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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF STANISLAUS

JANICE DENYSE KHINOO, an individual and on behalf of all similarly situated , Plaintiff, v. ASPIRANET, a California Corporation; and DOES 1 through 100, inclusive, Defendant.	CASE NO.: CV-23-007641 (Related with Case No. CV-24-001726) [Assigned to the Hon. John D. Freeland in Dept. 23] **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT AND PROVISIONAL CLASS CERTIFICATION FOR SETTLEMENT PURPOSES ONLY; DECLARATIONS OF VEDANG J. PATEL, DAVID D. BIBIYAN, JANICE DENYSE KHINOO , AND TONY ROGERS IN SUPPORT THEREOF** <u>HEARING INFORMATION:</u> DATE: June 11, 2026 TIME: 8:30 a.m. DEPT: 23

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on June 11, 2026 at 8:30 a.m., or as soon thereafter as they may be heard in Department 23 of the Superior Court of the State of California for the County of Stanislaus, plaintiff Janice Denyse Khinoo ("Plaintiff"), on behalf of herself and all others similarly situated and aggrieved, will and hereby does move for this Court for entry of an Order:

1. Preliminarily certifying the following settlement class ("Settlement Class," "Settlement Class Members" or "Class Members") for the purpose of settlement only: all persons employed by defendant Aspiranet ("Defendant") in California and classified as a non-exempt, hourly-paid employee who worked for Defendant during the period from December 28, 2019 through September 17, 2024, subject to paragraph 8.1 of the Settlement Agreement ("Class Period").

2. Preliminarily approving Plaintiff as Class Representative.

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

4. Preliminarily approving the settlement claims under the terms set forth in the Class and PAGA Settlement Agreement ("Settlement Agreement").

5. Preliminarily approving payment of the Gross Settlement Amount of $1,775,000.00, which is subject to escalation pursuant to the Settlement Agreement.

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

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

8. Preliminarily approving the payment of not to exceed $13,950.00 for settlement administration to ILYM from the Gross Settlement Amount.

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

10. Preliminarily approving payment of reasonable attorneys' fees to Class Counsel in the amount of up to thirty-five percent (35%) of the Gross Settlement Amount which, unless escalated pursuant to the Settlement Agreement, amounts to $621,250.00.

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

to proof, not to exceed $50,000.00.

12. Preliminarily approving PAGA penalties in the amount of $88,750.00, seventy-five percent (75%) or $66,562.50 of which will be paid to the Labor and Workforce Development Agency ("LWDA") out of the Gross Settlement Amount, and twenty-five percent (25%) or $22,187.50 of which will be distributed to "Aggrieved Employees," defined as all persons employed by Defendant in California and classified as a non-exempt, hourly-paid employee who worked for Defendant during from December 22, 2022 through the end of Class Period ("PAGA Period").

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

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

This Motion will be based on this Notice of Motion, the Memorandum of Points and Authorities filed herewith, the Declarations of Vedang J. Patel, David D. Bibiyan, Janice Denyse Khinoo, and Tony Rogers, and exhibits attached thereto, arguments of counsel and upon such other materials contained in the file and pleadings of this action.

Dated: March 17, 2026

BIBIYAN LAW GROUP, P.C.

/s/ Vedang J. Patel

VEDANG J. PATEL

Attorneys for Plaintiff, Janice Denyse Khinoo, on behalf of herself and all others similarly situated and aggrieved

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Janice Denyse Khinoo ("Plaintiff"), on behalf of herself and all others similarly situated and aggrieved, hereby applies for preliminary approval of the Class and PAGA Settlement Agreement ("Settlement," "Agreement" or "Settlement Agreement") upon the terms and conditions set forth in the Settlement Agreement, attached to the Declaration of Vedang J. Patel as Exhibit "1."

On December 28, 2023, Plaintiff commenced this action by filing a class action complaint against defendant Aspiranet ("Defendant") for: (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal periods or compensation in lieu thereof; (4) failure to provide rest periods or compensation in lieu thereof; (5) failure to pay all wages due upon separation from employment; (6) failure to provide accurate wage statements; (7) failure to timely pay wages during employment; (8) failure to indemnify for business expenses; (9) engaging in unfair competition, and (10) Violation of labor code & 227.3.

Also, On December 28, 2023, Plaintiff filed a notice with the Labor and Workforce Development Agency (LWDA) and served the same on Defendant, stating that she intended to serve as a proxy of the LWDA for various Labor Code violations ("PAGA Notice"). A true and correct copy of the PAGA Notice is attached to the Declaration of Vedang J. Patel as Exhibit "2."

Thereafter, the Parties agreed to exchange informal discovery and attend mediation. Prior to mediation, Plaintiff obtained, through informal discovery: (1) time and payroll records for 100% class members; (2) Defendant's relevant wage and hour policy records.

On September 17, 2024, the Parties participated in an all-day mediation presided over by Nikki Tolt, Esq. The mediation was successful, and the Parties agreed to globally resolve all class and PAGA claims in the Action and reached the Settlement.

II. THE SETTLEMENT

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

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

- Defendant will pay $1,775,000.00 ("Gross Settlement Amount") to resolve the matter
- Certification of a class ("Settlement Class," "Settlement Class Members" or "Class Members") defined as: all persons employed by defendant Aspiranet ("Defendant") in California and classified as a non-exempt, hourly-paid employee who worked for Defendant during the period from December 28, 2019 through September 17, 2024, subject to paragraph 8.1 of the Settlement Agreement ("Class Period").
- The Settlement is based on Defendant's estimate that there were 117,995 Workweeks during the Class Period. In the event the number of Workweeks during the Class Period increases by more than 5%, then at Defendant's election: (1) the Gross Settlement Amount shall be increased proportionally by the Workweeks worked in the Class Period in excess of 123,852 (i.e. 117,955 + 5,897) Workweeks multiplied by the Workweek value; or (2) the Class Period shall end on the date the number of Workweeks reaches 123,852. The Workweek count shall be calculated by dividing the originally agreed-upon Gross Settlement Amount ($1,775,000.00) by 117,955, which amounts to a Workweek value of $15.00. Defendant shall make its elections no later than 21 days after receiving sufficient information from the Administrator indicating the number of Workweeks has exceeded 123,852.
- Defendant will pay the employer's share of taxes separate and apart from the Gross Settlement Amount.
- This is a non-reversionary settlement.
- Class Members will be paid their *pro rata* share of the class action settlement based on the total number of Workweeks[1] worked during the Class Period.

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

- The Settlement Administration costs, estimated not to exceed $13,950.00, will be paid out of the Gross Settlement Amount.
- Class Counsel, comprised of David D. Bibiyan, and Vedang J. Patel of Bibiyan Law Group, P.C., may apply for, and Defendant will not oppose, attorneys' fees of *up to* thirty-five percent (35%) of the Gross Settlement Amount, which, unless escalated pursuant to the Settlement Agreement, amounts to $621,250.00, and actual costs, not to exceed $50,000.00, all of which will be paid out of the Gross Settlement Amount.
- Class Counsel hereby apply for, and Defendant will not oppose, a service award of up to $7,500.00 to Plaintiff, which will be paid out of the Gross Settlement Amount.
- "Aggrieved Employees" means all persons employed by Defendant in California and classified as a non-exempt, hourly-paid employee who worked for Defendant during the period from December 28, 2022 through the end of class period. ("PAGA Period").
- Defendant has agreed to pay $88,750.00 as PAGA penalties, seventy-five percent (75%) or $66,562.50 of which will be paid to the LWDA out of the Gross Settlement Amount, and twenty-five percent (25%) or $22,187.50 of which will be distributed to the Aggrieved Employees.
- For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date (i.e., 180 days after the date of mailing) the Administrator shall transmit the funds represented by such checks to the *cy pres* recipient, Legal Aid at Work.

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

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

11.51; *In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation* (N.D. Cal. May 17, 2017) No. 16-cv-00295, 2017 WL 2214655, quoting *United States v. Oregon* (9th Cir. 1990) 913 F.2d 576, 580.)

IV. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS

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

Attached to the Declaration of Vedang J. Patel as Exhibit "1" thereto is the Settlement Agreement between the Parties. Attached to the Settlement Agreement as internal Exhibit "A" is the proposed Class Notice to be distributed to Class Members in English and Spanish. The proposed Class Notice satisfies these requirements.

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

On or about March 17, 2026, Class Counsel submitted a copy of the Settlement Agreement to the LWDA in compliance with Labor Code section 2699, subdivision (l)(2). Attached to the Declaration of Vedang J. Patel as Exhibit "3" thereto is a true and correct copy of confirmation from the LWDA.

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

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

The Settlement that has been reached, subject to this Court's approval, is a product of substantial efforts by the Parties and their counsel. The Settlement was reached after extensive factual and legal investigation and research; the exchange of informal discovery; substantial negotiation regarding the scope of informal discovery; exchange of documents and information that included review of time and pay records and analysis thereof with the aid of Plaintiff and expert consultant; analysis of shifts and Workweeks worked by Class Members in the Class Period, analysis of the number of pay periods and number of Aggrieved Employees in the PAGA Period for calculating PAGA penalties, number of Class Members eligible for wage statement penalties and waiting time penalties; detailed analysis of Defendant's financial documents and ability to fund the settlement; an analysis of Plaintiff's employment records; extensive correspondence and communication between counsel; a review of pleadings, evidence and rulings in similar actions litigated elsewhere in the state; a review of similar cases in the same industry elsewhere in the country; and preparation for and attendance at a full-day mediation, followed by further discussions and coordination to finalize the terms and conditions of the general settlement parameters agreed to by the Parties.

While Class Counsel believe in the chance of success of certifying the claims, Class Counsel recognized the potential risk, expense and complexity posed by further litigation. Moreover, litigating Plaintiff's claims in this litigation—claims that involve approximately 1,510 Class Members during the Class Period—would require substantial preparation and discovery, and ultimately would involve the deposition and presentation of numerous more witnesses (including Class Members and expert witnesses), as well as the consideration, preparation and analysis of expert reports. Therefore, should litigation have progressed any further, there would have been significant expense incurred by each side (above and beyond the expense already incurred).

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

The settlement amount reached in this case provides significant recovery to Class Members and Aggrieved Employees, and easily falls within the range of reasonableness. Based on documents and information provided by Defendant, Class Counsel understand there are no more than 117,955 Workweeks during the Class Period.

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

Class Counsel theorized, based on Plaintiff's narrative evidence and information provided by Defendant, that Defendant failed to pay all wages due to Class Members because Defendant required Class Members to work off-the-clock due to its policies and practices. Class Counsel theorized, based upon Plaintiff's narrative evidence and Defendant's records, that it required Class

Members to obtain prior approval for overtime, or otherwise be subject to disciplinary action, thereby creating an environment in which Class Members worked off the clock. Class Counsel also theorized that this policy resulted in Class Members to giving residents medications, making sure residents have food, make sure residents' living facilities are clean, and wait for the relieving shift to come in, all off the clock. Class Counsel also theorized, based on Plaintiff's narrative evidence, that Class Members were required to wait in line to clock in at thumb print stations, thereby resulting in off-the-clock work. As a result, Defendant failed to compensate Class Members for all time under Defendant's control or direction.

One theory advanced by Class Counsel was that Class Members worked off the clock for an average of five (5) minutes each shift throughout the Class Period, without pay. Class Counsel understand, based on time and payroll records produced by Defendant and analysis by expert data consultants retained by Class Counsel, that there were approximately 375,476 shifts during the Class Period, 35.5% of which were over eight (8) hours in length, and Class Members had an average hourly rate of pay of $19.60. Thus, one calculation performed by Class Counsel at mediation resulted in **Defendant's exposure for unpaid off-the-clock work in a conservative amount of $1,117,251** ([375,476 shifts x .355 shifts over eight hours x .0833 hour x $19.60 x 1.5 overtime rate] + [375,476 shifts x .645 shifts under eight hours x .0833 hour x $19.60 x 2 in liquidated damages]).

Class Counsel understand from the mediator and the mediation process that Defendant makes the following defenses in connection with this claim: Defendant argued that it did not require Class Members to work off-the-clock and, rather, Class Members were paid for all time suffered or permitted to work. Defendant contends that its policies prohibit off-the-clock work. Defendant argued that they provided enough thumb print monitors to Class Members and there would have been no need for Class Members to wait in line to clock-in because Class Members arrived at different times, and the process of clocking in at the electronic thumb print monitors took mere seconds. Defendant also argued that if any Class Members were observed "waiting" to clock in, it was because Class Members could arrive early by choice and wait by the thumb print monitor until it was time to start their shifts. Defendant also contends that any theory that off-the-clock work was performed is purely speculative, such off-the-clock work was voluntary if it occurred, unapproved, and certainly not indicative of a pattern or practice. For the same reasons, Defendant contends this claim not subject to class treatment and would make a trial in this Litigation unmanageable. Defendant further argued that any estimate of time worked off-the-clock for every single shift during the Class Period is an exaggeration. Class Counsel understand that Defendant attributed no settlement value to this claim.

2. Recovery of Damages for Non-Compliant Meal Periods

Class Counsel theorized, based on narrative evidence of Plaintiff and documents produced by Defendant, that Defendant's meal period policies and practices throughout the Class Period were non-compliant. Class Counsel theorized, based on documents provided by Defendant, that Defendant require Class Members to take unnecessary on duty meal periods and did not record such on-duty meal periods. Furthermore, based on Plaintiff's narrative evidence and Defendant's records, Class Counsel theorized meal periods were late, short, on duty or missed due interruptions that required Class Members to perform tasks during meal periods, and thus, they could not be relieved of their duties.

Class Counsel understand from the documents produced by Defendant and analyzed by expert data consultants that there were 211,028 unique meal period violations (*i.e.* meal periods that were late, short, or missed) during the Class Period through mediation. Thus, one theory advanced by Class Counsel, based solely on facial and unique violations, resulted in Defendant's liability for unpaid meal premiums of **$3,878,154** [$19.60/hr x (211,028 unique meal period violations – 13,163 meal period premiums paid)].

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

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3. Recovery of Damages for Non-Compliant Rest Periods

Class Counsel theorized, based on Plaintiff's narrative evidence, that Defendant's rest period practices throughout the Class Period were non-compliant because Class Members were rarely afforded the opportunity to take rest periods, and if they did, the rest periods were often interrupted, not duty-free, and not a full 10 minutes in length. Notably, no rest period premiums were ever issued throughout the Class Period. Class Counsel understand from the documents provided that there were 362,949 rest-eligible-shifts. Thus, one calculation performed by Class Counsel resulted in, assuming a conservative 40% violation rate for rest-eligible shifts, **Defendant's exposure for failure to provide compliant rest periods in an amount of $2,845,520** (362,949 shifts greater than 3.5 hours x .40 violation rate x $19.60/hour).

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

4. Wage Statement Violations

Class Counsel theorized that Class Members are entitled to recover penalties for Defendant's alleged failure to issue compliant wage statements under Labor Code section 226, subdivision (e), for the derivative impact of the failure to pay all wages owed on providing accurate information on wage statements. Specifically, Class Counsel theorized that penalties are owed under Labor Code section 226 due to, at minimum, Defendant's failure to pay premium wages. A non-exempt employee suffering injury as a result of a knowing and intentional failure by an employer to comply with Labor Code section 226, subdivision (a), is entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period. Class Counsel understand from the data provided by Defendant that there were 16,356 pay periods during the relevant statutory time period for Class Members. If, in fact, Class Members worked every off-the-clock every shift as set forth above, and no rest premiums were paid, every wage statement would thus, Class Counsel theorized, violate Labor Code section 226. However, due to the derivative nature of wage statement penalties, as well as the requirement that Defendant's failure to comply with Labor Code section 226 be knowing and intentional, One calculation performed by Class Counsel at mediation, based on the initial penalty of fifty dollars ($50) in light of Defendant's defenses, resulted in **Defendant's maximum exposure for wage statement violations in the amount of $817,800** (16,356 pay periods x $50/pay period).

Class Counsel understand from the mediator and the mediation process that Defendant makes the following defenses: Defendant contends that the wage statements issued to the employees fully complied with Labor Code section 226. Defendant contends that because it believes no wages are unpaid that, thus, there can be no derivative penalties. However, Class Counsel also understand the risks inherent in this claim if the above claims were not certified. Class Counsel also had to factor in, and did factor in, the risk that the Court would find there was no injury to Class Members even if the wage statements were inaccurate or that Defendant's conduct was not intentional, both of which are requirements of Labor Code section 226 before penalties can issue. Class Counsel also note that the calculation used does not take into account the fact that all Class Members did not work all pay periods and, therefore, Class Counsels' calculation does not take into account the maximum penalty of $4,000 in Plaintiff's exposure model used at mediation.

5. Failure to Indemnify for Business Expenses

Class Counsel theorized, based on Plaintiff's narrative evidence, that Defendant failed to indemnify Class Members for necessary business expenses because Defendant required Class Members to use their personal cellphones for work related purposes, without compensation. Class Counsel theorized, based on Plaintiff's narrative evidence, that Class Members would incur expenses of $10 per month for using their cellphones for work purposes. Thus, one calculation performed by Class Counsel resulted in **Defendant's exposure for failure to indemnify for business expenses of $1,179,550** ($10 per workweek x 117,955 workweeks).

Class Counsel understand from the mediator and the mediation process that Defendant makes the following defenses: Defendant argued that it reimbursed employees for all expenses incurred in furtherance of work. Defendant argued that, to the extent any Class Members' claims of using personal cellphones for business purposes would necessitate an individualized inquiry, thereby precluding certification and making any trial thereon unmanageable. Thus, Defendant contends that it owes no monies to Class Members under this theory, either.

6. Waiting Time Penalties

Pursuant to Labor Code sections 201, 202 and 203, each employee in the relevant statutory period (*i.e.*, three years before the filing of the initial Complaint) is entitled to 30 days' worth of wages as waiting time penalty for not being paid all wages due upon separation from employment. Class Counsel theorized at mediation, based on relevant documents provided by Defendant, that, under Labor Code section 203, Defendant is liable to pay each Class Member, who was terminated during the relevant statutory period, a full 30-day worth of wages as waiting time penalty for failure to pay compensation in lieu of compliant meal and rest periods, and failure to timely pay all wages due at the time of termination or resignation. Based on relevant documents provided by Defendant, there were approximately 937 Class Members who were terminated or resigned during the relevant statutory period. Thus, one calculation performed at mediation by Class Counsel resulted in **Defendant's exposure for waiting time penalties to be approximately $4,407,648** (937 separated Class Members x $19.60/hour x 8 hours x 30 days).

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

7. PAGA Penalties

Class Counsel understand from the time and payroll data provided by Defendant that there are approximately 874 Aggrieved Employees who collectively worked 16,356 pay periods in the PAGA Period. Plaintiff's claims in the Action under PAGA are substantially similar to those described herein. PAGA penalties include penalties for initial violations and subsequent violations. Defendant contends that only initial violation rates may be used instead of the subsequent violation rates initially used by Class Counsel. With this in mind and because Class Counsel through investigation and discovery did not come to the conclusion that Defendant at any time was notified by any governmental entity that they violated any Labor Code sections presented in the PAGA Notice and PAGA claims, Class Counsel adjusted the exposure model for Defendant to include only initial violation rates.

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

a. <u>Overtime Violations</u>: Labor Code section 558 prescribes penalties of $50 for an initial violation and $100 for each subsequent violation. Using the initial pay period rate for all violations, and a violation every single pay period for every single non-exempt employee in the PAGA Period, this amounts to a maximum exposure of $817,800 (16,356 pay periods x $50).

b. <u>Minimum Wage Violations</u>: Labor Code section 1197.1 prescribes penalties of $100 for an initial violation and $250 for each subsequent violation. Using the initial pay period rate for all violations and a violation every single pay period for every single Aggrieved Employee in the PAGA Period, this amounts to a maximum exposure of $1,635,600 (16,356 pay periods x $100).

c. <u>Meal Period Violations</u>: Labor Code section 558 prescribes penalties of $50 for an initial violation and $100 for each subsequent violation. Using the initial pay period rate for all violations and a violation every single pay period for every single non-exempt employee in the PAGA Period, this amounts to a maximum exposure of $817,800 (16,356 pay periods x $50).

d. Rest Period Violations: Labor Code section 558 prescribes penalties of $50 for an initial violation and $100 for each subsequent violation. Using the initial pay period rate for all violations and a violation every single pay period for every single non-exempt employee in the PAGA Period, this amounts to a maximum exposure of $817,800 (16,356 pay periods x $50).

e. Wage Statement Violations: According to *Gunther v. Alaska Airlines, Inc.* (2021) 287 Cal.Rptr.3d 229, in this instance, Labor Code section 2699 would be the appropriate penalty for wage statement violations that are inaccurate, which prescribes penalties of $100 for an initial violation and $200 for each subsequent violation (*Id.* at 247-248). Using the initial pay period rate for all violations and a violation every single pay period for every single Aggrieved Employee in the PAGA Period, this amounts to a maximum exposure of $1,635,600 (16,356 pay periods x $100).

f. Failure to Reimburse Work Expenses: Labor Code section 2699 would be the appropriate penalty for failure to reimburse work expenses, which prescribes penalties of $100 for an initial violation and $200 for each subsequent violation. Using the initial pay period rate for all violations, and a violation every single pay period for every single Aggrieved Employee in the PAGA Period, this amounts to a maximum exposure of $1,635,600 (16,356 pay periods x $100).

g. Waiting Time Penalties: Labor Code section 2699 prescribes penalties of $100 for an initial violation and $200 for each subsequent violation. Because this violation is merited only at separation of employment, a 100% violation rate would likely include just one violation per employee. The data produced by Defendant indicate that there were 376 Aggrieved Employees whose employment was separated during the PAGA Period. This amounts to a maximum exposure of $37,600 (376 Aggrieved Employees x $100).

h. Conclusion: In sum, Class Counsel calculated Defendant's total maximum exposure for PAGA violations if the Court were to find a 100% violation rate for every Aggrieved Employee every pay period and not exercise its discretion to reduce any of those penalties to be **$7,397,800**. Class Counsel understand from the mediator and the mediation process that

Defendant argued the following in connection with this claim: Defendant contends that no PAGA penalties are likely to be awarded and, even if they were, the maximum exposure calculated by Class Counsel is vastly overstated. First, Defendant defends that PAGA penalties cannot and should not be stacked. Second, Defendant asserts that individualized issues predominate the PAGA claims, making the claims unmanageable for trial. Third, Defendant denies that a violation for each pay period can be established. Fourth, Defendant contends that a Court is unlikely to exercise its discretion to award civil penalties under PAGA where, as here, there is no conduct shown by Plaintiff that would show any Labor Code violation by Defendant is knowing and intentional. Defendant insists that this is especially true in this Action where class action damages are available to Class Members, rendering an award of PAGA penalties in addition to class action damages to be double recovery.

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 **$739,780** as a reasonable estimate of the likelihood of what Plaintiff may recover at trial for PAGA penalties ($7,397,800 x .10).

10. 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 **$14,985,703**. In all, Class Counsel obtained a Gross Settlement Amount of **$1,775,000.00**. 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. Furthermore, Class Counsel also investigated Defendant's financial ability to fund the settlement through analysis of Defendant's financial records. Specifically, Class Counsel worked with an expert financial consultant to determine Defendant's ability to sustain a settlement on a class action basis and determined the Gross Settlement Amount was reasonable in light of Defendant's financial records.

Moreover, $88,750.00 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* thirty-five percent (35%) of the Gross Settlement Amount, which, unless escalated pursuant to this Agreement, would amount to $621,250.00. Class Counsel also seek reimbursement of costs not to exceed $50,000.00.

The requested fees fall well within the historical range of attorney's fees awards under the common fund theory, which is generally from 25% to 50%. The requested fee is fair compensation for undertaking complex, risky, expensive and time-consuming litigation on a contingent fee basis. Thus, the Court should preliminarily approve the requested attorneys' fees and costs, which are justified by the results achieved, the complexity of the issues, the difficulty of the case and the great risks undertaken by Class Counsel. The requested attorneys' fees will not be opposed by Defendant and are well within established guidelines.

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

Plaintiff is entitled to enhanced award for his service as class representative, for answering extensive questions by Class Counsel, for being subjected to intrusive questioning during his deposition, for being available and answering questions during mediation, for the risks in being the named plaintiff and for providing Defendant with a more expansive release of claims, including a waiver based upon California Civil Code section 1542, in exchange for the enhancement award. Defendant does not oppose the requested enhancement to Plaintiff.

Plaintiff risked intrusive discovery and the payment of employer costs. In the experience of Class Counsel, the typical enhancement award in wage and hour class actions ranges from approximately $10,000.00 to $25,000.00, although some awards are higher. In contrast, Class Counsel seek an extremely limited enhancement of $7,500.00 to Plaintiff for her service.

IX. CONDITIONAL CERTIFICATION FOR SETTLEMENT PURPOSES

A. The Class should be Preliminarily Certified

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

1. Ascertainability – "Ascertainability" is a due process requirement that ensures it is possible to decide who will be bound by the judgment (*res judica* effect). The determination is made by examining the class definition and the size of the class. Here, the Class Members definition (*i.e.*, all individuals employed by Defendant in California as non-exempt, hourly-paid employees during the Class Period) 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, hourly paid 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, hourly-paid employee who worked in California for Defendant during the Class Period based solely from Defendant's payroll records, which amounts to approximately 1,510 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 (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 1,510 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, hourly-paid employee like other Class Members; (2) complains of not being paid for all time under Defendant's control or suffered and/or permitted to work for Defendant; (3) did not receive full premium pay for meal periods that were not compliant with the Labor Code; (4) did not receive premium pay for rest periods that were not provided, among others as set forth above.

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

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

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

(ii) Class Counsel are Experienced Class Action Attorneys

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

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

It deals with common issues that are most efficiently adjudicated together, as indicated above. Moreover, with at least 1,510 Class Members, presentation of all of them before this Court may be problematic, impractical, and burdensome. On the contrary, a class action allows claims of many individuals to be resolved at the same time, eliminates the possibility of repetitious litigation and affords small claimants with a method of obtaining redress for claims which otherwise would be too insufficient to warrant individual litigation.

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

X. CONCLUSION

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

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Dated: March 17, 2026

BIBIYAN LAW GROUP, P.C.

/s/ Vedang J. Patel

VEDANG J. PATEL

Attorneys for Plaintiff JANICE DENYSE KHINOO, on behalf of herself and all others similarly situated and aggrieved