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on behalf of all others similarly situated

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF PLACER**

10
11 ELLEN ANN SOUZA, an individual, and on
behalf of all others similarly situated,

12
13 Plaintiff,

14 v.

15 GENERAL PLUMBING SUPPLY
COMPANY, INC., a California corporation;
16 and DOES 1 through 100, inclusive,

17 Defendant.
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CASE NO.: S-CV-0052511

[Assigned for all purposes to Department 40]

**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 ELLEN ANN
SOUZA, DAVID D. BIBIYAN, VEDANG
J. PATEL, AND SEAN HARTRANFT IN
SUPPORT THEREOF**

HEARING INFORMATION:

DATE: December 3, 2026

TIME: 8:30 a.m.

DEPT: 40

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

2 **PLEASE TAKE NOTICE** that on December 3, 2026 at 8:30 a.m., or as soon thereafter as
3 the matter may be heard in Department 40 of the Superior Court of the State of California for the
4 County of Placer, Plaintiff Ellen Ann Souza (“Plaintiff”), on behalf of herself and all others similarly
5 situated and aggrieved, will and hereby does move this Court for entry of an Order:

- 6 1. Preliminarily certifying the following settlement class (“Class,” “Settlement Class
7 Members” or “Class Members”) for the purpose of settlement only: all persons
8 employed by Defendant in California and classified as non-exempt, hourly-paid
9 employee who worked for Defendant during the period from March 25, 2020, through
10 March 19, 2025 (the “Class Period”).
- 11 2. Preliminarily approving Plaintiff as Class Representative.
- 12 3. Preliminarily approving David D. Bibiyan and Vedang J. Patel of Bibiyan Law Group,
13 P.C., as Class Counsel.
- 14 4. Preliminarily approving the settlement claims under the terms set forth in the Settlement
15 Agreement.
- 16 5. Preliminarily approving payment of the Gross Settlement Amount of \$360,000.00.
- 17 6. Approving the form and content of the Class Notice submitted herewith.
- 18 7. Appointing Apex Class Action Administration (“Apex”) to administer the Settlement,
19 including distribution of the Class Notice, as set forth in the Settlement Agreement.
- 20 8. Preliminarily approving payment of administration expenses to Apex from the Gross
21 Settlement Amount in an amount not to exceed \$6,865.00.
- 22 9. Preliminarily approving a Class Representative Service Payment of up to \$7,500.00 to
23 Plaintiff, in consideration for Plaintiff’s efforts in prosecuting this case.
- 24 10. Preliminarily approving payment of reasonable attorneys’ fees to Class Counsel in the
25 amount of up to thirty-five percent (35%) of the Gross Settlement Amount, which
26 amounts to \$126,000.00.
- 27 11. Preliminarily approving reimbursement of Class Counsel’s costs in an amount,
28 according to proof, not to exceed \$30,000.00.

12. Preliminarily approving PAGA penalties in the amount of \$36,000.00, seventy-five percent (75%) or \$27,000.00 of which will be paid to the Labor and Workforce Development Agency (“LWDA”), and twenty-five percent (25%) or \$9,000.00 of which will be distributed to Aggrieved Employees, defined as all persons employed by Defendant in California and classified as non-exempt, hourly-paid employees who worked for Defendant during the period from March 26, 2023, through the end of the Class Period (the “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 David D. Bibiyan, Vedang J. Patel, Ellen Ann Souza, and Sean Hartranft, and exhibits attached thereto, arguments of counsel, and upon such other materials contained in the file and pleadings of this action.

Dated: September 24, 2026

BIBIYAN LAW GROUP, P.C.

/s/ Vedang Patel
VEDANG J. PATEL

Attorneys for Plaintiff, ELLEN ANN SOUZA, on
behalf of herself and all others similarly situated
and aggrieved

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

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

8 On March 25, 2024, Plaintiff commenced this action by filing a class action complaint in
9 the Superior Court of California, County of Placer, Case No. S-CV-0052511, against Defendant
10 General Plumbing Supply Company, Inc. (“Defendant”) for failure to pay overtime wages; failure
11 to pay minimum wages; failure to provide meal periods; failure to provide rest periods; waiting
12 time penalties; wage statement violations; failure to timely pay wages; failure to indemnify;
13 violation of Labor Code section 227.3; and unfair competition (the “Class Action”).

14 On March 26, 2024, Plaintiff filed with the Labor and Workforce Development Agency
15 (“LWDA”) and served on Defendant a notice under Labor Code section 2699.3 stating Plaintiff
16 intended to serve as a proxy of the LWDA to recover civil penalties on behalf of aggrieved
17 employees for alleged Labor Code violations (“PAGA Notice”). A true and correct copy of the
18 PAGA Notice is attached to the Patel Decl. as Exhibit “2.”

19 On May 30, 2024, Plaintiff filed a separate representative action seeking civil penalties
20 under the Labor Code Private Attorneys General Act of 2004 (“PAGA”) in the Superior Court of
21 California, County of Placer.

22 Thereafter, the Parties agreed to exchange informal discovery and participate in private
23 mediation. Prior to mediation, Plaintiff obtained through informal discovery, among other things,
24 a one-third sampling of timekeeping and payroll records of Class Members.

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

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1 On March 19, 2025, the Parties participated in an all-day mediation before Tagore
2 Subramaniam, Esq. The mediation was successful, and the Parties agreed to globally resolve all
3 Class and PAGA claims in the Action.

4 The Court has not granted class certification. The Parties, Class Counsel, and Defense
5 Counsel are not aware of any other pending matter or action asserting claims that will be
6 extinguished or affected by the Settlement.

7 Class Counsel have conducted significant investigation of the law and facts relating to the
8 claims asserted in the Action and the PAGA Notice and have concluded that the Settlement is fair,
9 reasonable, adequate, and in the best interests of the Settlement Class, taking into account the
10 contested issues involved, the expense and time necessary to litigate the Action through trial and
11 any appeals, the risks and costs of further litigation, the risk of an adverse outcome, the
12 uncertainties of complex litigation, the information learned through informal discovery regarding
13 Plaintiff's allegations, and the substantial benefits to be received by Settlement Class Members.

14 **II. THE SETTLEMENT**

15 Subject to Court approval pursuant to Code of Civil Procedure section 382 and California
16 Rules of Court, rule 3.769 et seq., the Parties have agreed to settle the Action upon the terms and
17 conditions and for the consideration set forth in the Settlement Agreement, a copy of which is
18 attached to the Declaration of Vedang J. Patel as Exhibit "1." A summary of the material terms of
19 the Settlement is as follows:

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

- 21 • Certification of a class ("Class," "Settlement Class Members," or "Class Members")
22 defined as: All persons employed by Defendant in California and classified as non-
23 exempt, hourly-paid employee who worked for Defendant during the period from March
24 25, 2020, through March 19, 2025 (the "Class Period").
- 25 • Defendant will pay \$360,000.00 ("Gross Settlement Amount") to resolve the matter.
- 26 • Defendant will pay the employer's share of payroll taxes on the Wage Portions of the
27 Individual Class Payments separate and apart from the Gross Settlement Amount.
- 28 • This is a non-reversionary settlement.

- 1 • Participating Class Members will be paid their pro rata share of the Net Settlement
2 Amount based on the total number of Workweeks worked during the Class Period.
- 3 • The settlement administration costs, not to exceed \$6,865.00, will be paid out of the
4 Gross Settlement Amount.
- 5 • Class Counsel, comprised of David D. Bibiyan and Vedang J. Patel of Bibiyan Law
6 Group, P.C., may apply for, and Defendant will not oppose, attorneys’ fees of up to
7 thirty-five percent (35%) of the Gross Settlement Amount, which amounts to
8 \$126,000.00, and actual costs, not to exceed \$30,000.00, all of which will be paid out of
9 the Gross Settlement Amount.
- 10 • Class Counsel hereby apply for, and Defendant will not oppose, a Class Representative
11 Service Payment of up to \$7,500.00 to Plaintiff, which will be paid out of the Gross
12 Settlement Amount.
- 13 • “Aggrieved Employees” are defined as “all persons employed by Defendant in
14 California and classified as non-exempt, hourly-paid employee who worked for
15 Defendant during the period from March 26, 2023, through the end of the Class Period”
16 (the “PAGA Period”).
- 17 • Defendant has agreed to pay \$36,000.00 as PAGA penalties, seventy-five percent (75%)
18 or \$27,000.00 of which will be paid to the Labor and Workforce Development Agency
19 (“LWDA”) out of the Gross Settlement Amount, and twenty-five percent (25%) or
20 \$9,000.00 of which will be distributed to the Aggrieved Employees.
- 21 • Participating Class Members will receive an Individual Class Payment and Aggrieved
22 Employees will receive an Individual PAGA Payment. Individual Class Payment and
23 Individual PAGA Payment checks shall remain valid and negotiable for one hundred
24 eighty (180) days from issuance. Any checks not cashed within one hundred eighty (180)
25 days after issuance will be void, and the funds associated with such uncashed checks will
26 be transmitted to the California Controller’s Office Unclaimed Property Fund.

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

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

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

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

17 Attached to the Declaration of Vedang J. Patel as Exhibit “1” is the Settlement Agreement
18 between the Parties. Attached to the Settlement Agreement as Exhibit A is the proposed Class Notice
19 to be distributed to Class Members in English and Spanish. The proposed Class Notice satisfies these
20 requirements.

21 The Parties respectfully request that this Court approve the above-referenced Class Notice
22 and dissemination of the Class Notice to the Class Members, consistent with the manner and timing
23 set forth in the Settlement Agreement. The Parties have agreed to use Apex, an experienced
24 settlement administrator to administer the Settlement.

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

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

4 The Settlement that has been reached, subject to this Court's approval, is a product of
5 substantial efforts by the Parties and their counsel. The Settlement was reached after factual and
6 legal investigation and research; the exchange of informal discovery; the review and analysis of a
7 one-third sampling of timekeeping and payroll records of Class Members; analysis of Workweeks
8 worked by Class Members during the Class Period; analysis of the number of PAGA Pay Periods
9 and number of Aggrieved Employees during the PAGA Period for calculating PAGA penalties;
10 analysis of the potential exposure for unpaid wages, overtime, meal period premiums, rest period
11 premiums, wage statement penalties, waiting time penalties, reimbursement claims, and related
12 claims; analysis of Plaintiff's employment records and information; extensive correspondence and
13 communication between counsel; and preparation for and attendance at an all-day private mediation
14 before Tagore Subramaniam, Esq., followed by further discussions and coordination to finalize the
15 terms and conditions of the Settlement agreed to by the Parties.

16 While Class Counsel believe in the chance of success of certifying the claims, Class Counsel
17 recognized the potential risk, expense, and complexity posed by further litigation. Moreover,
18 litigating Plaintiff's claims in this litigation—claims that involve approximately 244 Class Members
19 during the Class Period—would require substantial preparation and discovery, and ultimately would
20 involve the deposition and presentation of numerous witnesses, including Class Members and expert
21 witnesses, as well as the consideration, preparation, and analysis of expert reports. Therefore, should
22 litigation have progressed any further, there would have been significant expenses incurred by each
23 side, above and beyond the expense already incurred.

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

25 The settlement amount reached in this case provides significant recovery to Class Members
26 and Aggrieved Employees and falls within the range of reasonableness. Based on documents and
27 information provided by Defendant, Class Counsel understand there are approximately 244 Class
28 Members, 14,086 Total Workweeks during the Class Period, 188 Aggrieved Employees, and 14,086

1 PAGA Workweeks, or 7,043 bi-weekly PAGA pay periods, during the PAGA Period.

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

3 Class Counsel theorized, based on Plaintiff's narrative evidence and documents produced
4 by Defendant, that Defendant failed to pay all wages due to Class Members because Defendant
5 required employees to perform work off-the-clock and/or under Defendant's control without
6 compensation. This includes, without limitation, time spent walking from designated employee
7 parking areas to the facility, locating and using Defendant's timekeeping system, dealing with
8 timekeeping issues and malfunctioning timekeeping equipment or software, as well as work
9 performed during otherwise unpaid meal periods when employees were required to remain available
10 to assist customers, answer calls, or respond to supervisor requests. Class Counsel further theorized
11 that Defendant's pay practices resulted in additional unpaid wages because employees were not
12 always paid for all time worked and because commissions were not always properly included in
13 calculating overtime and premium wages.

14 One theory advanced by Class Counsel, based on Defendant's records and Plaintiff's
15 narrative evidence: (1) the average rate of pay during the relevant period was approximately \$25.60;
16 and (2) approximately 72.1% of shifts worked were over eight (8) hours in length; and (3) there
17 were approximately 61,633 shifts worked by Class Members during the Class Period. Class Counsel
18 theorized and alleged, based on the foregoing, that Class Members performed approximately five
19 (5) minutes of off-the-clock work for every shift throughout the Class Period. Thus, one calculation
20 made by Class Counsel resulted in Defendant's potential exposure for off-the-clock work in the
21 approximate amount of **\$214,705.31** ([61,633 shifts x 0.083 hours per shift x \$25.60/hour x 0.721
22 shifts over eight (8) hours x 1.5 overtime rate] + [61,633 shifts x 0.083 hours per shift x \$25.60/hour
23 x 0.279 shifts under eight (8) hours x 2 liquidated damages].

24 Class Counsel understand from the mediator and the mediation process that Defendant
25 makes the following defenses in connection with this claim: Defendant contends that that their
26 policies specifically prohibit off-the-clock work. Defendant contends that it did not require Class
27 Members to work off-the-clock and, rather, they were paid for all time suffered or permitted to work,
28 including overtime pay. Finally, Defendant contends that any allegations that Class Members were

1 required to be under Defendant's control off-the-clock work would necessitate an individualized
2 inquiry into when and why, making this claim not subject to class treatment and any trial in this
3 litigation unmanageable. Defendant contends that no damages can be recovered here, and, even if,
4 *arguendo*, they could, an estimate of five (5) minutes of unpaid work off-the-clock of Class
5 Members for *every* shift during the Class Period is an exaggeration of time spent working off-the-
6 clock if *any* such time was spent. Thus, Defendant contends that *no* monies are owed under this
7 theory.

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

9 Class Counsel theorized at the mediation, based on Plaintiff's narrative evidence and
10 documents produced by Defendant, that Defendant's meal period policies and practices during the
11 Class Period were non-compliant. Class Counsel understood, based on Plaintiff's narrative evidence
12 and Defendant's records, that Class Members were not consistently provided timely, duty-free,
13 uninterrupted meal periods of at least thirty minutes for shifts of more than five hours. Plaintiff
14 reported that, for a period of time, she and other Class Members did not receive compliant meal
15 periods despite working qualifying shifts. Plaintiff further reported that meal periods were
16 frequently late, interrupted, shortened, or missed because Defendant was understaffed, employees
17 were expected to prioritize customers, and employees were required to remain available to assist
18 customers, answer calls, or respond to supervisor requests. Class Counsel further theorized that meal
19 periods were frequently non-compliant due to understaffing and the resulting inability of employees
20 to secure coverage. Consistent with Plaintiff's account, Defendant's records reflected significant
21 meal-period issues, including recorded shifts over ten hours without a recorded second meal period.
22 In addition, while Defendant paid some meal-period premiums during the Class Period, Class
23 Counsel theorized that those premiums did not fully compensate Class Members for all non-
24 compliant meal periods.

25 Class Counsel theorized, based on documents produced by Defendant, that Defendant
26 incurred substantial meal-period premium exposure during the Class Period. Plaintiff estimated that
27 a substantial number of qualifying shifts resulted in meal period violations, including late, missed,
28 interrupted, short, or otherwise non-duty-free meal periods. C Class Counsel theorized that there

1 are approximately 8,289 unique meal period violations (*i.e.* meal periods that were missed,
2 short, or were exactly 30 minutes in length). However, Class Counsel acknowledged that
3 Defendant paid 581 meal period premiums. Thus, one calculation performed by Class
4 Counsel at mediation resulted in **Defendant's exposure for failure to provide compliant**
5 **meal periods in a conservative amount of \$197,324.80** [(8,289 meal period violations –
6 581 meal period premiums paid) x 25.60/hour].

7 Class Counsel understand from the mediator and the mediation process that Defendant
8 makes the following arguments in connection with this claim: Defendant argues that it maintained
9 lawful meal period policies and provided employees with the opportunity to take compliant meal
10 periods. Defendant further contends that its records accurately reflect meal periods taken by
11 employees and disputes Plaintiff's contention that employees were not relieved of duty or were
12 required to work through meal periods. Defendant also asserts that any allegedly missed, late, short,
13 interrupted, or on-duty meal periods were the result of individual circumstances and would require
14 individualized inquiries, making class treatment inappropriate. Defendant further disputes
15 Plaintiff's assumptions regarding the frequency of meal period violations and contends that meal
16 period premiums were paid when owed. Thus, Defendant contends that *no* monies are owed on this
17 account but, even if any amounts were due, the amount calculated by Class Counsel is excessive.

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

19 Class Counsel theorized at the mediation, based on Plaintiff's narrative evidence and
20 documents produced by Defendant, that Class Members were not provided compliant rest periods
21 throughout the Class Period. Class Counsel understand, based on Plaintiff's narrative evidence, that
22 rest periods were frequently missed, shortened, or interrupted due to understaffing, workload
23 demands, customer-service expectations, and the nature of the work performed. Plaintiff reported
24 that employees were often required to remain available during purported rest periods, respond to
25 work-related issues, assist customers, answer calls, or forego breaks entirely in order to complete
26 assigned duties. Class Counsel further understand that Defendant did not maintain records reflecting
27 whether compliant rest periods were actually provided, and did not consistently pay rest period
28 premiums when compliant rest periods were not provided.

1 One theory advanced by Class Counsel, based on Plaintiff's narrative evidence and
2 Defendant's records, was that Class Members experienced non-compliant rest periods at a high rate
3 during the Class Period. Thus, one calculation performed by Class Counsel at mediation resulted in,
4 assuming a forty percent (40%) violation rate, **Defendant's exposure for failure to provide**
5 **compliant rest periods in a conservative amount of \$626,503.68** (61,182 eligible shifts x 0.4
6 violation rate x \$25.60/hour).

7 Class Counsel understand from the mediator and the mediation process that Defendant
8 makes the following defenses in connection with this claim: Defendant argues that it had compliant
9 rest period policies and practices. Defendant argues that Class Members took timely and full rest
10 periods. Defendant contends that its policy requires their employees to take timely and full rest
11 periods. Defendant further contends that any instance of a Class Member failing to take a compliant
12 rest period was voluntary, in violation of their rest period policy, would necessitate an individualized
13 inquiry and would not lend itself to a manageable trial. Finally, Defendant contends that a forty
14 percent (40%) violation rate is a wild exaggeration of non-compliant rest periods, if there were any.
15 Thus, Defendant contends that *no* monies are owed for this account but, even if any amounts were
16 due, the amount calculated by Class Counsel is excessive.

17 4. Failure to Reimburse Business Expenses

18 Class Counsel theorized at the mediation, based on Plaintiff's narrative evidence and
19 documents produced by Defendant, that Defendant failed to reimburse Class Members for necessary
20 business expenses incurred in violation of California law. Class Counsel understand, based on
21 Plaintiff's narrative evidence, that Defendant did not provide company cell phones or laptops to
22 employees and did not pay reimbursement for employees' use of their personal cell phones for work-
23 related purposes. Plaintiff further reported that Defendant required employees to use their personal
24 vehicles for work-related tasks, including delivering products to customers, but did not maintain a
25 compliant mileage reimbursement policy or reimburse employees for those expenses. However,
26 after investigation and diligent inquiry, Class Counsel discounted this theory of liability at the time
27 of mediation to focus on Plaintiffs' other wage-and-hour claims, among others.

28 Class Counsel understand from the mediator and the mediation process that Defendant

1 makes the following defenses in connection with this claim: Defendant contends that it complied
2 with all applicable reimbursement obligations and that employees were not required to incur
3 unreimbursed business expenses. Defendant further contends that any alleged use of personal cell
4 phones or vehicles was either not required, not necessary, not incurred for Defendant's benefit, or
5 would require individualized inquiries as to whether an expense was incurred, whether it was
6 necessary, whether Defendant knew or should have known of the expense, and the amount of any
7 reimbursement owed. Defendant also disputes Plaintiff's estimated reimbursement amount and
8 denies that any reimbursement is owed. Thus, Defendant contends that *no* monies are owed on this
9 account.

10 5. Wage Statement Violations

11 Class Counsel theorized at the mediation, based on Plaintiff's narrative evidence and
12 documents produced by Defendant, that Class Members are entitled to recover penalties for
13 Defendant's alleged failure to issue compliant wage statements under Labor Code section 226,
14 subdivision (e). Class Counsel understand that, as a result of Defendant's alleged failure to pay
15 for all hours worked, failure to include commissions in the regular rate of pay, failure to reimburse
16 necessary business expenses, and failure to pay all meal and rest period premiums owed, the wage
17 statements issued to Class Members during the Class Period did not accurately reflect all wages
18 earned. Plaintiff further contended that, under applicable law, the underlying wage-and-hour
19 violations support derivative wage statement penalties where the resulting wages and premiums
20 are not timely and accurately reflected on employees' wage statements.

21 However, due to the derivative nature of wage statement penalties, as well as the
22 requirement that Defendant's failure to comply with Labor Code section 226 be knowing and
23 intentional, one calculation performed by Class Counsel at mediation, based on the initial penalty
24 of fifty dollars (\$50) in light of Defendant's defenses, resulted in **Defendant's maximum**
25 **exposure for wage statement violations in the amount of \$352,150** (7,043 pay periods x
26 \$50/pay period)...

27 Class Counsel understand from the mediator and the mediation process that Defendant
28 makes the following defenses in connection with this claim: Defendant contends that the wage

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

11 6. Waiting Time Penalties

12 Pursuant to Labor Code sections 201, 202, and 203, each employee who separates from
13 employment and is not paid all wages due at the time of separation is entitled to recover waiting
14 time penalties of up to thirty (30) days of wages. Class Counsel theorized at the mediation, based
15 on Plaintiff's narrative evidence and documents produced by Defendant, that Defendant failed to
16 timely pay all wages due to separated employees, including wages for off-the-clock work, overtime
17 and regular-rate amounts, meal and rest period premiums, reimbursement amounts, and other
18 derivative amounts. Class Counsel understand, based on Defendant's records, that a portion of Class
19 Members separated from employment during the Class Period.

20 One theory advanced by Class Counsel, based on Defendant's records and reasonable
21 assumptions regarding separated employees, was that approximately forty-four (44) Class Members
22 were former employees entitled to waiting time penalties. Thus, one calculation performed at
23 mediation by Class Counsel resulted in **Defendant's exposure for waiting time penalties to be**
24 **approximately \$270,336** (44 separated Class Members x \$25.60/hour x 8 hours x 30 days).

25 Class Counsel understand from the mediator and the mediation process that Defendant
26 contends that there is no credence to Plaintiff's off-the-clock theory and that, thus, no waiting time
27 penalties are owed based on that theory. Finally, Defendant contends that its actions were not
28

1 “willful” and that, thus, waiting time penalties cannot be awarded. Thus, Defendant argued that no
2 waiting time penalties are owed.

3 7. PAGA Penalties

4 Class Counsel understand from the time and payroll data provided by Defendant that there
5 were approximately 7,043 pay periods in the PAGA Period and approximately 188 aggrieved
6 employees during that time. Plaintiff’s claims in the Action under PAGA are substantially similar
7 to those described herein. PAGA penalties include penalties for initial violations and subsequent
8 violations. While Defendant contends that only initial violation rates may be applied, Plaintiff’s
9 claims include multiple predicate Labor Code violations, including: (1) failure to pay overtime
10 wages; (2) failure to pay minimum wages; (3) failure to provide meal periods or compensation in
11 lieu thereof; (4) failure to provide rest periods or compensation in lieu thereof; (5) failure to timely
12 pay wages during employment; (6) failure to provide accurate wage statements; (7) failure to
13 timely pay all wages upon separation of employment; (8) failure to indemnify employees for
14 necessary business expenses; and (9) violation of Labor Code section 227.3.

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

18 a. Overtime Violations: Labor Code section 558 prescribes penalties of \$50 for an
19 initial violation and \$100 for each subsequent violation. Applying the initial violation rate for all
20 pay periods—given the absence of any prior governmental finding of violation—and assuming
21 one violation per pay period during the PAGA Period, this results in a maximum exposure of
22 \$352,150.00 (7,043 pay periods × \$50).

23 b. Minimum Wage Violations: Labor Code section 1197.1 prescribes penalties of
24 \$100 for an initial violation and \$250 for each subsequent violation. Applying the initial violation
25 rate for all pay periods—given the absence of any prior governmental finding of violation—and
26 assuming one violation per pay period during the PAGA Period, this results in a maximum
27 exposure of \$704,300.00 (7,043 pay periods × \$100).

1 c. Meal Period Violations: Labor Code section 558 prescribes penalties of \$50 for an
2 initial violation and \$100 for each subsequent violation. Applying the initial violation rate for all
3 pay periods—given the absence of any prior governmental finding of violation—and assuming
4 one violation per pay period during the PAGA Period, this results in a maximum exposure of
5 \$352,150.00 (7,043 pay periods × \$50).

6 d. Rest Period Violations: Labor Code section 558 prescribes penalties of \$50 for an
7 initial violation and \$100 for each subsequent violation. Applying the initial violation rate for all
8 pay periods—given the absence of any prior governmental finding of violation—and assuming
9 one violation per pay period during the PAGA Period, this results in a maximum exposure of
10 \$352,150.00 (7,043 pay periods × \$50).

11 e. Wage Statement Violations: According to *Gunther v. Alaska Airlines, Inc.* (2021)
12 287 Cal.Rptr.3d 229, in this instance, Labor Code section 2699 would be the appropriate penalty
13 for wage statement violations that are inaccurate, which prescribes penalties of \$100 for an initial
14 violation and \$200 for each subsequent violation (*Id.* at 247-248). Using the initial pay period rate
15 for all violations and a violation every single pay period for every single Aggrieved Employee in
16 the PAGA Period, this amounts to a maximum exposure of \$704,300.00 (7,043 pay periods x
17 \$100).

18 g. Failure to Reimburse Business Expenses: Labor Code section 2699 prescribes
19 penalties of \$100 for an initial violation and \$200 for each subsequent violation. Applying the
20 initial violation rate for all pay periods—given the absence of any prior governmental finding of
21 violation—and assuming one violation per pay period during the PAGA Period, this results in a
22 maximum exposure of \$704,300.00 (7,043 pay periods × \$100).

23 h. Waiting Time Penalties: Labor Code section 2699 prescribes penalties of \$100 for
24 an initial violation and \$200 for each subsequent violation. Because this violation arises only upon
25 separation of employment, it is appropriate to assume one violation per aggrieved employee.
26 Based on Defendant's data, approximately 188 Aggrieved Employees were employed during the
27 PAGA Period. Applying the initial violation rate of \$100, this results in a maximum exposure of
28 \$4,400.00 (44 employees × \$100).

i. Conclusion: Class Counsel calculated Defendant's total maximum exposure for PAGA penalties—assuming a violation at the applicable initial penalty rate across the predicate Labor Code violations identified above, and no discretionary reduction by the Court—to be approximately **\$3,173,750.00** across all alleged violations. Class Counsel recognize that this represents a theoretical ceiling rather than a likely recovery, as courts routinely exercise their discretion to substantially reduce PAGA penalties where warranted. Class Counsel understand that Defendant advanced several defenses in connection with these claims. 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. Defendant argues that PAGA penalties cannot and should not be stacked across overlapping violations; that individualized issues predominate; and that Plaintiff cannot establish a violation for each pay period. Defendant further contends that a court is unlikely to exercise its discretion to impose civil penalties under PAGA where there is no evidence that any Labor Code violation was knowing or intentional. Finally, Defendant asserts that because Class Members are already eligible for class action damages under overlapping claims, an additional award of PAGA penalties would constitute impermissible double recovery.

Class Counsel maintain that it is possible to recover the subsequent violation rate for penalties, that stacking of penalties across multiple Labor Code violations is permissible, and that PAGA penalties remain recoverable notwithstanding Defendant's defenses. As such, Class Counsel believe that a substantial reduction of this theoretical exposure is appropriate to reflect litigation risk, judicial discretion, and proportionality considerations, resulting in a valuation of approximately **\$313,375** as a reasonable estimate of the likelihood of what Plaintiff may recover at trial for PAGA penalties ($\$3,173,750 \times 0.10$).

8. Conclusion

When including derivative penalties, such as waiting time penalties, wage statement violations, and a reasonable valuation of PAGA penalties, Class Counsel theorized Defendant's maximum exposure to be approximately **\$1,978,395**. This amount reflects the aggregation of estimated exposure for unpaid off-the-clock wages, meal period premiums, rest period premiums, unreimbursed business expenses, wage statement penalties, waiting time penalties, and a

1 discounted valuation of PAGA penalties to account for litigation risk and the Court's discretion
2 in awarding civil penalties. In all, Class Counsel obtained a Gross Settlement Amount of
3 \$360,000.00. Particularly in light of the risks involving obstacles to class certification, all issues
4 and risks related to liability, the issues with manageability at trial, the discretionary nature of
5 PAGA penalties, and considering the case law regarding fair, reasonable and adequate settlements,
6 Class Counsel strongly believe that the settlement reached is fair, reasonable and adequate, and in
7 the best interest of Class Members.

8 Moreover, \$36,000.00 of the Gross Settlement Amount was attributed to PAGA penalties.
9 This allocation was decided mutually by the Parties and the mutual decision was based on: (1) the
10 fact that damages are available for the wage claims while only penalties are available for the
11 PAGA claims; (2) the risk that the Court may exercise its discretion to decline to stack PAGA
12 penalties; (3) the risk that the Court may exercise its discretion to not award the full amount of
13 PAGA penalties available; and (4) the risk that the Court may decline to award any PAGA
14 penalties at all in light of the fact that damages are available for Class Members and it may find
15 any further liability against Defendant unnecessarily punitive.

16 **VI. THE PROPOSED ATTORNEYS' FEES AND COSTS ARE REASONABLE**

17 Class Counsel seek an award of attorneys' fees of up to thirty-five percent (35%) of the Gross
18 Settlement Amount, which amounts to \$126,000.00, and reimbursement of litigation costs not to
19 exceed \$30,000.00. The requested fees are within the range of attorneys' fees commonly awarded
20 under the common fund doctrine in wage and hour class actions. The requested fee is fair and
21 reasonable in light of the contingent nature of the representation, the complexity of the issues
22 presented, the risks undertaken by Class Counsel, and the substantial time and effort devoted to
23 prosecuting this Action. Class Counsel prosecuted this Action on a wholly contingent basis,
24 advancing all costs and dedicating significant resources with no guarantee of recovery. The requested
25 fees and costs are justified by the results achieved for the Settlement Class and the risks inherent in
26 continued litigation. Moreover, Defendant has agreed not to oppose the requested attorneys' fees and
27 costs, and the requested amounts are within the parameters set forth in the Settlement Agreement.
28 Accordingly, the Court should preliminarily approve the requested attorneys' fees and costs.

1 **VII. THE REQUESTED CLASS REPRESENTATIVE SERVICE PAYMENT TO**
2 **THE NAMED PLAINTIFF AND CLASS REPRESENTATIVE IS**
3 **REASONABLE**

4 Plaintiff will request a Class Representative Service Payment of up to \$7,500.00 for her
5 service as Class Representative. This payment is intended to compensate Plaintiff for her efforts in
6 prosecuting this Action, including assisting Class Counsel, providing information and documents,
7 participating in the mediation process, reviewing and understanding the Settlement Agreement, and
8 remaining available throughout the litigation. Plaintiff also undertook risks by serving as the named
9 representative, including the potential for intrusive discovery, reputational harm, and a broader
10 release of claims than those applicable to the Settlement Class, including a waiver under California
11 Civil Code section 1542. The requested service payment is fair and reasonable and is consistent with
12 service awards routinely approved in wage and hour class actions. Moreover, Defendant has agreed
13 not to oppose the requested service payment, and the amount requested is within the parameters set
14 forth in the Settlement Agreement. Accordingly, the Court should preliminarily approve the
15 requested Class Representative Service Payment.

16 **VIII. CONDITIONAL CERTIFICATION FOR SETTLEMENT PURPOSES**

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

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

26 **1. Ascertainability** – “Ascertainability” is a due process requirement that
27 ensures it is possible to decide who will be bound by the judgment (res judicata effect). The
28 determination is made by examining the class definition and the size of the class. Here, the Class

Members definition (i.e., all persons employed by Defendant in California and classified as non-exempt, hourly-paid employees who worked for Defendant during the period from March 25, 2020, through March 19, 2025 (the “Class Period”)) is derived from the operative complaint, which alleges violations of Labor Code provisions 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 who is a non-exempt, hourly-paid employee who worked in California for Defendant during the Class Period based on Defendant’s payroll and employment records, which reflect approximately 244 Class Members.

2. Numerosity – According to the California Supreme Court, a putative class is sufficiently numerous to achieve the numerosity requirement if 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. Mich. 2013) 292 F.R.D. 454, 461.) However, as few as 10 class members have been found sufficient. (*See, e.g., Bowles v. Sup. Ct.* (1955) 44 Cal.2d 574.) Class Counsel understand from documents provided that Defendant identified approximately 244 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 properly included all required remuneration, including commissions, in the regular rate of pay; whether Defendant provided full, timely, and uninterrupted meal and rest periods; whether Class Members are entitled to premium pay for incomplete, untimely, or interrupted meal or rest periods; whether Defendant reimbursed necessary business expenses; whether Defendant provided accurate wage statements; and whether Defendant timely paid all wages due upon separation, among other claims as set forth above. While Defendant reserves its rights to object that commonality exists in the Action if the litigation were to continue, the Parties

1 agree for purposes of this Settlement only that Plaintiff's allegations meet the commonality
2 requirement.

3 **4. Typicality** – Typicality requires only that the named plaintiff's interests in
4 the action be significantly similar to those of other class members. (*Williams v. Sup. Ct.* (2013)
5 221 Cal.App.4th 1353, citing *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1021.)
6 Plaintiff contends that her claims are typical of those of other Class Members as Plaintiff: (1) was
7 a non-exempt, hourly-paid employee like other Class Members; (2) complains of not being paid
8 for all time under Defendant's control or suffered and/or permitted to work for Defendant; (3)
9 contends that commissions and other remuneration were not properly included in calculating
10 overtime and premium wages; (4) did not receive full premium pay for meal periods that were not
11 compliant with the Labor Code; (5) did not receive premium pay for rest periods that were not
12 provided; and (6) contends that she and other employees were not reimbursed for necessary
13 business expenses, among others as set forth above. The Parties agree for settlement purposes only
14 that Plaintiff's claims regarding policies and practices that are at the core of the lawsuit are typical
15 of the Class.

16 **5. Adequacy of Representation** - To maintain a class action, the representative
17 plaintiff must adequately protect the interests of the class. (*Williams v. Sup. Ct.* (2013) 221
18 Cal.App.4th 1353, citing *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1021.)
19 Adequacy of representation consists of two components. First, there must be no disabling conflicts
20 of interest between the class representative and the class. Second, the class representative must be
21 represented by counsel who are competent and experienced in the kind of litigation to be undertaken.
22 (*See McGhee v. Bank of Am.* (1976) 60 Cal.App.3d 442, 450; *accord In re Juniper Networks, Inc.*
23 *Securities Litigation* (N.D. Cal. 2009) 264 F.R.D. 584, 590.) Plaintiff contends, and Defendant does
24 not dispute for Settlement only, both criteria are met in this instance:

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

27 No conflicts, disabling or otherwise, exists between Plaintiff and Class Members because
28 Plaintiff alleges to have been damaged by the same alleged conduct of Defendant (i.e., Plaintiff

1 classified as a non-exempt, hourly-paid employee, not paid premium pay, etc.) and thus has the
2 incentive to fairly represent all Class Members' claims to achieve the maximum possible recovery.

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

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

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

10 This case presents common issues that are most efficiently adjudicated together, as
11 indicated above. Moreover, Plaintiff asserts that, with approximately 244 Class Members,
12 presentation of all of them before this Court individually would be problematic, impractical, and
13 burdensome. On the contrary, a class action allows the claims of many individuals to be resolved at
14 the same time, eliminates the possibility of repetitious litigation, and affords small claimants with a
15 method of obtaining redress for claims that otherwise would be too small to warrant individual
16 litigation.

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

20 **X. CONCLUSION**

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

23 Dated: September 24, 2026

BIBIYAN LAW GROUP, P.C.

24 */s/ Vedang Patel*

25 _____
VEDANG J. PATEL

26 Attorneys for Plaintiff, ELLEN ANN SOUZA, on
27 behalf of herself and all others similarly situated
28 and aggrieved