cal. Dec. 20, 2018, No. CV 17-6433 JVS(JCGx)) 2018 WL 6616659, at *10 (class size approx. 2,650; lead counsel) (in approving my hourly rate in that case, the Court found: "Class Counsel's declarations show that the attorneys are experienced and successful litigators. Other courts have approved the attorneys' current rates for the Moon & Yang, APC attorneys"); *Martinez v. Bail Hotline Bail Bonds, Inc.* (LASC No. BC700131) (class size approx. 173; lead counsel); *Montoya v. Golden 1 Credit Union* (Sacramento No. 34-2018-00228252) (class size approx. 1,900; lead counsel); *Onofre v. Caitac Garment Processing, Inc*. (LASC No. BC702283) (class size approx. 750; lead counsel); *Rodriguez v. Rossmoyne, Inc.* (LASC No. BC699137) (class size approx. 220; lead counsel); *Sison v. Cha Hollywood Med. Ctr., L.P.* (LASC No. BC6441 29) (class size approx. 2,100; co-counsel); *Slaughter v. ACA Sec. Stems, LP* (LASC No. BC699137) (class size approx. 300; lead counsel); *Taylor v. Sherman's Delicatessen & Bakery, LLC* (LASC No. BC722765) (class size approx. 515; lead counsel); *Vargas v. AMS Paving, Inc*. (LASC No. BC722767) (case size approx. 260; lead counsel); *Vertti v. Bagcraft Papercon III, LLC* (LASC No. 19STCV12729) (class size approx. 260; lead counsel); and *Wallick v. Campbell Soup Supply Co., LLC* (San Joaquin No. STK-CV-UOE-2021-0000865) (class size 435; lead counsel).

LILIT TER-ASTVATSATRYAN'S EXPERIENCE AND QUALIFICATIONS

41. Lilit Ter-Astvatsatryan is a Partner at Moon Law Group, PC. Since she was admitted to the California Bar, her practice has exclusively focused on labor and employment class action lawsuits involving California and federal labor laws. Prior to her employment at Moon Law Group, PC, she worked at Setareh Law Group, where she worked with Senior Counsel and mentor H. Scott Leviant on over 80 class actions.

42. Mr. Ter-Astvatsatryan received her Juris Doctorate from the University of California, Hastings College of the Law in 2017, where she served as a Symposium Editor for the Hastings Race and Poverty Law Journal and a Teaching Assistant to the Legal Research & Writing and Legal Analysis programs. In law school, she served as a Judicial Extern to the Honorable Patrick J. Walsh of the United States District Court, Central District of California.

43. Ms. Ter-Astvatsatryan received her undergraduate degree in 2014 from the University of California, Los Angeles with a Bachelor of Arts degree in Anthropology and a minor in English Literature.

44. Ms. Ter-Astvatsatryan's billing rate is $850.00 per hour, which is her usual hourly rate in wage and hour litigations. Based on Ms. Ter-Astvatsatryan's nearly 8 years of experience, her Laffey Matrix rate with a 2.6% adjustment is $860.81 per hour ($839 Laffey Matrix rate + (2.6% x $839)). (*See* Exh. 5.) As compared to the Laffey Matrix rate and when considering her experience, Ms. Ter-Astvatsatryan's billing rate of $850.00 per hour is reasonable.

45. As a partner working solely on wage and hour class action cases, she has been involved in all aspects of complex litigation, including assisting in class certification motions in the following cases:

(a) Macario Gonzalez v. Metcon TI, Inc., Alameda Superior Court, Case No. RG19015589 [after class certification motion was filed, the parties attended mediation and ultimately resolved the matter on a class wide basis];

(b) Miguel Angel Lopez Cuadras v. R.C. Wendt Painting, Inc., Los Angeles Superior Court, Case No. BC705964 [after class certification motion was entirely briefed, the parties attended mediation and ultimately resolved the matter on class wide basis]; and

(c) Noe Armendariz v. Kinkisharyo International, LLC, United States District Court, Central District of California, Case No. 2:19-cv-08757-JAK-KS [motion for class certification filed, decision pending].

46. Additionally, the following is a list of cases where she briefed preliminary and final approval motions of class action settlements that were ultimately granted by each respective Court:

(a) Ana Rose De Jesus, et al. v. Philippine National Bank, et al, Los Angeles Superior Court, Case No. BC673024;

(b) Andres De La Riva Sotelo v. Belfor USA Group, Inc., Los Angeles Superior Court, Case No. BC688895;

(c) Carlos Vertti v. Bagcraft Papercon III, LLC, et al., Los Angeles Superior Court, Case No. 19STCV12729;

(d) Christopher Thurman v. Wanton Group SP, LLC, et al, Los Angeles Superior Court, Case No. 19STCV18772;

(e) Francisca Velasco v. Paige, LLC, Los Angeles Superior Court, Case No. 19STCV12114;

(f) Jose Montoya v. The Golden 1 Credit Union, Sacramento Superior Court, Case No. 34-2018-00228252;

(g) Malu Vaesau v. Double AA Corporation, San Francisco Superior Court, Case No. CGC-19-572598;

(h) Tyler Jones v. Citiguard, Inc., Los Angeles Superior Court, Case No. BC664890; and

(i) Venancio Miranda v. Maximum Nursery, Inc., Santa Barbara Superior Court, Case No. 19STCV06041;

47. In addition to her work on complex litigation matters and class actions, she has authored published articles on California labor laws, including:

(a) Lilit Ter-Astvatsatryan and H. Scott Leviant, Where Troester Stops Not Even Troester Knows, Daily Journal (Los Angeles & San Francisco), July 2, 2019; and

(b) Lilit Ter-Astvatsatryan and H. Scott Leviant, Unaccounted Time: Reading the Tea Leaves of Troester, Daily Journal (Los Angeles & San Francisco), September 12, 2018.

NICHELLE CHRISTOPHERSON'S EXPERIENCE AND QUALIFICATIONS

48. Nichelle Christopherson is an associate attorney at Moon Law Group, PC, and represents employees in all aspects of employment litigation, including wage-and-hour class and representative actions involving claims related to overtime and minimum wages, meal and rest break violations, improper wage statements, the California Private Attorneys General Act, and unfair business practices.

49. Ms. Christopherson received a Bachelor of Arts in Political Science from Arizona State University and a Juris Doctorate from Michigan State University College of Law. In law school, Ms. Christopherson served as a Senior Editor on the *MSU International Law Review Journal* and President of the Lori E. Talsky Center for Human Rights of Women and Children Student Network.

50. Ms. Christopherson became an Active Member of the State Bar of California in May 2023 and has been an Active Member in good standing continuously since. Ms. Christopherson is also admitted to practice before the U.S. District Courts for the Central, Southern, and Eastern Districts of California.

51. Ms. Christopherson's billing rate is $500.00 per hour, which is her usual hourly rate in wage and hour litigations. Based on Ms. Christopherson's nearly 2 years of experience, her Laffey Matrix rate with a 2.5% adjustment is $484.83 per hour ($473 Laffey Matrix rate + (2.5% x $473)). (*See* Exh. 5.) As compared to the Laffey Matrix rate and when considering her experience, Ms. Christopherson's billing rate of $500.00 per hour is reasonable.

<u>CLASS COUNSEL'S EXPERIENCE AND QUALIFICATIONS</u>

52. As demonstrated by the foregoing, my office is qualified to handle this litigation because we are experienced in litigating Labor Code and Wage Order violations in individual, class, and representative actions. The attorneys at my office have been appointed as lead or co-lead counsel in numerous wage and hour class and/or PAGA actions in state and federal courts by way of motion for settlement approval. Including myself, Moon Law Group, PC is comprised of approximately 30 attorneys, all of whom are actively and continuously practicing employment litigation, representing almost entirely employee-plaintiffs, in both individual and class and/or PAGA actions, in this Superior Court and other Superior Courts throughout the State, in the Courts of Appeal, and in various federal courts. The attorneys at my firm have a high level of skill and knowledge in wage and hour class actions, PAGA representative actions, and labor and employment law generally, the substantiative (state and federal) and procedural law of which is frequently evolving.

53. Moon Law Group, PC has been engaged in the practice of employment and labor law for over a decade, and presently focuses exclusively on plaintiffs' employment law. The firm and its lawyers have tried both bench and jury trials (representing both plaintiffs and defendants) relating to employment matters. As noted above, Moon Law Group, PC has been appointed lead or co-lead class counsel in federal and state courts in California. Also, the firm and its lawyers have successfully settled hundreds of cases during that time, including wage and hour class and/or PAGA actions.

54. The foregoing experience of myself and other attorneys of Moon Law Group, PC is helpful in assessing the reasonableness of settlements, such as the one at issue here, and from this experience we concluded that this litigation could not have been settled on better terms than provided under the Settlement.

55. I respectfully submit that the attorneys of Moon Law Group, PC, myself included, are well suited to act as Class Counsel in this action, and we have, and will continue to, vigorously represent the interests of the Class. To my knowledge, we do not have any conflicts of interest with Plaintiff, other Class Members, or the proposed Settlement Administrator, and we are not related to Plaintiff. We respectfully request to be appointed as Class Counsel, for settlement purposes.

THE REQUEST FOR ATTORNEYS' FEES AND COSTS IS REASONABLE

56. The Settlement provides for attorneys' fees payable to Class Counsel in an amount up to 33.33% of the Gross Settlement Amount, currently estimated to be $246,642.00. (Settlement, ¶ 3.2.2.) The proposed award of attorneys' fees can be justified under either the lodestar method or the percentage/common-fund recovery method. Plaintiff's Counsel, however, intend to base the proposed fees award on the percentage method, as many of the entries in the time records will have to be redacted to preserve attorney-client and attorney work product privileges.

57. I am informed and believe that the fees and costs provision in the Settlement is reasonable. The fee percentage requested is less than that charged by my office for most employment cases. Moreover, my office invested significant time and resources into the case, with payment deferred to the end of the case, and then, of course, contingent on the outcome.

58. It is further estimated that my office will need to expend at least another 50 to 100 hours to monitor the administration process leading up to the final approval, prepare for final approval, and oversee distribution to the Class following final approval. My office also bears the risk of taking whatever actions are necessary should Defendant fail to pay.

59. The risk to my office has been very significant, particularly if we would not be successful in pursuing this class action. In such instance, we would have been left with no compensation for all the time taken in litigating this case due to the contingency fee arrangement. Indeed, I have taken on a number of class action cases that have resulted in thousands of attorney hours being expended and ultimately having the

defendant company going bankrupt during litigation. The contingent risk in these types of cases is very real and occurs regularly. Furthermore, we were precluded from focusing on, or taking on, other cases which could have resulted in a larger, and less risky, monetary gain.

60. Because most individuals cannot afford to pay for representation in litigation on an hourly basis, Moon Law Group, PC represents virtually all its employment law clients on a contingency fee basis, including Plaintiff in this matter. Pursuant to this arrangement, we are not compensated for our time unless we prevail at trial or successfully settle our clients' cases. Because Moon Law Group, PC is taking the risk that we will not be reimbursed for our time unless our client settles or wins his or her case, we cannot afford to represent an individual employee on a contingency basis if, at the end of our representation, all we are to receive is our regular hourly rate for services. It is essential that we recover more than our regular hourly rate when we win if we are to remain in practice so as to be able to continue representing other individuals in civil rights employment disputes.

61. My office invested significant time and resources into the case, with payment deferred to the end of the case, and then, of course, contingent on the outcome. My office's efforts have included, and will include following preliminary and final approval, without limitation, the following:

(a) Numerous interviews with Plaintiff and review of documents provided by him;

(b) Legal research and investigation regarding Defendant's business and employment practices at numerous points in the litigation;

(c) Preparation and submission of Plaintiff's PAGA notice letter;

(d) Preparation, finalization, and filing of multiple drafts of the original class action complaint and subsequent amended complaints;

(e) Extensive "meet and confer" correspondence and discussions with Defense Counsel regarding mediation and to obtain relevant documents and information through formal and informal discovery;

(f) Research and preparation of Plaintiff's mediation brief;

(g) Analysis of the discovery production and preparation of a damages model with the aid of a statistics expert;

(h) Attendance and active participation at a full day of mediation;

(i) Drafting, negotiating, and reviewing multiple drafts of the Settlement and Class Notice;

(j) Preparation of the motion for preliminary approval and the accompanying filings;

(k) Anticipated preparation for and attendance at the preliminary approval hearing;

(l) Anticipated conferring with Defense Counsel and the Administrator regarding the Class Notice mailing, Class responses, and preliminary and final calculations;

(m) Anticipated preparation, finalization, filing, and service of a motion for final approval and accompanying filings;

(n) Anticipated preparation for and anticipated attendance at the final approval hearing, and then monitoring of the distribution of funds following final approval; and

(o) Anticipated responding to Class Member inquiries and communicating with Plaintiff regarding the case.

62. Through the efforts of my office and Plaintiff in this case, a fair and reasonable joint resolution has been reached that includes a gross, non-reversionary payment by Defendant of *no less than* $740,000.00 to compensate Class Members for the alleged unlawful wage and hour practices. I am informed and believe that, without the efforts of my office or Plaintiff, the Labor Code and Wage Order violations alleged in the Operative Complaint would have gone completely unremedied.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct. Executed on May 6, 2025, at Los Angeles, California.

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Kane Moon