

1 **BIBIYAN LAW GROUP, P.C.**

David D. Bibiyan (SBN 287811)

2 *david@tomorrowlaw.com*

3 Vedang J. Patel (SBN 328647)

vedang@tomorrowlaw.com

4 Megan Lazar (SBN 315007)

megan@tomorrowlaw.com

5 1460 Westwood Boulevard

Los Angeles, California 90024

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

7 Attorneys for Plaintiff, VALERIE L. DIARD

on behalf of herself and all others similarly situated and aggrieved

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF LOS ANGELES**

12 VALERIE L. DIARD, an individual and on
13 behalf of all others similarly situated,

14 Plaintiff,

15 v.

17 MILK AND HONEY HOLDINGS, LLC et
al., a Texas limited liability company; and
18 DOES 1 through 100, inclusive,

19 Defendant.
20

CASE NO.: 23STCV23686

[Assigned for all purposes 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 AND DAVID D.
BIBIYAN, AND JODEY LAWRENCE
IN SUPPORT THEREOF**

HEARING INFORMATION:

DATE:

TIME:

DEPT: 10

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

2 **PLEASE TAKE NOTICE** that on [REDACTED] at [REDACTED] a.m., or as soon thereafter as she may be
3 heard in Department 10 of the Superior Court of the State of California for the County of Los
4 Angeles, plaintiff Valerie L. Diard (“Plaintiff”), on behalf of herself and all others similarly situated
5 and aggrieved, will and hereby does move for this Court for entry of an Order:

6 1. Preliminarily certifying the following settlement class (“Settlement Class,” “Settlement
7 Class Members” or “Class Members”) for the purpose of settlement only: all non-exempt, hourly-
8 paid individuals that worked for defendant Milk and Honey Holdings, LLC (“Defendant”) in the
9 State of California at any time during the period from September 29, 2019 through November 18,
10 2024 (the "Class Period").

11 2. Preliminarily approving Plaintiff as Class Representative.

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

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

16 5. Preliminarily approving payment of the Gross Settlement Amount of \$355,000.00, which
17 is subject to escalation pursuant to the Settlement Agreement.

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

19 7. Appointing Phoenix Class Action Administrators (“Phoenix”) to administer the Settlement,
20 including distribution of the Class Notice, as set forth in the Settlement Agreement.

21 8. Preliminarily approving the payment of not to exceed \$7,995.00 for settlement
22 administration to Phoenix from the Gross Settlement Amount.

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

25 10. Preliminarily approving payment of reasonable attorneys’ fees to Class Counsel in the
26 amount of up to one-third (1/3) of the Gross Settlement Amount which, unless escalated pursuant
27 to the Settlement Agreement, amounts to \$183,333.33.

28 11. Preliminarily approving reimbursement of Class Counsel’s costs in an amount, according

1 to proof, not to exceed \$30,000.00.

2 12. "Aggrieved Employees" are all non-exempt, hourly-paid individuals that worked for
3 Defendant in the State of California from September 29, 2022 through November 18, 2024 (the
4 "PAGA Period").

5 13. Preliminarily approving PAGA penalties in the amount of \$20,000.00, seventy-five percent
6 (75%) or \$15,000.00 of which will be paid to the Labor and Workforce Development Agency
7 ("LWDA") out of the Gross Settlement Amount, and twenty-five percent (25%) or \$5,000.00 of
8 which will be distributed to Aggrieved Employees.

9 14. Entering an Order preliminarily approving the Settlement consistent with the terms of the
10 Settlement Agreement.

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

13 This Motion will be based on this Notice of Motion, the Memorandum of Points and
14 Authorities filed herewith, the Declarations of Vedang J. Patel, David D. Bibiyan, and Jodey
15 Lawrence, and exhibits attached thereto, arguments of counsel and upon such other materials
16 contained in the file and pleadings of this action.

17
18 Dated: July 7, 2025

BIBIYAN LAW GROUP, P.C.

19 /s/ Vedang J. Patel

20 _____
21 Vedang J. Patel
22 Attorneys for Plaintiff, VALERIE L. DIARD, on
23 behalf of herself and all others similarly situated and
24 aggrieved
25
26
27
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Valerie L. Diard (“Plaintiff”), on behalf of herself 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 September 29, 2023, Plaintiff filed with the Labor and Workforce Development
9 Agency (“LWDA”) and served on defendant Milk and Honey Holdings, LLC et al. (“Defendant”) a
10 notice under Labor Code section 2699.3 stating Plaintiff intended to serve as a proxy of the
11 Labor and Workforce Development Agency (“LWDA”) to recover civil penalties on behalf of
12 other non-exempt, hourly-paid employees for alleged Labor Code violations (“PAGA Notice”). A
13 true and correct copy of the PAGA Notice is attached to the Patel Decl. as Exhibit “2.”

14 On September 29, 2023, Plaintiff commenced this action by filing a complaint against
15 Defendant alleging: (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3)
16 failure to provide meal periods or compensation in lieu thereof; (4) failure to provide rest periods
17 or compensation in lieu thereof; (5) waiting time penalties; (6) wage statement violations; (8)
18 failure to timely pay wages; (9) failure to indemnify; (9) failure to pay vested vacation time; and
19 (10) engaging in unfair competition (the “Class Action”). On December 4, 2023, Plaintiff filed a
20 complaint under the Private Attorneys General Act (“PAGA”) in Los Angeles County, Case No.
21 23STCV29618, alleging Labor Code violations set out in the PAGA Notice.

22 On August 20, 2024, the parties participated in an all-day mediation presided over by
23 Katherine Edwards, Esquire. In the months ensuing, the Parties negotiated regarding the terms of
24 the settlement and eventually reached upon the Settlement Agreement.

25 Prior to mediation, the Parties agreed to exchange informal discovery and attend an early
26 mediation. Prior to mediation, Plaintiff obtained, Plaintiff obtained, through informal discovery: (a)
27 timecards and payroll records for 100% of the putative class; (b) relevant policy and practice
28 documents; and (c) Plaintiff’s personnel file.

1 Class Counsel – comprised of David D. Bibiyan and Vedang J. Patel - had strong positions
2 at mediation regarding the certifiability of Plaintiff’s claims, the merits thereof, the manageability
3 of a trial, and the likelihood of recovering civil penalties. Nevertheless, Class Counsel concluded,
4 after considering the sharply disputed factual and legal issues involved in this litigation, the risks
5 associated with further prosecution, and the substantial benefits to be received pursuant to the
6 compromise and settlement of the lawsuit as set forth in the Settlement Agreement, that settlement
7 on the terms set forth herein is in the best interest of Plaintiff, putative class members, aggrieved
8 employees, and Defendant, and is fair, reasonable, and adequate.

9 As part of the Settlement, the Parties agreed to stipulate to Plaintiff filing a First Amended
10 Complaint to include all claims from the PAGA Action into the Class Action for purposes of
11 settlement. The order granting Plaintiff leave to file the First Amended Complaint has since been
12 granted and the First Amended Complaint is filed concurrently with this Motion.

13 **II. THE SETTLEMENT**

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

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

- 20 • Certification of a class (“Settlement Class,” “Settlement Class Members” or “Class
21 Members”) defined as: all non-exempt, hourly-paid individuals that worked for
22 Defendant in the State of California at any time during the period from September 29,
23 2019 through November 18, 2024 (the "Class Period").
- 24 • Defendant will pay \$355,000.00 (“Gross Settlement Amount”) to resolve the matter.
- 25 • The settlement was negotiated based on Defendant’s representation that there are no
26 more than 9,457 Workweeks from the beginning of the Class Period through the date of
27 mediation, August 20, 2024. If the total number of workweeks calculated for the Class
28 Period is 10% higher (10,403 workweeks), then the GSA is to be increased

1 proportionally by the workweeks calculated in excess of 10,403 workweeks multiplied
2 by the per workweek value of the GSA. For example, if the total workweeks during the
3 Class Period is 10,497 workweeks (an increase of 11%), then the GSA shall be increased
4 by 11% (\$39,050.00). If this provision is triggered, Defendant has the option to end the
5 Class Period at an earlier date than described above (November 18, 2024) in order to
6 limit the covered workweeks to 10,403 (or less) in lieu of paying an increase to the GSA.
7 For purposes of this provision and for submission of the total workweeks to the
8 Settlement Administrator, a workweek is one that a Class Member recorded time worked
9 in the Defendant's time and payroll systems of record. Time paid, but not worked, such
10 as vacation, medical leave, or any other type of paid or unpaid time off, does not qualify.
11 Defendant shall provide to the administrator an excel sheet containing the recorded time
12 worked for calculation by the Settlement Administrator. Parties agree that the portion of
13 the GSA allocated to attorneys' fees will increase proportionally such that the total
14 amount of attorneys' fees remains one-third of the GSA after the upward adjustment
15 required by this provision is implemented.

- 16 • Defendant will pay the employer's share of taxes separate and apart from the Gross
17 Settlement Amount.
- 18 • This is a non-reversionary settlement.
- 19 • Class Members will be paid their *pro rata* share of the class action settlement based
20 on the total number of Workweeks¹ worked during the Class Period.
- 21 • The Settlement Administration costs, estimated not to exceed \$7,995.00 will be paid
22 out of the Gross Settlement Amount.
- 23 • Class Counsel, comprised of David D. Bibiyan and Vedang J. Patel of Bibiyan Law
24 Group, P.C., hereby apply for, and Defendant will not oppose, attorneys' fees of up to
25 one-third (1/3) of the Gross Settlement Amount, which, unless escalated pursuant to
26

27 ¹ "Workweek" means any week during which a Class Member was employed by Defendant for at least one day in a
28 non-exempt, hourly-paid position and recorded active work time in Defendant's timekeeping system during the Class
Period.

1 the Settlement Agreement, amounts to \$183,333.33, and actual costs, not to exceed
2 \$30,000.00, all of which will be paid out of the Gross Settlement Amount. While the
3 Settlement Agreement states Class Counsel may seek up to 35% of the Gross
4 Settlement Amount, Class Counsel will only be seeking one-third (1/3) at the time of
5 final approval.

- 6 • Class Counsel hereby apply for, and Defendant will not oppose, a service award of
7 \$7,500.00 for the Class Representative, which will be paid out of the Gross Settlement
8 Amount.
- 9 • “Aggrieved Employees” means all non-exempt, hourly-paid individuals that worked for
10 Defendant in the State of California from September 29, 2022 through November 18,
11 2024 (the "PAGA Period").
- 12 • Defendant has agreed to pay \$20,000.00 as PAGA penalties, seventy-five percent (75%)
13 or \$15,000.00 of which will be paid to the LWDA out of the Gross Settlement Amount,
14 and twenty-five percent (25%) or \$5,000.00 of which will be distributed to the
15 Aggrieved Employees.
- 16 • For any Class Member or Aggrieved Employee whose check is uncashed after 180
17 days of issuance, it shall be cancelled and funds represented by such checks to the
18 California Controller’s Unclaimed Property Fund, in the name of the Class Member,
19 thereby leaving no “unpaid residue” subject to the requirements of California Code of
20 Civil Procedure section 384, subd. (b).

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

23 Any settlement of class litigation must be reviewed and approved by the Court. (*See* Cal.
24 Rules of Court, rule 3.769). This is done in two steps: (1) an early (preliminary) review by the
25 trial court; and (2) a final review after notice has been distributed to the class members for their
26 comment or objections. (*See id.*). Courts presume the absence of fraud or collusion in the
27 negotiation of a settlement unless evidence to the contrary is offered. In short, there is a
28 presumption that the negotiations were conducted in good faith. (Newberg on Class Actions, §

1 11.51; *In re Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability*
2 *Litigation* (N.D. Cal. May 17, 2017) No. 16-cv-00295, 2017 WL 2214655, quoting *United States*
3 *v. Oregon* (9th Cir. 1990) 913 F.2d 576, 580.). Here, the Settlement is fair, reasonable, and
4 adequate.

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

6 A notice of settlement of a class action “must contain an explanation of the proposed
7 settlement and procedures for class members to follow in filing written objections to it and in
8 arranging to appear at the settlement hearing and state any objections to the proposed settlement.”
9 (Cal. Rules of Court, rule 3.769, subd. (f).) Attached to the Patel Decl. as Exhibit “1” thereto is the
10 Settlement Agreement between the Parties. Attached to the Settlement Agreement as internal Exhibit
11 “A” is the proposed Class Notice to be distributed to Class Members in English and Spanish. The
12 proposed Class Notice satisfies these requirements. The Parties respectfully request that this Court
13 approve the above-referenced Class Notice and dissemination of the Class Notice to the Class
14 Members, consistent with the manner and timing as set forth in the Settlement Agreement. The
15 Parties have agreed to use Phoenix Class Action Administration Solutions (“Phoenix”), an
16 experienced Settlement Administrator, to administer the settlement.

17 **V. THE SETTLEMENT IS FAIR AND REASONABLE BASED UPON**
18 **OBJECTIVE EVIDENCE**

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

20 The Settlement that has been reached, subject to this Court’s approval, is a product of
21 substantial efforts by Class Counsel. The Settlement was reached after extensive factual and legal
22 investigation and research; substantial negotiation regarding the scope of informal discovery; an
23 exchange of documents and information that included review of time and pay records and analysis
24 thereof with the aid of Plaintiff and expert consultants; an analysis of shifts and Workweeks worked
25 by Class Members in the Class Period, analysis of the number of pay periods and number of
26 Aggrieved Employees in the PAGA Period for calculating PAGA penalties, number of Class
27 Members eligible for wage statement penalties and waiting time penalties; an analysis of Plaintiff’s
28 employment records; extensive correspondence and communication between counsel; a review of

1 pleadings, evidence and rulings in similar actions litigated elsewhere in the state; a review of similar
2 cases in the same industry elsewhere in the country; and preparation for and attendance at a full-day
3 session of mediation, followed by months of further discussions and coordination to finalize the
4 terms and conditions of the general settlement parameters agreed to by the Parties.

5 While Class Counsel believe in the chance of success of certifying the claims, Class Counsel
6 recognized the potential risk, expense and complexity posed by further litigation. Moreover,
7 litigating Plaintiff's claims in this Litigation—claims that involve approximately 209 Class
8 Members during the Class Period—would require substantial preparation and discovery, and
9 ultimately would involve the deposition and presentation of numerous more witnesses (including
10 Class Members and expert witnesses), as well as the consideration, preparation and analysis of
11 expert reports. Therefore, should litigation have progressed any further, there would have been
12 significant expense incurred by each side (above and beyond the expense already incurred).

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

14 The settlement amount reached in this case provides significant recovery to Class Members
15 and Aggrieved Employees, and easily falls within the range of reasonableness. Based on documents
16 and information provided by Defendant, Class Counsel understand there are approximately 9,457
17 Workweeks during the Class Period.

18 **1. Unpaid Wages for Failure to Pay for All Time Worked**

19 Class Counsel theorized at mediation, based on Plaintiff's narrative evidence and
20 documents produced by Defendant, that Defendant failed to pay all wages due to Class Members
21 because employees are required to arrive early prior to the start of the shift, be subject to
22 disciplinary action, to change into their uniform prior to the start of shifts, to be at meetings prior
23 to the start of their shifts, waiting to be let out of buildings after clocking out, and answering phone
24 calls from supervisors off the clock.

25 Class Counsel advanced a theory at mediation, based on Plaintiff's narrative evidence that
26 Class Members worked off-the-clock for a conservative estimate of five (5) minutes each shift
27 throughout the Class period, without pay. Thus, Class Counsel theorized Defendant's exposure
28 for unpaid overtime wages due to failure to track and pay for all time worked is \$5,336 (0.083 hr.

1 x \$27.19/hr x 1.5 OT rate x 38,446 shifts x .041 shifts that were longer than 8 hrs.). Class Counsel
2 theorized Defendant's exposure for unpaid minimum wages and corresponding liquidated
3 damages is \$166,413 (0.083 hr x \$27.19/hr x 2 in liquidated damages x 38,446 shifts x .959 shifts
4 under 8 hours.). **Thus, Defendant's exposure for failure to pay for all time under Defendant's**
5 **control is \$171,749.**

6 Class Counsel understand from the mediator and the mediation process that Defendant
7 makes the following defenses in connection with this claim: Defendant contends that their policies
8 specifically prohibit off-the-clock work. Defendant contends that they did not require Class
9 Members to work off-the-clock and, rather, they were paid for all time suffered or permitted to
10 work. Finally, Defendant contends that any allegations that Class Members were required to be
11 under Defendant's control off-the-clock would necessitate an individualized inquiry into when
12 and why, making this claim not subject to class treatment and any trial in this litigation
13 unmanageable. Thus, Defendant contends that no damages can be recovered here, and, even if,
14 arguendo, they could, an estimate of five (5) minutes of unpaid work off-the-clock of Class
15 Members for every single shift during the Class Period is a wild exaggeration of time spent
16 working off-the-clock if any such time was spent.

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

18 Class Counsel theorized at mediation, based on narrative evidence of Plaintiff and
19 documents produced by Defendant, that Defendant's meal period policies practices throughout the
20 Class Period were non-compliant. Class Counsel theorized that meal periods were cut short due to
21 managers calling or texting about work related topics and the managers would interrupt Class
22 Members in person in the breakroom or the laundry room to ask work related questions or assign
23 tasks.

24 Class Counsel understand from the documents produced by Defendant and analysis of expert
25 data consultants that there were 7,989 unique meal period violations (i.e. meal periods that were
26 missed, short, late) during the Class Period. Class Counsel also understand from the data provided
27 that some meal period premiums were paid. Class Counsel theorized Defendant's liability for unpaid
28

1 meal premiums is **\$182,255** [\$27.19/hr x (7,989 unique meal period violations – 1,286 meal period
2 premiums)).

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

12 **3. Recovery of Damages for Non-Compliant Rest Periods**

13 Class Counsel theorized at mediation, based on Plaintiffs' narrative evidence, that Class
14 Members did not receive rest periods throughout the Class Period based on many of the reasons
15 stated above for meal period violations, including that they were interrupted, short, or missed. One
16 calculation performed by Class Counsel at mediation resulted in, assuming a conservative 40%
17 violation rate for rest-eligible shifts, of **\$403,772** (\$27.19/hr. x 37,125 shifts greater than 3.5 hours
18 x .40 violation rate).

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

28 **4. Wage Statement Violations**

1 Class Counsel theorized that Class Members are entitled to recover penalties for
2 Defendant's alleged failure to issue compliant wage statements under Labor Code section 226,
3 subdivision (e), because shift involved off-the-clock work that was not included on wage
4 statements. Further, many shifts included meal period and rest period violations for which
5 premiums were not paid. Thus, Defendant is liable for wage statement violations for each pay
6 period. Specifically, Class Counsel theorized that penalties are owed under Labor Code section
7 226 due to, at minimum, every shift involved off-the-clock work that was not included on wage
8 statements. Thus, Defendant is liable for wage statement violations for each pay period. Class
9 Counsel understand from the data provided by Defendant that there were 3,329 pay periods in the
10 wage statement liability period. Thus, Defendant's maximum exposure for wage statement
11 violations would be **\$332,900** (3,329 pay periods in the wage statement period x \$100 penalty).

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

23 **5. Waiting Time Penalties**

24 Pursuant to Labor Code sections 201, 202 and 203, each employee in the relevant statutory
25 period (*i.e.*, three years before the filing of the initial Complaint) is entitled to 30 days' worth of
26 wages as waiting time penalty for not being paid all wages due upon separation of employment.
27 Class Counsel theorized at mediation, based on relevant documents provided by Defendant, that,
28 under Labor Code section 203, Defendant is liable to pay each Class Member, who was terminated

1 during the relevant statutory period, a full 30-day worth of wages as waiting time penalty for failure
2 to pay failure to pay compensation in lieu of compliant meal and rest periods, and failure to timely
3 pay all wages due. Class Counsel understand from documents provided by Defendant that there
4 were 135 separated employees during the relevant statutory period. Thus, Class Counsel theorized
5 Defendant's exposure for this claim to be **\$880,956** (135 separate Class Members x \$27.19/hr. x 8
6 hrs x 30 days).

7 Class Counsel understand from the mediator and the mediation process that Defendant
8 contends that there is no credence to Plaintiff's off-the-clock theory and that, thus, no waiting time
9 penalties are owed based on that theory. Finally, Defendant contends that their actions were not
10 "willful" and that, thus, waiting time penalties cannot be awarded. Thus, Defendant argued that no
11 waiting time penalties are owed.

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

13 Class Counsel initially theorized that Defendant failed to indemnify Class Members for
14 necessary business expenses because Defendant required Class Members to download an app to
15 their personal cell phones to clock in and out. Class Counsel, after investigation, did not attribute
16 significant value to this claim for purposes of mediation and this settlement. Class Counsel
17 understand from the mediator and the mediation process that Defendant argued the following:
18 Defendant argued that it did not require Class Members to download an app to their personal cell
19 phones for work-related purposes. Defendant also argued that it reimbursed employees for all
20 expenses incurred in furtherance of work. Thus, Defendant contends that it owes not monies under
21 this theory, either.

22 **7. Failure to Pay Vested Vacation**

23 Class Counsel initially theorized that Defendant did not pay Class Members for vested
24 vacation time. However, after diligent investigation, Class Counsel did not attribute significant
25 value to this claim for purposes of mediation. Class Counsel understand from the mediator and
26 the mediation process that Defendant contends it did pay all vested vacation time owed to Class
27 Members.

28 **8. PAGA Penalties**

1 Class Counsel understand from the time and payroll data provided by Defendant that there
2 were 3,329 pay periods in the PAGA Period. Plaintiff's claims in the Action under PAGA are
3 substantially similar to those described herein. PAGA penalties include penalties for initial
4 violations and subsequent violations. Defendant contends that only initial violation rates may be
5 used instead of the subsequent violation rates initially used by Class Counsel. With this in mind
6 and because Class Counsel through investigation and discovery did not come to the conclusion
7 that Defendant at any time was notified by any governmental entity that they violated any Labor
8 Code sections presented in the PAGA Notice and PAGA claims, Class Counsel adjusted the
9 exposure model for Defendant to include only initial violation rates.

10 While Class Counsel are informed and believe that reasonable minds differ with regard to
11 calculation of PAGA penalties, Class Counsel believe it is reasonable to calculate Defendant's
12 maximum exposure in PAGA penalties as follows:

13 a. Overtime Violations: Labor Code section 558 prescribes penalties of \$50 for an
14 initial violation and \$100 for each subsequent violation. Using the initial pay period rate for all
15 violations, and a violation every single pay period for every single non-exempt employee in the
16 PAGA Period, this amounts to a maximum exposure of \$166,450 (3,329 pay periods x \$50).

17 b. Minimum Wage Violations: Labor Code section 1197.1 prescribes penalties of
18 \$100 for an initial violation and \$250 for each subsequent violation. Using the initial pay period
19 rate for all violations and a violation every single pay period for every single PAGA Member in
20 the PAGA Period, this amounts to a maximum exposure of \$332,900 (3,329 pay periods x \$100).

21 c. Meal Period Violations: Labor Code section 558 prescribes penalties of \$50 for an
22 initial violation and \$100 for each subsequent violation. Using the initial pay period rate for all
23 violations and a violation every single pay period for every single non-exempt employee in the
24 Settlement Period, this amounts to a maximum exposure of \$166,450 (3,329 pay periods x \$50).

25 d. Rest Period Violations: Labor Code section 558 prescribes penalties of \$50 for an
26 initial violation and \$100 for each subsequent violation. Using the initial pay period rate for all
27 violations and a violation every single pay period for every single non-exempt employee in the
28 Settlement Period, this amounts to a maximum exposure of \$166,450 (3,329 pay periods x \$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 indicate that there were 207 Aggrieved Employees
5 whose employment was separated during the PAGA Period. This amounts to a maximum exposure
6 of \$3,300 (66 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 Aggrieved Employee in
12 the PAGA Period, this amounts to a maximum exposure of \$332,900 (3,329 pay periods x \$100).

13 h. Conclusion: In sum, Class Counsel calculated Defendant's total maximum
14 exposure for PAGA violations if the Court were to find a 100% violation rate for every Aggrieved
15 Employee every pay period and not exercise its discretion to reduce any of those penalties to be
16 \$1,168,450. Class Counsel understand from the mediator and the mediation process that
17 Defendant argued the following in connection with this claim: Defendant contends that no PAGA
18 penalties are likely to be awarded and, even if they were, the maximum exposure calculated by
19 Class Counsel is vastly overstated. First, Defendant defends that PAGA penalties cannot and
20 should not be stacked. Second, Defendant asserts that individualized issues predominate the
21 PAGA claims, making the claims unmanageable for trial. Third, Defendant denies that a violation
22 for each pay period can be established. Fourth, Defendant contends that a Court is unlikely to
23 exercise its discretion to award civil penalties under PAGA where, as here, there is no conduct
24 shown by Plaintiff that would show any Labor Code violation by Defendant is knowing and
25 intentional. Defendant insists that this is especially true in this Action where class action damages
26 are available to Class Members, rendering an award of PAGA penalties in addition to class action
27 damages to be double recovery.

28 Class Counsel maintain that it is possible to recover the subsequent violation rate for

penalties, that stacking is permissible, and that there is no manageability requirement under PAGA (citing *Estrada v. Royalty Carpet Mills, Inc.*). As such, Class Counsel believe a 90% discount of this claim to be reasonable, resulting in a valuation of \$116,845 as a reasonable estimate of the likelihood of what Plaintiff may recover at trial for PAGA penalties (\$1,168,450 x .10).

7. Conclusion

When including derivative penalties, such as waiting time penalties, wage statement violations, and discretionary PAGA penalties, Class Counsel theorized Defendant's maximum exposure to be approximately **\$2,088,477**. In all, Class Counsel obtained a Gross Settlement Amount of **\$355,000**. Particularly in light of the risks involving obstacles to class certification, all issues and risks related to liability, the issues with manageability at trial, the discretionary nature of PAGA penalties, and considering the case law regarding fair, reasonable and adequate settlements, Class Counsel strongly believe that the settlement reached is fair, reasonable and adequate, and in the best interest of Class Members.

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

VII. THE PROPOSED ATTORNEYS' FEES AND COSTS ARE REASONABLE

Class Counsel seek an attorneys' fees award of *up to* one-third (1/3) of the Gross Settlement Amount, which, unless escalated pursuant to this Agreement, would amount to \$183,333.33. While the Settlement Agreement states Class Counsel may seek up to 35% of the Gross Settlement Amount in fees, Class Counsel intend to only seek one-third (1/3) at the time of final approval. Class Counsel also seek reimbursement of costs not to exceed \$30,000.00. The requested fees fall well within the historical range of attorney's fees awards under the common fund theory, which is generally from

1 25% to 50%. The requested fee is fair compensation for undertaking complex, risky, expensive, and
2 time-consuming litigation on a contingent fee basis. Thus, the Court should preliminarily approve
3 the requested attorneys' fees and costs, which are justified by the results achieved, the complexity of
4 the issues, the difficulty of the case and the great risks undertaken by Class Counsel. The requested
5 attorneys' fees will not be opposed by Defendant and are well within established guidelines.

6 **VIII. THE REQUESTED ENHANCEMENT AWARD TO THE NAMED**
7 **PLAINTIFF AND CLASS REPRESENTATIVE IS REASONABLE**

8 Plaintiff is entitled to an enhanced award for her service as class representative, for
9 answering extensive questions by Class Counsel, for being available and answering questions during
10 mediation, for the risks in being the named plaintiff and for providing Defendant with a more
11 expansive release of claims, including a waiver based upon California Civil Code section 1542, in
12 exchange for the enhancement award. Defendant do not oppose the requested enhancement to
13 Plaintiff. Plaintiff risked intrusive discovery and the payment of employer costs. In the experience
14 of Class Counsel, the typical enhancement award in wage and hour class actions ranges from
15 approximately \$10,000.00 to \$25,000.00, although some awards are higher. In contrast, Class
16 Counsel seek an extremely limited enhancement of \$7,500.00 to Plaintiff, for her service.

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

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

19 In California, there are two certification prerequisites: (1) the existence of an "ascertainable
20 class;" and (2) "a well-defined community of interest in the questions of law and fact involved
21 affecting the parties to be represented." (*Sotelo v. MediaNews Group, Inc.* (2012) 207 Cal.App.4th
22 639, 647.) To certify a class, the party advocating class treatment must demonstrate: (1) a numerous
23 class; (2) predominant common questions of law or fact; (3) class representatives with claims or
24 defenses typical of the class; and (4) class representatives who can adequately represent the class."
25 (*Williams v. Sup. Ct.* (2013) 221 Cal.App.4th 1353, citing *Brinker Restaurant Corp. v. Sup. Ct.*
26 (2012) 53 Cal.4th 1004, 1021.) Each of the criteria for class certification is satisfied in this instance:

27 **1. Ascertainability** – "Ascertainability" is a due process requirement that
28 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 non-exempt, hourly-paid individuals that worked for defendant Milk Defendant in the State of California at any time during the period from September 29, 2019 through November 18, 2024) 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. 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's payroll records, which amounts to approximately 209 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 understand from documents provided that Defendant identified at least 209 Class Members. 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.

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's claims are typical of those of other Class Members as Plaintiff: (1) is a non-exempt

1 employee like other Class Members; (2) complains of not being paid for all time under
2 Defendant's control or suffered and/or permitted to work for Defendant; (3) did not receive full
3 premium pay for meal periods that were not compliant with the Labor Code; (4) did not receive
4 premium pay for rest periods that were not provided, among others as set forth above.

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

13 **(i) No Disabling Conflict of Interest Exists Between the Class**
14 **Representative and the Class**

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

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

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

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

26 It deals with common issues that are most efficiently adjudicated together, as indicated
27 above. Moreover, with at least 209 Class Members, presentation of all of them before this Court
28 may be problematic, impractical, and burdensome. On the contrary, a class action allows claims of

1 many individuals to be resolved at the same time, eliminates the possibility of repetitious litigation
2 and affords small claimants with a method of obtaining redress for claims which otherwise would
3 be too insufficient to warrant individual litigation.

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

7 **X. CONCLUSION**

8 Therefore, the Parties request the Court grant preliminary approval of the proposed
9 settlement.

10 ///

11 Dated: July 7, 2025

BIBIYAN LAW GROUP, P.C.

12 /s/ Vedang J. Patel

13 _____
14 Vedang J. Patel
15 Attorneys for Plaintiff VALERIE L. DIARD, on
16 behalf of herself and all others similarly situated
17 and aggrieved
18
19
20
21
22
23
24
25
26
27
28