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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

DEVONE M. BARNES, an individual and on behalf of all others similarly situated,

Plaintiff,

v.

BAY AREA COMMUNITY RESOURCES, INC., a California Nonprofit corporation; and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 24CV062496

[Assigned for all purposes to the Hon. Somnath Raj Chaterjee in Dept. 21]

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT AND PROVISIONAL CLASS CERTIFICATION FOR SETTLEMENT PURPOSES ONLY; DECLARATIONS OF KEATON D. MENDOZA, DAVID D. BIBIYAN, JAMES HAWKINS PLAINTIFFS, AND JODEY LAWRENCE IN SUPPORT THEREOF

HEARING INFORMATION:

DATE: December 22, 2026
TIME: 2:30 p.m.
DEPT: 21
Reservation ID: 924342095026

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on December 22, 2026 at 2:30 p.m., or as soon thereafter as they may be heard in Department 21 of the Superior Court of the State of California for the County of Alameda, plaintiffs Devone Marcell Barnes ("Plaintiff Barnes") and Jelisa Margaret Spraggins ("Plaintiff Spraggins") (collectively, "Plaintiffs"), on behalf of themselves 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 ("Class" or "Class Members") for the purpose of settlement only: all current and former non-exempt employees of Defendant Bay Area Community Resources, Inc. ("Defendant") within the State of California at any time during the period from February 2, 2020, through December 31, 2025 ("Class Period").

2. Preliminarily approving Plaintiffs Devone Marcell Barnes and Jelisa Margaret Spraggins as Class Representatives.

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

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

5. Preliminarily approving payment of the Gross Settlement Amount of $1,990,000.00, which is subject to escalation pursuant to the Settlement Agreement.

6. Approving the form and content of the Notice of proposed Class Action Settlement and Date for Final Approval Hearing ("Class Notice") submitted herewith.

7. Appointing Phoenix Settlement Administrators ("Phoenix" or "Administrator") to administer the Settlement, including distribution of the Class Notice, as set forth in the Settlement Agreement.

8. Preliminarily approving the Administration Expenses Payment of not to exceed $51,500.00 for settlement administration to Phoenix from the Gross Settlement Amount.

9. Preliminarily approving a service award of not more than $10,000.00 to each Plaintiff, for an aggregate amount of $20,000, in consideration for Plaintiffs' extensive efforts in prosecuting this case.

10. Preliminarily approving payment of reasonable attorneys' fees to Class Counsel in the amount of not more than thirty five percent (35%) of the Gross Settlement Amount which, unless escalated pursuant to the Settlement Agreement, amounts to $696,500.00.

11. Preliminarily approving reimbursement of Class Counsel's costs in an amount not to exceed $45,000.00.

12. Preliminarily approving PAGA penalties in the amount of $200,000.00, seventy-five percent (75%), or $150,000.00, 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 $50,000.00, of which will be distributed to "PAGA Members" or "Aggrieved Employees," defined as all current and former non-exempt employees of Defendant Bay Area Community Resources, Inc. ("Defendant") within the State of California at any time during the period from February 2, 2023 through the end of the 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 Keaton D. Mendoza, David D. Bibiyan, Plaintiffs, and Jodey Lawrence, and exhibits attached thereto, arguments of counsel and upon such other materials as contained in the file and pleadings of this action.

Dated: November 13, 2026

BIBIYAN LAW GROUP, P.C.

/s/ Keaton D. Mendoza
KEATON D. MENDOZA

Attorneys for Plaintiff, DEVONE MARCELL BARNES, on behalf of himself and all others similarly situated and aggrieved

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Devone Marcell Barnes ("Plaintiff Barnes") and Jelisa Margaret Spraggins ("Plaintiff Spraggins") (collectively, "Plaintiffs"), on behalf of themselves 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 Keaton D. Mendoza as Exhibit "1."

On February 2, 2024, Plaintiff Barnes commenced this Action by filing a complaint against Defendant Bay Area Community Resources, Inc. ("Defendant") for: (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal periods; (4) failure to provide rest periods; (5) waiting time penalties; (6) wage statement violations; (7) failure to timely pay wages; (8) failure to indemnify; (9) violation of Labor Code section 227.3; (10) unfair competition; (11) sexual harassment; (12) retaliation; (13) negligent infliction of emotional distress; and (14) intentional infliction of emotional distress (the "Barnes Class Action" or "Action").

Also on February 2, 2024, Plaintiff Barnes filed with the Labor and Workforce Development Agency ("LWDA") and served on Defendant a notice under Labor Code section 2699.3, stating Plaintiff Barnes intended to serve as a proxy of the LWDA to recover civil penalties on behalf of Private Attorneys General Act of 2004 ("PAGA") Members for alleged Labor Code violations (the "Barnes PAGA Notice"). A true and correct copy of the PAGA Notice is attached to the Declaration of Keaton D. Mendoza as Exhibit "2."

On April 8, 2024, Plaintiff Barnes filed a PAGA representative action, seeking PAGA civil penalties against Defendant for Labor Code violations alleged in the Barnes PAGA Notice.

On May 1, 2024, Plaintiff Barnes filed a First Amended Complaint under PAGA (the "Barnes PAGA Action").

On November 12, 2024, Plaintiff Spraggins commenced a separate class action by filing a complaint against Defendant (the "Spraggins Class Action").

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On November 12, 2024, Plaintiff Spraggins filed with the LWDA and served on Defendant a notice under Labor Code section 2699.3 stating Plaintiff Spraggins intended to serve as a proxy of the LWDA to recover civil penalties on behalf of PAGA Members for alleged Labor Code violations (the "Spraggins PAGA Notice").

On January 21, 2025, Plaintiff Spraggins filed a PAGA representative action, seeking PAGA civil penalties against Defendant for Labor Code violations (the "Spraggins PAGA Action"). The Barnes Class Action, Barnes PAGA Action, Spraggins Class Action, and Spraggins PAGA Action are referred to collectively as "Actions".

Thereafter, Plaintiffs and Defendant (collectively, the "Parties") agreed to exchange informal discovery and attend mediation.

Prior to mediation Plaintiffs confidentially obtained, through informal discovery: (a) time and payroll records for twenty percent (20%) of putative Class Members through October 7, 2025; (b) exemplar wage statements and relevant policies; (c) personnel files of Plaintiffs; and (d) relevant standalone polices and excerpts from employee handbooks that were in effect from during the Class Period.

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

On October 7, 2025, the Parties participated in an all-day private mediation presided over by Monique Bonnici-Ngo. While the mediation was unsuccessful on the day of mediation, the Parties agreed to globally resolve all class and PAGA claims alleged in the Actions through continued negotiations.

As part and parcel of the Settlement, the Parties agreed to stipulate consolidating the various actions for purposes of Court approval of the Settlement. The Parties have since filed a stipulation to consolidate to the Actions, and the Court granted consolidation.

Class Counsel has conducted significant investigation of the law and facts relating to the claims asserted in the Actions and the PAGA Notices, and have concluded that the Settlement is fair, reasonable, adequate, and in the best interests of the Class, taking into account the sharply

contested issues involved, the expense and time necessary to litigate the Actions through trial and any appeals, the risks and costs of further litigation of the Actions, the risk of an adverse outcome, the uncertainties of complex litigation, the information learned through informal discovery regarding Plaintiffs' allegations, and the substantial benefits to be received by Class Members.

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 Keaton D. Mendoza as Exhibit "1" thereto. A summary of the terms of the settlement is as follows:

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

- Certification of a settlement class ("Class" or "Class Members") for the purpose of settlement only: all current and former non-exempt employees of Defendant Bay Area Community Resources, Inc. ("Defendant") within the State of California at any time during the period from February 2, 2020, through December 31, 2025 ("Class Period").
- Defendant will pay $1,990,000.00 ("Gross Settlement Amount") to resolve the matter.
- For Mediation and Settlement, Defendant represented that there were 247,385 Workweeks worked between February 2, 2020 through October 7, 2025. In the event the number of Workweeks worked increased by more than ten percent (10%) between February 2, 2020 through October 7, 2025, (i.e., by more than 24,739 Workweeks worked for a total of 272,124 Workweeks), Defendant had the option to elect that one of the following occur: (1) either the Gross Settlement Amount shall be increased by the percentage increase above ten percent (10%) (e.g., by 2% if the percentage increase is 12%); or (2) the Class Period and PAGA Period (as well as the end date for the release period) will end on the date that the number of Workweeks worked by Class Members, when starting from the first day of the Class Period, reaches 272,124 Workweeks worked by Class Members. The Workweek Value for this provision shall be calculated by dividing the Gross Settlement Amount by 247,385 and, thus, the Parties agreed that the

Workweek Value amounts to $8.04 per Workweek ($1,990,000 / 247,385 Workweeks). Thus, for example, should Defendant elect the former of the two options, and there are 296,862 Workweeks in the Class Period, then the Gross Settlement Amount shall be increased by $198,893.52 ((296,862 Workweeks – 272,124 Workweeks) x $8.04 Workweek).

- In response to Plaintiffs' Motion for the Preliminary Approval Order, Defendant agrees to file a declaration estimating Workweeks by Class Members during the Class Period. Defendant represents that there are 260,703 total Workweeks through the end of the Class Period, and, thus, the Escalator Clause was not triggered.
- 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.
- The Administration Expenses Payment, estimated not to exceed $51,500.00, 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.; and James Hawkins of James Hawkins, APLC may apply for, and Defendant will not oppose, attorneys' fees of not more than thirty-five percent (35%) of the Gross Settlement Amount, which, unless escalated pursuant to the Settlement Agreement, amounts to $696,500.00, and actual costs, not to exceed $45,000.00, all of which will be paid out of the Gross Settlement Amount.

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- Class Counsel hereby applies for, and Defendant will not oppose, a service award of not more than $10,000.00 to each Plaintiff, for an aggregate amount of $20,000 to Plaintiffs, which will be paid out of the Gross Settlement Amount.

[1] "Workweek(s)" means any week during which a Class Member worked for Defendant during the Class Period, based on Defendant's time clocking data.

- "PAGA Members" means all current and former non-exempt employees of Defendant within the State of California at any time during the period from February 2, 2023 through December 31, 2025 ("PAGA Period").
- Defendant has agreed to pay $200,000.00 as PAGA penalties, seventy-five percent (75%), or $150,000.00, of which will be paid to the LWDA out of the Gross Settlement Amount, and twenty-five percent (25%), or $50,000.00, of which will be distributed to the PAGA Members.
- For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such uncashed checks 50/50 to the following *cy pres* recipients and subject to Court approval as follows: fifty percent (50%) to Legal Aid at Work; and fifty percent (50%) to Koinonia Family Services for child advocacy programs in the State of California as permitted by Code of Civil Procedure section 384(b).

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

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

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 Plaintiffs 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, and analysis of the number of Class Members eligible for wage statement penalties and waiting time penalties; analysis of Defendant's financial ability to fund the settlement; an analysis of Plaintiffs' 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 believes in the chance of success of certifying the claims, Class Counsel recognized the potential risk, expense and complexity posed by further litigation. Moreover, litigating Plaintiffs' claims in this litigation—claims that involve approximately 4,719 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. The Settlement Amount Is Well Within Range of Reasonableness

The settlement amount reached in this case provides significant recovery to Class Members and PAGA Members and easily falls within the range of reasonableness. Based on documents and information provided by Defendant, Class Counsel understand there are approximately 4,719 Class Members who worked 247,385 Workweeks during the Class Period.

1. Recovery of Damages for Failure to Pay Wages for All Time Worked

Class Counsel theorized, based on Plaintiffs' narrative evidence and documents produced by Defendant, that Defendant failed to pay all wages due to Class Members because Defendant required Class Members to work off-the-clock. Defendant maintained an impermissible rounding practice of rounding Class Members' time entries to the nearest quarter hour, ultimately resulting in unrecorded and unpaid time worked by Class Members. Class Counsel also theorized, based on Plaintiffs' narrative evidence and Defendant's records, that Defendant's time records were synthetic, or false, and did not accurately track Class Members' time worked based on the above practices. Additionally, Class Counsel further theorized and alleged based on Plaintiffs' narrative evidence and documents produced by Defendant, that Class Members were not paid all reporting time pay owed, nor were Plaintiffs and the Class Members paid sick pay at the proper regular rate of pay.

One theory advanced by Class Counsel alleged, based on Plaintiffs' narrative evidence, that Class Members worked off-the-clock for approximately three (3) minutes each shift throughout the

Class Period, without pay. Class Counsel understand, based on time and payroll records produced by Defendant and analysis thereof by expert data consultants retained by Class Counsel, that there were approximately 1,049,866 shifts during the Class Period, 2.8% of which were over eight (8) hours in length, and Class Members had an average hourly rate of pay of $23.18. Thus, one calculation performed by Class Counsel at mediation resulted in Defendant's exposure for unpaid off-the-clock work in an approximate amount of **$2,416,554.26** ([1,049,866 shifts x 0.028 shifts over eight hours x 0.05 hours x $23.18 x 1.5 overtime rate] + [1,049,866 shifts x 0.972 shifts under eight hours x 0.05 hours x $23.18 x 2 in liquidated damages]).

Class Counsel understand that Defendant denies these contentions and makes the following defenses in connection with this claim: Defendant contends that their policies specifically prohibit off-the-clock work. Defendant contends that they did not require Class Members to work off-the-clock, they were paid for all time suffered or permitted to work. Defendant asserts that it has not rounded time entries in a manner detrimental to the Class Members' interest. Defendant further contends that any allegations that Class Members were required to be under Defendant's control off-the-clock would necessitate an individualized inquiry into when and why, making this claim not subject to class treatment and any trial in this litigation unmanageable. Additionally, Defendant contends that no damages can be recovered here, and, even if, *arguendo*, they could, an estimate of three (3) minutes of unpaid work off-the-clock of Class Members for *every single shift* during the Class Period is an exaggeration of time spent working off-the-clock if *any* such time was spent. Thus, Defendant contends that no monies are owed under this theory.

2. Recovery of Damages for Non-Compliant Meal Periods

ass Counsel theorized and alleged that Defendant's meal period policies and practices were non-compliant based on Plaintiffs' narrative evidence and documents produced by Defendant's. Class Counsel theorized that the Class Members reported that meal periods were regularly taken *after* the end of the *fifth* hour of work and are, thus, facially violative of California law. Class Counsel further theorized and alleged that during shifts where meal periods were recorded, Class Members did not receive full thirty (30) minute meal periods. Class Counsel also theorized that many meal periods were synthetic, or fictional because they rounded to exactly

thirty (30) minutes. Based on Defendant's records, there were approximately 11,511 meal period premiums paid.

Class Counsel theorized that there are approximately 126,223 unique meal period violations (*i.e.* meal periods that were missed, short, or were exactly 30 minutes in length). Thus, one calculation performed by Class Counsel at mediation resulted in **Defendant's exposure for failure to provide compliant meal periods in a conservative amount of $2,659,024** [(126,223 shifts – 11,511 meal period premiums) x 23.01/hour].

Class Counsel understands that Defendant makes the following defenses in connection with this claim: Defendant argued that they had compliant meal period policies and practices. Defendant argued that Class Members took timely and full meal periods, as they were required to do. Defendant further contends that any instance of a Class Member failing to take a compliant meal period was voluntary, in violation of their meal period policy, would necessitate an individualized inquiry and would not lend itself to a manageable trial. Further, Defendant argued that Class Members signed meal break waivers. 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.

3. Recovery of Damages for Non-Compliant Rest Periods

Class Counsel theorized, based on Plaintiff's narrative evidence and documents produced by Defendant, that Defendant's meal period policies and practices throughout the Class Period were non-compliant, as they were either late, short, or missed entirely, due to Defendant's policies and practices that prevented employees from being able to take compliant rest breaks during shifts. Class Counsel theorized that Defendant's policies were non-compliant because they did not relinquish control over Class Members or allow employees to leave the premises during rest breaks. Moreover, Class Counsel also theorized, based on Plaintiff's narrative evidence, the Class Members seldom received duty-free rest breaks.

Class Counsel understand from the documents provided by Defendant that there were 916,113 rest-eligible shifts. Thus, one calculation performed by Class Counsel at mediation resulted in, assuming a twenty percent (20%) violation rate, **Defendant's exposure for failure to provide**

compliant rest periods in a conservative amount of $4,247,100 (916,113 shifts x 0.2 violation rate x $23.18/hour).

Class Counsel understand that Defendant denies all such allegations and makes the following defenses in connection with this claim: Defendant argues that it had compliant rest period policies and practices and its policy requires employees to take timely and full duty-free rest periods, or received the required rest period premium for each instance of rest period violations, if any. 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. Finally, Defendant contends that a twenty percent (20%) violation rate is a wild exaggeration of non-compliant rest periods, if there were any. 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 and alleged 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 66,647 pay periods during the relevant statutory time period for Class Members. If, in fact, Class Members worked 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, with a twenty percent (20%) violation rate, resulted in **Defendant's maximum exposure for wage statement violations in the amount of $666,470** (66,647 pay periods x $50/pay period x 0.20 violation rate).

Class Counsel understand that Defendant makes the following defenses in connection with this claim: 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 Plaintiffs' exposure model used at mediation.

5. 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 2,971 Class Members who were terminated or resigned during the relevant statutory period. Thus, one calculation performed by Class Counsel, assuming a twenty percent (20%) violation rate, resulted

in **Defendant's exposure for waiting time penalties to be approximately $3,305,653.44** (2,971 separated Class Members x $23.18/hour x 8 hours x 30 days x 0.2 violation rate).

Defendant contends there is no credence to Plaintiffs' 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.

6. Failure to Reimburse Work Expenses

Class Counsel theorized, based on Plaintiffs' 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, such as for calling vendors; to notify parents of children of illness, absence, injuries, or closures of the program; and using applications for classroom instruction. Thus, Class Counsel theorized that employees were entitled to an estimated $25.00 reimbursement for cellphone costs per month ($12.50 per biweekly Pay Period).

Class Counsel theorized, based on documents produced by Defendant and analysis thereof by expert data consultants retained by Class Counsel, that there were approximately 66,647 Pay Periods throughout the Class Period. Thus, one calculation performed by Class Counsel resulted in **Defendant's exposure for failure to indemnify for business expenses of $833,088** (66,647 pay periods x $12.50).

Class Counsel understand that Defendant argued the following: Defendant argued that it reimbursed employees for all expenses incurred in furtherance of work. Defendant also argued that Class Members were using their cellphones, for personal use and Defendant has no obligation to reimburse Class Members for such use. Thus, Defendant contends that it owes *no* monies to Class Members under this theory, either.

7. PAGA Penalties

Class Counsel understand from the time and payroll data provided by Defendant that there are approximately 2,824 Aggrieved Employees who collectively worked 66,647 pay periods in the PAGA Period. Plaintiffs' 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. Overtime 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 $3,332,350 (66,647 pay periods x $50).

b. Minimum Wage Violations: 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 $6,664,700 (66,647 pay periods x $100).

c. Meal 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 $3,332,350 (66,647 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 $3,332,350 (66,647 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 $6,664,700 (66,647 pay periods x $100).

f. 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 one hundred percent (100%) violation rate would likely include just one violation per employee. The data produced by Defendant indicate that there were 1,713 Aggrieved Employees whose employment was separated during the PAGA Period. This amounts to a maximum exposure of $171,300 (1,713 Separated Aggrieved Employees x $100).

g. 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 *only* the initial pay penalty of $100 for all violations, and a violation every pay period for each Aggrieved Employee in the PAGA Period, this amounts to exposure of $6,664,700 (66,647 pay periods 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 **$30,162,450**. 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 Plaintiffs 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 believes a ninety-five percent (95%) discount of this claim to be reasonable, resulting in a valuation of **$1,508,123** as a reasonable estimate of the likelihood of what Plaintiffs may recover at trial for PAGA penalties ($30,162,450 x 0.05).

8. 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 **$15,636,012**. In all, Class Counsel obtained a Gross Settlement Amount of **$1,990,000.00**. 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.

Moreover, $200,000.00 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 seeks an attorneys' fees award of not more than thirty-five percent (35%) of the Gross Settlement Amount, which, unless escalated pursuant to this Agreement, would amount to $696,500.00. Class Counsel also seek reimbursement of costs not to exceed $45,000.00. 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 PLAINTIFFS AND CLASS REPRESENTATIVES ARE REASONABLE

Plaintiffs are entitled to enhanced awards for their services as class representatives, 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 plaintiffs 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 Plaintiffs. Plaintiffs 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 seeks a limited enhancement of $10,000.00 for each Plaintiff, for a total of $20,000 to Plaintiffs for their services.

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 current and former non-exempt employees of Defendant within the State of California at any time 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 4,719 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 4,719 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 plaintiffs' 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.) Plaintiffs' claims are typical of those of other Class Members as Plaintiffs: (1) are non-exempt, hourly-paid employees like other Class Members; (2) complain of not being paid for all time under Defendant's control or suffered and/or permitted to work for Defendant; (3) did not receive full premium pay for meal periods that were not compliant with the Labor Code; and (4) did not receive premium pay for rest periods that were not provided, among others as set forth above.

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

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

No conflicts, disabling or otherwise, exists between Plaintiffs and Class Members because Plaintiffs allege 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 4,719 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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BIBIYAN LAW GROUP, P.C.

/s/ Keaton D. Mendoza
KEATON D. MENDOZA

Attorneys for Plaintiff DEVONE M. BARNES, on behalf of himself and all others similarly situated and aggrieved