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Attorneys for Plaintiffs, MARK DOUGLAS, JR. and RICHARD FALCON, on behalf of themselves and all others similarly situated and aggrieved,

(*Additional Counsel on the next page*)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

MARK DOUGLAS, JR. and RICHARD FALCON, as individuals, and on behalf of all others similarly situated,

Plaintiffs,

v.

TRUGREEN LIMITED PARTNERSHIP, a Delaware limited partnerhsip; TRUGREEN COMPANIES L.L.C., a Delaware limited liability company; TRUGREEN, INC., a Delaware corporation; and DOES 1 through 10, inclusive,

Defendants.

CASE NO.: 24CV003985

[Assigned for all purposes to Hon. Lauri A. Damrell in Dept. 22]

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 VEDANG J. PATEL, DAVID D. BIBIYAN, RAUL PEREZ, MARK DOUGLAS, JR., RICHARD FALCON, AND ILYM GROUP, INC. IN SUPPORT THEREOF

HEARING INFORMATION:

DATE: August 14, 2026
TIME: 9:00 a.m.
DEPT: 22
Reservation Number: A-03985-005

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Co-Counsel for Plaintiffs, MARK DOUGLAS, JR. and RICHARD FALCON, on behalf of themselves and all others similarly situated and aggrieved,

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 14, 2026 at 9:00 a.m., or as soon thereafter as they may be heard in Department 22 of the Superior Court of the State of California for the County of Sacramento, plaintiffs Mark Douglas, Jr. and Richard Falcon (collectively, "Plaintiffs"), on behalf of themselves and all others similarly situated and aggrieved, will and hereby do move for this Court for entry of an Order:

1. Preliminarily certifying the following settlement class ("Class," "Settlement Class Members" or "Class Members") for the purpose of settlement only: all current and former non-exempt employees who worked for defendants TruGreen Limited Partnership, TruGreen Companies, LLC, and TruGreen, Inc. (collectively, "Defendants") in the State of California during the period from September 1, 2022 until December 31, 2024 ("Class Period").

2. Preliminarily approving Plaintiffs as Class Representatives.

3. Preliminarily approving David D. Bibiyan and Vedang J. Patel of Bibiyan Law Group, P.C., as well as Raul Perez and Orlando Villalba of Capstone Law APC, as Class Counsel.

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

5. Preliminarily approving payment of the Gross Settlement Amount of $395,000.00, which is subject to escalation pursuant to the Settlement Agreement.

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

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

8. Preliminarily approving the payment of not to exceed $8,450.00 for settlement administration to ILYM from the Gross Settlement Amount.

9. Preliminarily approving a service award of up to $10,000.00 each to plaintiffs Mark Douglas, Jr. and Richard Falcon, for a total of $20,000.00 to Plaintiffs, 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 thirty-five percent (35%) of the Gross Settlement Amount which, unless escalated

pursuant to the Settlement Agreement, amounts to $138,250.00.

11. Preliminarily approving reimbursement of Class Counsel's costs in an amount, according to proof, not to exceed $40,000.00.

12. Preliminarily approving PAGA penalties in the amount of $19,750.00, seventy-five percent (75%) or $14,812.50 of which will be paid to the Labor and Workforce Development Agency ("LWDA") out of the Gross Settlement Amount, and twenty-five percent (25%) or $4,937.50 of which will be distributed to "Aggrieved Employees," defined as all persons employed by Defendants in California and classified as non-exempt, hourly-paid employees who worked for Defendants during the period from March 16, 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 Vedang J. Patel, David D. Bibiyan, Rauel Perez, Mark Douglas, Jr., Richard Falcon, and ILYM Group, Inc., and exhibits attached thereto, arguments of counsel and upon such other materials contained in the file and pleadings of this action.

Local Rule 1.06(A)—Pursuant to Local Rule 1.06(A), the court will make a tentative ruling on the merits of this matter by 2:00 p.m., the court day before the hearing. The complete text of the tentative ruling may be downloaded off the court's website. If the party does not have online access, they may call the dedicated phone number for the department as referenced in the local telephone directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and receive the tentative ruling. If you do not call the court and the opposing party by 4:00 p.m. the day before the hearing, no hearing will be held.

Dated: April 30, 2026

BIBIYAN LAW GROUP, P.C.

/s/ Vedang J. Patel

VEDANG J. PATEL
Attorneys for Plaintiffs, MARK DOUGLAS, JR. and RICHARD FALCON, on behalf of themselves and all others similarly situated and aggrieved,

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Mark Douglas, Jr. and Richard Falcon (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 Vedang J. Patel as Exhibit "1."

On March 1, 2024, plaintiff Mark Douglas, Jr. ("Plaintiff Douglas") commenced this action by filing a class action complaint alleging causes of action against defendants TruGreen Limited Partnership, TruGreen Companies, LLC, and TruGreen, Inc. ("Defendants" and with Plaintiff, the "Parties") for: (1) failure to pay overtime; (2) failure to pay minimum wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) non-compliant wage statement and failure to maintain payroll records; (6) waiting time penalties; (7) failure to timely pay wages during employment; (8) unreimbursed business expenses; (9) unlawful business practices; and (10) unfair business practices (the "Douglas Action").

On March 14, 2024, Plaintiff Douglas filed with the LWDA and served on Defendants a notice under Labor Code section 2699.3, stating he intended to serve as a proxy of the LWDA to recover civil penalties on behalf of Aggrieved Employees for alleged Labor Code violations ("Douglas PAGA Notice"). A true and correct copy of the Douglas PAGA Notice is attached to the Declaration of Raul Perez as Exhibit "1."

On May 20, 2024, after sixty-five (65) days had passed since plaintiff Douglas filed and served the Douglas PAGA Notice, without any action by the LWDA with respect to the alleged Labor Code violations, plaintiff Mark Douglas, Jr. filed a first amended complaint in the Douglas Action, seeking PAGA civil penalties against Defendants for Labor Code violations alleged in the Douglas PAGA Notice.

On April 17, 2024, plaintiff Richard Falcon ("Plaintiff Falcon") filed a wage and hour class action complaint, captioned *Richard Falcon v. TruGreen Limited Partnership, et al.*, in the Los Angeles County Superior Court, Case No. 24STCV09751, alleging causes of action against defendants TruGreen Limited Partnership and Deanna Brush for: (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal periods or compensation in lieu thereof; (4) failure to provide rest periods or compensation in lieu thereof; (5) failure to pay all wages due upon separation from employment; (6) failure to provide accurate wage statements; (7) failure to timely pay wages during employment; (8) failure to indemnify for business expenses; (9) failure to pay unused vested vacation time; and (10) engaging in unfair competition (the "Falcon Action").

On April 17, 2024, plaintiff Richard Falcon filed with the LWDA and served on defendant TruGreen Limited Partnership a notice under Labor Code section 2699.3, stating Plaintiff intended to serve as a proxy of the LWDA to recover civil penalties on behalf of Aggrieved Employees for alleged Labor Code violations ("Falcon PAGA Notice"). A true and correct copy of the Falcon PAGA Notice is attached to the Declaration of Vedang J. Patel as Exhibit "2." The Douglas PAGA Notice and the Falcon PAGA Notice are hereinafter collectively referred to as the "PAGA Notices."

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

Prior to mediation, Plaintiffs obtained, through informal discovery: (1) time and payroll records for approximately 67 (19%) of the estimated 355 putative class members from September 1, 2022 through October 3, 2024; (2) Defendants' applicable wage and hour policy documents, including handbooks; and (3) all documents pertaining to Plaintiffs available to Defendants. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Ford Motor Co.* (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 17, 2024, the Parties participated in an all-day mediation presided over by Daniel J. Turner, Esquire, a well-regarded mediator experienced in mediating complex labor and employment matters. The mediation was successful, and the Parties agreed to globally resolve all class and PAGA claims in the Action.

As part of the Settlement, the Parties further agreed to stipulate to plaintiff Mark Douglas, Jr.'s filing a Second Amended Complaint in the Douglas Action, adding plaintiff Richard Falcon as a Class Representative. Upon the acceptance of the Second Amended Complaint in the Douglas Action, plaintiff Richard Falcon shall file a request for dismissal of Deanna Brush with prejudice and the remainder of the Falcon Action without prejudice. The Second Amended Complaint in the Douglas Action will be the Operative Complaint in the Action.

Class Counsel has conducted a significant investigation of the law and facts relating to the claims asserted in the Action and the PAGA Notices, and have concluded that the Settlement is fair, reasonable, adequate, and in the best interests of the Settlement's "Class Members" and "Aggrieved Employees," (defined below) taking into account the sharply contested issues involved, the expense and time necessary to litigate the Action through trial and any appeals, the risks and costs of further litigation of the Action, 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 and Aggrieved Employees.

II. THE SETTLEMENT

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

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

- Certification of a class ("Settlement Class," "Settlement Class Members" or "Class Members") defined as: all current and former non-exempt employees who worked for defendants TruGreen Limited Partnership, TruGreen Companies, LLC, and TruGreen, Inc. (collectively, "Defendants") in the State of California during the period from September 1, 2022 until December 31, 2024 ("Class Period").
- Defendants will pay $395,000.00 ("Gross Settlement Amount") to resolve the matter.
- Defendants represent that Class Members worked approximately 8,313 workweeks as of the date of the mediation. In the event the qualifying workweeks worked by Class Members during the Class Period increases over 8,313 by more than 10%, Defendants

shall have the option to either: (i) increase the Gross Settlement Amount on a pro-rata basis equal to the percentage increase in the number of workweeks worked by the Class Members above 10% (for example, if the number of workweeks increases by 11%, the Gross Settlement Amount will increase by 1%) or (ii) shorten the release period to an earlier date at which only the represented number of workweeks plus 10% are covered by the Class Period. Based on its records, Defendants estimate that, (1) there are 373 Class Members and 8,810 Total Workweeks during the Class Period and (2) there are 270 Aggrieved Employees who worked 6,394 Pay Periods during the PAGA Period. This information shall be confirmed by the administrator after court approval.

- Defendants 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 Settlement Administration costs, estimated not to exceed $8,450.00, 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 Raul Perez and Orlando Villalba of Capstone Law APC, may apply for, and Defendants will not oppose, attorneys' fees of up to thirty-five percent (35%) of the Gross Settlement Amount, which, unless escalated pursuant to the Settlement Agreement, amounts to $138,250.00, and actual costs, not to exceed $40,000.00, all of which will be paid out of the Gross Settlement Amount. Class Counsel may elect to seek fees less than 35% at the time of final approval.
- Class Counsel hereby apply for, and Defendants will not oppose, a service award of up to $10,000.00 each to plaintiffs Mark Douglas, Jr. and Richard Falcon, for a total of $20,000.00 to Plaintiffs, which will be paid out of the Gross Settlement Amount.

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

- "Aggrieved Employees" means all persons employed by Defendants in California and classified as non-exempt, hourly-paid employees who worked for Defendants during the period from March 16, 2023 through the end of the Class Period ("PAGA Period").
- Defendants have agreed to pay $19,750.00 as PAGA penalties, seventy-five percent (75%) or $14,812.50 of which will be paid to the LWDA out of the Gross Settlement Amount, and twenty-five percent (25%) or $4,937.50 of which will be distributed to the Aggrieved Employees.
- Each Class Member's settlement payment will be allocated 20% as wages (subject to withholdings and reported on a W-2) and 80% as penalties/interest (not subject to withholdings and reported on a 1099). Individual PAGA Payments will be treated as miscellaneous income on IRS 1099 Forms.
- For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date (180 days after the date of mailing), the Administrator shall transmit the funds represented by such checks to the *cy pres* recipient, Legal Aid at Work.
- Class Members release Defendants from all claims asserted or that could have been asserted based on the complaint's facts during the class period, including wage-and-hour violations (e.g., overtime, minimum wage, meal/rest breaks, wage statements/payroll records, waiting time penalties, pay wages timely during employment, unreimbursed expenses, vacation wages), as well as related unfair competition claims. (Settlement Agreement ¶ 5.2.)
- All Aggrieved Employees release Defendants from any PAGA penalty claims that were or could have been asserted based on the facts alleged in the action, complaint, and PAGA notice during the PAGA period. (Settlement Agreement 5.4.)
- Because the releases are expressly limited to claims that that were alleged, or which could have been alleged based on the factual allegations in the Douglas Action, the Falcon Action, and the PAGA Notices, the releases comply with California law. *See Villacres v. ABM Industries Inc.*, 189 Cal. App. 4th 562, 586 (2010) ("[A] court may

release not only those claims alleged in the complaint and before the court, but also claims which could have been alleged by reason of or in connection with any matter or fact set forth or referred to in the complaint.").

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

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

IV. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS

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

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

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

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, number of Class Members eligible for wage statement penalties and waiting time penalties; 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 believe in the chance of success of certifying the claims, Class Counsel recognized the potential risk, expense and complexity posed by further litigation. Moreover, litigating Plaintiffs' claims in this litigation—claims that involve approximately 373 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 the Range of Reasonableness

The settlement amount reached in this case provides significant recovery to Class Members and Aggrieved Employees, and easily falls within the range of reasonableness. Based on documents and information provided by Defendants, Class Counsel understands there are no more than 8,810 Workweeks during the Class Period.

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

Class Counsel theorized, based on Plaintiffs' narrative evidence and documents produced by Defendants, that Defendants failed to pay all wages due to Class Members because Defendants required Class Members to work off-the-clock or Class Members spent time off-the-clock under Defendants' control, including: (1) pre-shift duties, such as loading the truck with supplies needed for the day's work and/or attending a team meeting before clocking in; (2) post-shift duties, such as unloading of the truck and conducting an inventory of supplies after clocking out; and (3) taking calls and responding to text messages from supervisors and co-workers regarding work routes and other work-related matters, all without pay. Additionally, Class Counsel understand, from the same bases, that Defendants had a policy and practice of requiring employees to record synthetic time entries, i.e., requiring employees to clock in and out at their scheduled shift's start time and end time respectively, instead of actual time worked, resulting in unrecorded and unpaid time worked.

One theory advanced by Class Counsel alleged, based on Plaintiffs' narrative evidence, that Class Members worked off-the-clock for a conservative estimate of five (5) minutes each shift throughout the Class Period, without pay. Class Counsel understand, based on time and payroll records produced by Defendants and analysis thereof by expert data consultants retained by Class Counsel, that there were approximately 38,200 shifts during the Class Period and Class Members had an average hourly rate of pay of $17.19. Thus, one calculation performed by Class Counsel, assuming all shifts throughout the Class Period were over eight (8) hours in length, resulted in **Defendants' exposure for unpaid off-the-clock work, specifically for overtime alone, in a conservative amount of $78,799** (38,200 shifts x 0.08 hour x $17.19 x 1.5 overtime rate).

Defendants contend that their policies specifically prohibit off-the-clock work. Defendants contend that they did not require Class Members to work off-the-clock and, rather, they were paid for all time suffered or permitted to work. Defendants contend that any allegations that Class Members were required to be under Defendants' 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. Thus, Defendants contend that no damages can be recovered here, and, even if, *arguendo*, it could, an estimate of five (5) minutes of unpaid time for *every single* shift worked by all Class Members during the Class Period is a *wild* exaggeration of time spent working off-the-clock if *any* such time was spent.

2. Recovery of Damages for Non-Compliant Meal Periods

Class Counsel theorized, based on Plaintiffs' narrative evidence, that Defendants' meal period practices throughout the Class Period were non-compliant because meal periods were late, short or missed due to: (1) the heavy workload, including travelling to 15 to 30 residential and commercial properties, and applying fertilizers and pesticides, which must be completed within the workday; (2) understaffing, including single staffing for certain positions; and (3) travel time from one property to another, which was lengthened by heavy traffic conditions. Notably, based upon records provided by Defendants, and analyzed by expert data consultants, Class Counsel understands there were no meal period premiums ever issued throughout the Class Period.

Class Counsel theorized, based on documents produced by Defendants and analysis thereof by expert data consultants retained by Class Counsel, that 40% of the shifts had meal period violations. Thus, one calculation advanced by Class Counsel, assuming all shifts throughout the Class Period were meal-eligible, resulted in **Defendants' exposure for facial meal period violations in the approximate amount of $262,663** (38,200 shifts x 0.40 violation rate x $17.19/hour).

Class Counsel understands that Defendants make the following defenses in connection with this claim: Defendants argue that they had compliant meal period policies and practices. Defendants argue that Class Members took timely and full meal periods. Defendants contend that their policy requires their employees to take timely and full meal periods. Defendants further contend 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. Thus, Defendants contend 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 Plaintiffs' narrative evidence, that Defendants' rest period practices throughout the Class Period were non-compliant because rest periods were late, short or missed due to, like meal periods, the heavy workload, understaffing and long travel time from one property to another. Notably, there were no rest period premiums ever issued throughout the Class Period. Thus, one calculation performed by Class Counsel resulted in, assuming all shifts throughout the Class Period were rest-eligible and a 40% violation rate, **Defendants' exposure for failure to provide compliant rest periods in a conservative amount of $262,663** (38,200 shifts x 0.40 violation rate x $17.19/hour).

Class Counsel understands that Defendants make the following defenses in connection with this claim: Defendants argue that they had compliant rest period policies and practices. Defendants argue that Class Members took timely and full rest periods. Defendants contend that their policy requires their employees to take timely and full rest periods. Defendants further contend 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, Defendants contend that a 40% violation rate is a wild exaggeration of non-compliant rest periods, if there were any. Thus, Defendants contend that *no* monies are owed for this account but, even if any amounts were due, the amount calculated by Class Counsel is excessive

4. Failure to Indemnify for Business Expenses

Class Counsel theorized, based on Plaintiffs' narrative evidence, that Defendants failed to indemnify Class Members for necessary business expenses because Defendants required all Class Members to use their personal cellphones and data in taking calls and responding to text messages from supervisors and co-workers regarding work routes and other work-related matters, without compensation.

Class Counsel theorized, based on Plaintiffs' narrative evidence, that each Class Member would incur an expense of approximately $10 per month for cellphone and data costs throughout the Class Period. Thus, one calculation performed by Class Counsel resulted in **Defendants' exposure for failure to indemnify for business expenses of $100,710** ($10/month x 27 months x 373 Class Members)

Class Counsel understands from the mediator and the mediation process that Defendants argued the following: Defendants argued that they reimbursed employees for all expenses incurred in furtherance of work. Defendants also argued that Class Members were using their cellphones and data for personal use, and Defendants have no obligation to reimburse Class Members for such use. Thus, Defendants contend that they owe no monies to Class Members under this theory, either.

5. Wage Statement Violations

Class Counsel theorized that Class Members are entitled to recover penalties for Defendants' 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, Defendants' 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 Defendants that there were 6,394 pay periods during the relevant statutory time period for Class Members. If, in fact, Class Members worked every off-the-clock every shift as set forth above, and no rest premiums were paid, every wage statement would thus, Class Counsel theorized, violate Labor Code section 226. Thus, one calculation performed by Class Counsel, resulted in **Defendants' maximum exposure for wage statement violations in the amount of $639,400** (6,394 pay periods x $100/pay period).

Class Counsel understands that Defendants make the following defenses in connection with this claim: Defendants contend that the wage statements issued to the employees fully complied with Labor Code section 226. Defendants contend that because they believe no wages are unpaid that, thus, there can be no derivative penalties. However, Class Counsel also understands 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 Defendants' conduct was not intentional, both of which are requirements of Labor Code section 226 before penalties can issue. Class Counsel also notes that the calculation used does not take into account the first pay period violation only being $50 and the fact that all Class Members did not work all pay periods and, therefore, do not qualify for the maximum penalty of $4,000 as calculated in Plaintiffs' exposure model used at mediation.

6. Waiting Time Penalties

Pursuant to Labor Code sections 201, 202 and 203, each employee in the relevant statutory period (*i.e.*, three years before the filing of the initial Complaint) is entitled to 30 days' worth of wages as waiting time penalties for not being paid all wages due upon separation from employment. Class Counsel theorized, based on relevant documents provided by Defendants, that, under Labor Code section 203, Defendants are 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 Defendants, there were approximately 280 Class Members who were terminated or resigned during the relevant statutory period. Thus, one calculation performed by Class Counsel resulted in **Defendants' exposure for waiting time penalties to be approximately $1,155,168** (280 separated Class Members x $17.19/hour x 8 hours x 30 days).

Class Counsel understands that Defendants contend that there is no credence to Plaintiffs' off-the-clock theory and that, thus, no waiting time penalties are owed based on that theory. Finally, Defendants contend that their actions were not "willful" and that, thus, waiting time penalties cannot be awarded. Defendants argued that no waiting time penalties are owed.

7. PAGA Penalties

Class Counsel understands, as of the date of mediation, from the time and payroll data provided by Defendants that Aggrieved Employees collectively worked 6,394 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. Defendants contend 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 Defendants at any time were 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 Defendants to include only initial violation rates.

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

a. <u>Overtime Violations</u>: Labor Code section 558 prescribes penalties of $50 for an initial violation and $100 for each subsequent violation. Using the initial pay period rate for all violations, and a violation every single pay period for every single non-exempt employee in the PAGA Period, this amounts to a maximum exposure of $319,700 (6,394 pay periods x $50).

b. <u>Minimum Wage Violations</u>: Labor Code section 1197.1 prescribes penalties of $100 for an initial violation and $250 for each subsequent violation. Using the initial pay period rate for all violations and a violation every single pay period for every single Aggrieved Employee in the PAGA Period, this amounts to a maximum exposure of $639,400 (6,394 pay periods x $100).

c. <u>Meal Period Violations</u>: Labor Code section 558 prescribes penalties of $50 for an initial violation and $100 for each subsequent violation. Using the initial pay period rate for all violations and a violation every single pay period for every single non-exempt employee in the PAGA Period, this amounts to a maximum exposure of $319,700 (6,394 pay periods x $50).

d. <u>Rest Period Violations</u>: Labor Code section 558 prescribes penalties of $50 for an initial violation and $100 for each subsequent violation. Using the initial pay period rate for all violations and a violation every single pay period for every single non-exempt employee in the PAGA Period, this amounts to a maximum exposure of $319,700 (6,394 pay periods x $50).

e. Failure to Reimburse Work Expenses: Labor Code section 2699 would be the appropriate penalty for failure to reimburse work expenses, which prescribes penalties of $100 for an initial violation and $200 for each subsequent violation. Using the initial pay period rate for all violations, and a violation every single pay period for every single Aggrieved Employee in the PAGA Period, this amounts to a maximum exposure of $639,400 (6,394 pay periods x $100).

f. 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 $639,400 (6,394 pay periods x $100).

g. Waiting Time Penalties: Labor Code section 2699 prescribes penalties of $100 for an initial violation and $200 for each subsequent violation. Because this violation is merited only at separation of employment, a 100% violation rate would likely include just one violation per employee. The data produced by Defendants indicate that there were 200 Aggrieved Employees whose employment was separated during the PAGA Period. This amounts to a maximum exposure of $20,000 (200 Aggrieved Employees x $100).

h. Conclusion: In sum, Class Counsel calculated Defendants' 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 $2,897,300. Class Counsel understands that Defendants argued the following in connection with this claim: Defendants contend 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, Defendants defend that PAGA penalties cannot and should not be stacked. Second, Defendants assert that individualized issues predominate the PAGA claims, making the claims unmanageable for trial. Third, Defendants deny that a violation for each pay period can be established. Fourth, Defendants contend 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 Defendants is knowing and intentional. Defendants insist that this is especially true in the Action where class action damages are available to Class Members, rendering an award of PAGA penalties in addition to class action damages to be double recovery.

Class Counsel maintain that it is possible to recover the subsequent violation rate for penalties, that stacking is permissible, and that there is no manageability requirement under PAGA (citing *Estrada v. Royalty Carpet Mills, Inc.*). As such, Class Counsel believe a 90% discount of this claim to be reasonable, resulting in **$289,730** as a reasonable estimate of the likelihood of what Plaintiff may recover at trial for PAGA penalties ($2,897,300 x 0.10).

8. Conclusion

When including derivative penalties, such as waiting time penalties, wage statement violations, and discretionary PAGA penalties, Class Counsel theorized Defendants' maximum exposure to be approximately **$2,789,133**. In all, Class Counsel obtained a Gross Settlement Amount of **$395,000.00**. 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 believes that the settlement reached is fair, reasonable and adequate, and in the best interest of Class Members and Aggrieved Employees.

Moreover, $19,750.00 of the Gross Settlement Amount was attributed to PAGA penalties. This allocation was decided mutually by the Parties and the mutual decision was based on: (1) the fact that damages are available for the failure to pay wage claims while only penalties are available for the PAGA claims; (2) the risk that the Court may exercise its discretion to decline to stack PAGA penalties; (3) the risk that the Court may exercise its discretion to not award the full amount of PAGA penalties available; and (4) the risk that the Court may decline to award any PAGA penalties at all in light of the fact that damages are available for Class Members and it may find any further liability against Defendants unnecessarily punitive.

VII. <u>THE PROPOSED ATTORNEYS' FEES AND COSTS ARE REASONABLE</u>

Class Counsel seek an attorneys' fees award of *up to* thirty-five percent (35%) of the Gross Settlement Amount, which, unless escalated pursuant to this Agreement, would amount to

$138,250.00. Class Counsel also seek reimbursement of costs not to exceed $40,000.00. 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 Defendants and are well within established guidelines.

VIII. <u>THE REQUESTED ENHANCEMENT AWARD TO THE NAMED PLAINTIFFS AND CLASS REPRESENTATIVES IS REASONABLE</u>

Plaintiffs are entitled to an enhancement award for their service as class representatives, for answering extensive questions by Class Counsel, for being available and answering questions during mediation, for the risks in being the named plaintiff and for providing Defendants with a more expansive release of claims, including a waiver based upon California Civil Code section 1542, in exchange for the enhancement award. Defendants do not oppose the requested enhancement to Plaintiffs. Plaintiffs risked intrusive discovery and the payment of employer costs.

Plaintiffs will file a formal motion for the negotiated enhancement awards once preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that the above showing is sufficient for preliminary approval of the negotiated enhancement awards.

IX. <u>CONDITIONAL CERTIFICATION FOR SETTLEMENT PURPOSES</u>

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 who worked for Defendants in the State of California 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 current and former non-exempt employee who worked for Defendants in the State of California during the Class Period based solely from Defendants' payroll records, which amounts to approximately 373 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 understands from documents provided that Defendants identified at least 373 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 Defendants failed to pay for all hours worked; whether Defendants provided full, timely and un-interrupted meal and rest periods; whether Class Members are entitled to premium pay for incomplete, untimely or interrupted meal or rest periods, among other claims as set forth above.

4. Typicality – Typicality requires only that the named plaintiff's interests in the action be significantly similar to those of other class members. (*Williams v. Sup. Ct.* (2013) 221 Cal.App.4th 1353, citing *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1021.) Plaintiffs contend that their claims are typical of those of other Class Members as Plaintiffs: (1) are non-exempt, hourly-paid employees like other Class Members; (2) complains of not being paid for all time under Defendants' control or suffered and/or permitted to work for Defendants; (3) did not receive premium pay for meal periods that were not compliant with the Labor Code; (4) did not receive premium pay for rest periods that were not provided, among others, as set forth above. Thus, Plaintiffs' claims are typical of other Class Members.

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

(i) <u>No Disabling Conflict of Interest Exists Between the Class Representatives and the Class</u>

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

(ii) <u>Class Counsel are Experienced Class Action Attorneys</u>

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, Plaintiffs assert that, with at least 373 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. <u>CONCLUSION</u>

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

Dated: April 30, 2026

BIBIYAN LAW GROUP, P.C.

/s/ Vedang J. Patel

VEDANG J. PATEL

Attorneys for Plaintiffs, MARK DOUGLAS, JR. and RICHARD FALCON, on behalf of themselves and all others similarly situated and aggrieved,