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Attorneys for Plaintiffs, JADE MARIE ADKINS and EDWARD CAGE, on behalf of themselves and all others similarly situated and aggrieved

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

JADE MARIE ADKINS and EDWARD CAGE, individuals, and on behalf of all others similarly situated,

Plaintiffs,

v.

KOAM ENGINEERING SYSTEMS, INC., a Delaware Corporation; BILLY BRYANT, an individual; and DOES 1 through 100, inclusive,

Defendants.

LEAD CASE NO.: 24CU007753C

RELATED CASE NO.: 24CU018806C

[Assigned for all purposes to the Hon. Gregory W. Pollack in Dept. C-71]

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, JADE MARIE ADKINS, EDWARD CAGE AND SEAN HARTRANFT IN SUPPORT THEREOF

HEARING INFORMATION:

DATE: March 12, 2027
TIME: 9:30a.m.
DEPT: C-71

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on March 12, 2027 at 9:30 a.m., or as soon thereafter as they may be heard in Department C-71 of the Superior Court of the State of California for the County of San Diego, plaintiffs Jade Marie Adkins and Edward Cage (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 persons currently or formerly employed by defendants Koam Engineering Systems, Inc., and Billy Bryant (collectively, "Defendants") in California as non-exempt, hourly-paid employees within the State of California who worked for Defendants during the period from August 22, 2020 through September 10, 2025 ("Class Period") and have not previously released their claims through a separate agreement with Defendants.

2. Preliminarily approving Plaintiffs as Class Representatives.

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

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

5. Preliminarily approving payment of the Gross Settlement Amount of $600,000.00, which is subject to escalation pursuant to the Settlement Agreement.

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

7. Appointing Apex Class Action, LLC ("Apex"), 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 $6,990.00 for settlement administration to Apex from the Gross Settlement Amount.

9. Preliminarily approving service awards of up to $10,000.00 to plaintiff Jade Marie Adkins and up to $7,500.00 to plaintiff Edward Cage, for a total of not more than $17,500.00 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 $210,000.00.

11. Preliminarily approving reimbursement of Class Counsel's costs in an amount, according to proof, not to exceed $30,000.00.

12. Preliminarily approving PAGA penalties in the amount of $100,000.00, sixty-five percent (65%) or $65,000.00 of which will be paid to the Labor and Workforce Development Agency ("LWDA") out of the Gross Settlement Amount, and thirty-five percent (35%) or $35,000.00 of which will be distributed to "Aggrieved Employees," defined as all hourly-paid, non-exempt employees who performed work in California and who is or was formerly employed by Defendants within the State of California during the period from June 21, 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, Jade Marie Adkins, Edward Cage, 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: August 3, 2026

BIBIYAN LAW GROUP, P.C.

/s/ Keaton D. Mendoza

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VEDANG J. PATEL
KEATON D. MENDOZA

Attorneys for Plaintiffs, JADE MARIE ADKINS and EDWARD CAGE, on behalf of themselves and all others similarly situated and aggrieved

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Jade Marie Adkins and Edward Cage (collectively, "Plaintiffs"), on behalf of themselves and all others similarly situated and aggrieved, hereby apply 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 June 21, 2024, plaintiff Jade Marie Adkins filed with the California Labor and Workforce Development Agency ("LWDA") and served on defendant Koam Engineering Systems, Inc., a notice under Labor Code section 2699.3, stating she intended to serve as a proxy of the LWDA to recover civil penalties on behalf of Aggrieved Employees for alleged Labor Code violations (the "Adkins PAGA Notice"). A true and correct copy of the Adkins PAGA Notice is attached to the Declaration of Vedang J. Patel as Exhibit "2."

On August 20, 2024, plaintiff Jade Marie Adkins filed with the LWDA and served on defendant Koam Engineering Systems, Inc., an amended notice under Labor Code section 2699.3, adding additional claims and code sections (the "Adkins Amended PAGA Notice"). A true and correct copy of the Adkins Amended PAGA Notice is attached to the Declaration of Vedang J. Patel as Exhibit "3." The Adkins PAGA Notice and the Adkins Amended PAGA Notice are hereinafter collectively referred to as the PAGA Notices.

On August 22, 2024, plaintiff Jade Marie Adkins commenced this Action by filing a complaint alleging causes of action against defendants Koam Engineering Systems, Inc., and Billy Bryant (collectively, "Defendants") 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; (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 (9) engaging in unfair competition (the "Adkins Class Action" or the "Action").

/ / /

On October 23, 2024, after sixty-five (65) days had passed without any action by the LWDA with respect to the Labor Code violations alleged in the Adkins PAGA Notice, plaintiff Jade Marie Adkins filed a separate representative action under PAGA against Defendants in the San Diego County Superior Court, captioned *Jade Marie Adkins v. Koam Engineering Systems, Inc., et al.*, Case No. 24CU018806C, for the Labor Code violations set out in the PAGA Notices (the "Adkins PAGA Action").

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

Prior to mediation, Plaintiffs obtained, through informal discovery: (a) approximately 33% sampling of time and payroll records of the estimated 208 putative class members during the class period; (b) data points, including the number of putative class members, workweeks and shifts during the class period, the number of putative class members separated in the waiting time penalty period, the number of pay periods in the wage statement penalty period, the number of pay periods during the PAGA period, and the average hourly rate of pay; (c) contact information of the putative class members; (d) wage and hour policy documents of Defendants; and (e) all documents pertaining to Plaintiffs available to Defendants.

Plaintiffs' 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 February 24, 2025, the Parties participated in an all-day mediation presided over by Steve Pearl, Esquire. The mediation was not successful. However, in the months thereafter, and with the assistance of the mediator, the Parties continued to negotiate until they reached an agreement to globally resolve all class and PAGA claims in the Action.

As part of this Agreement, the Parties agree to stipulate to Plaintiff's filing a First Amended Complaint ("FAC") in the Action, adding all allegations in the PAGA Action and adding Edward Cage as a Plaintiff, thereby effectively consolidating the allegations in the Class Action and the PAGA Action for purposes of the Settlement. The FAC will be the Operative Complaint in the Action.

Class Counsel have conducted significant investigation of the law and facts relating to the claims asserted in the Action and the PAGA Notice, and have concluded that the Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class, 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 Settlement Class Members.

II. THE SETTLEMENT

Subject to Court approval pursuant to Code of Civil Procedure section 382 and California Rules of Court, rule 3.679, *et seq*., the Parties have agreed to settle the Action by agreement upon the terms and conditions and for the consideration set forth in the Settlement Agreement, a copy of which is attached to the Declaration of 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 persons currently or formerly employed by defendants Koam Engineering Systems, Inc., and Billy Bryant (collectively, "Defendants") in California as non-exempt, hourly-paid employees within the State of California who worked for Defendants during the period from August 22, 2020 through September 10, 2025 ("Class Period") and have not previously released their claims through a separate agreement with Defendants.
- Defendants will pay $600,000.00 ("Gross Settlement Amount") to resolve the matter.
- In the event the number of Workweeks worked by Class Members during the Class Period increases 22,678 Workweeks by more than 10%, (2,268 Workweeks), Defendants shall have the option to do one of the following: 1) increase the Gross Settlement Amount on a pro rata basis equal to the percentage increase in the number of Workweeks worked by Class Members above 10% (for example, if the number of Workweeks increase by

11% through the Class Period, then the Goss Settlement Amount shall be increased by 1%,); or 2) Change the end date of the Class Period to the date on which the Workweek count reaches 24,946 Workweeks. Based upon calculations performed by Defendant, the number of Workweeks during the Class Period does not exceed 24,946 Workweeks and thus it is not expected that this clause will apply. Therefore, the Gross Settlement Amount is expected to remain the same and the Class Period to remain unchanged.

- 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 $6,990.00, will be paid out of the Gross Settlement Amount.
- Class Counsel, comprised of David D. Bibiyan and Vedang J. Patel of Bibiyan Law Group, P.C., may apply for, and 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 $210,000.00, and actual costs, not to exceed $30,000.00, all of which will be paid out of the Gross Settlement Amount.
- Class Counsel hereby apply for, and Defendant will not oppose, service awards of up to $10,000.00 to plaintiff Jade Marie Adkins and up to $7,500.00 to plaintiff Edward Cage, for a total of not more than $17,500.00 to Plaintiffs, which will be paid out of the Gross Settlement Amount.
- "Aggrieved Employees" is defined as all hourly-paid, non-exempt employees who performed work in California and who is or was formerly employed by Defendants

[1] "Workweek" means any week during the Class Period in which a Class Member worked at least one day during said week for defendant Koam Engineering Systems, Inc. ("Defendant KOAM"), based on hire dates, re-hire dates (as applicable), and termination dates (as applicable), but excluding any Workweeks in which a Class Member performed no work for Defendant KOAM (for example, during vacation weeks or leaves of absence and any other weeks of time during the Class Period in which the Class Member performed no work for Defendant KOAM).

within the State of California during the period from June 21, 2023 through the end of the Class Period ("PAGA Period").

- Defendants have agreed to pay $100,000.00 as PAGA penalties, sixty-five percent (65%) or $65,000.00 of which will be paid to the LWDA out of the Gross Settlement Amount, and thirty-five percent (35%) or $35,000.00 of which will be distributed to the Aggrieved Employees.
- For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the Void Date (the date, which is 180 days after the date of mailing, when the check will be voided), the Administrator shall transmit the funds represented by such checks to the California Unclaimed Property Fund in each such Class Member's name.

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* (9^{th} 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 Apex Class Action, LLC ("Apex"), 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; substantial discussions between counsel regarding the enforceability of the purported arbitration agreements executed by Class Members; 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 212 Class Members during the Class Period—would require substantial preparation and discovery, and ultimately would involve the deposition and presentation of numerous more witnesses (including Class Members and expert witnesses), as well as the consideration, preparation and analysis of expert reports. Therefore, should litigation have progressed any further, there would have been significant expense incurred by each side (above and beyond the expense already incurred).

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

The settlement amount reached in this case provides significant recovery to Class Members and Aggrieved Employees, and easily falls within the range of reasonableness. Based on documents and information provided by Defendants, Class Counsel understand, as of the date of the mediation, there are no more than 22,678 Workweeks during the Class Period.

1. Unpaid Wages for Failure to Pay 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, without limitation, walking from the parking area to the military base, undergoing security checks, walking to their respective workstations inside the military base, and timekeeping during their breaks or at home, all without pay.

One theory advanced by Class Counsel alleged, based on Plaintiffs' narrative evidence, that Class Members worked off-the-clock for a very conservative estimate of eight (8) 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 99,801 shifts during the Class Period, approximately 80% of which were over eight (8) hours in length, and Class Members had an average hourly rate of pay of $34.66. Thus, one calculation performed by Class Counsel resulted in **Defendants' exposure for unpaid off-the-clock work in a very conservative amount of $719,493** ([99,801 shifts x 0.8 shifts over 8 hours x 0.13 hour x $34.66 x 1.5 overtime rate] + [99,801 shifts x 0.2 shifts less than 8 hours x 0.13 hour x $34.66 x 2 in liquidated damages]).

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 eight (8) minutes of unpaid time for *every single* shift worked by all Class Members during the Class Period is an exaggeration of time spent working off-the-clock if *any* such time was spent. Finally, Defendant contends that no class action is even tenable here because Class Members signed what they believe to be enforceable arbitration agreements.

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 the distance between the workstations and Class Members' vehicles parked in an area outside of the military base, forcing Class Members not to leave the premises and stay at their workstations during meal periods. This would result in interrupted meal periods due to work-related calls from supervisors and co-workers, and clients' requests being always received and facilitated by Class Members while they were at their workstations, especially because performance reviews were based on customer service and teamwork. Additionally, Class Counsel understand from the documents produced by Defendants that meal periods were generally recorded exactly at the fifth hour of the meal-eligible shifts, or meal periods were generally late. Notably, 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 approximately 80% of 99,801 shifts during the Class Period were meal eligible. Thus, one calculation advanced by Class Counsel, assuming a 40% violation rate, resulted in **Defendants' exposure for meal period violations in a very**

conservative amount of $1,106,912 (99,801 shifts x 0.8 meal eligible shifts x 0.4 violation rate x $34.66/hour).

Class Counsel understand 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. Finally, Defendant contends that no class action is even tenable here because Class Members signed what they believe to be enforceable arbitration agreements.

3. Recovery of Damages for Non-Compliant Rest Periods

Class Counsel theorized at mediation, 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 the reasons above-mentioned, the distance between the workstations and Class Members' vehicles parked in an area outside of the military base, forcing Class Members not to leave the premises and stay at their workstations during rest periods. Like meal periods, rest periods were interrupted due to work-related calls from supervisors and co-workers, and clients' requests being always received and facilitated by Class Members while they were at their workstations, especially because performance reviews were based on customer service and teamwork. Additionally, Class Counsel theorized, based on documents produced by Defendants, that rest periods were not recorded, giving rise to a rebuttable presumption that rest periods were late, short or missed throughout the Class Period. 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, **Defendant's exposure for failure to**

provide compliant rest periods in a conservative amount of $1,383,641 (99,801 shifts x 0.40 violation rate x $34.66/hour).

Class Counsel understand 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. 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. Finally, Defendant contends that no class action is even tenable here because Class Members signed what they believe to be enforceable arbitration agreements.

4. Failure to Indemnify for Business Expenses

Class Counsel initially theorized, based on Plaintiffs' narrative evidence, that Defendants failed to indemnify Class Members for necessary business expenses because Defendants required their employees to: (1) use their personal cellphones and laptops for work-related communications, work from home, and timekeeping and billing duties; (2) purchase protective foot wears and wear at work as part of company safety program in the Old Town location, all without compensation. However, Class Counsel discounted this theory of liability at the time of mediation to focus on Plaintiffs' wage claims, among others.

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 2,293 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 $229,300** (2,293 pay periods x $100/pay period).

Class Counsel understand 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 it believes no wages are unpaid that, thus, there can be no derivative penalties. However, Class Counsel also understand the risks inherent in this claim if the above claims were not certified. Class Counsel also had to factor in, and did factor in, the risk that the Court would find there was no injury to Class Members even if the wage statements were inaccurate or that Defendants' conduct was not intentional, both of which are requirements of Labor Code section 226 before penalties can issue. Class Counsel also note that the calculation used does not take into account the 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 penalty 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 100 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 $831,840** (100 separated Class Members x $34.66/hour x 8 hours x 30 days).

Class Counsel understand 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 its actions were not "willful" and that, thus, waiting time penalties cannot be awarded. Thus, Defendants argued that no waiting time penalties are owed.

7. PAGA Penalties

Class Counsel understand, as of the date of mediation, from the time and payroll data provided by Defendants that Aggrieved Employees collectively worked 2,740 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 it 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 are informed and believe that reasonable minds differ with regard to calculation of PAGA penalties, Class Counsel believe it is reasonable to calculate Defendants' maximum exposure in PAGA penalties as follows:

a. Overtime Violations: Labor Code section 558 prescribes penalties of $50 for an initial violation and $100 for each subsequent violation. Using the initial pay period rate for all violations, and a violation every single pay period for every single non-exempt employee in the PAGA Period, this amounts to a maximum exposure of $137,000 (2,740 pay periods x $50).

b. Minimum Wage Violations: Labor Code section 1197.1 prescribes penalties of $100 for an initial violation and $250 for each subsequent violation. Using the initial pay period rate for all violations and a violation every single pay period for every single Aggrieved Employee in the PAGA Period, this amounts to a maximum exposure of $274,000 (2,740 pay periods x $100).

c. Meal Period Violations: Labor Code section 558 prescribes penalties of $50 for an initial violation and $100 for each subsequent violation. Using the initial pay period rate for all violations and a violation every single pay period for every single non-exempt employee in the PAGA Period, this amounts to a maximum exposure of $137,000 (2,740 pay periods x $50).

d. Rest Period Violations: Labor Code section 558 prescribes penalties of $50 for an initial violation and $100 for each subsequent violation. Using the initial pay period rate for all violations and a violation every single pay period for every single non-exempt employee in the PAGA Period, this amounts to a maximum exposure of $137,000 (2,740 pay periods x $50).

e. Wage Statement Violations: According to *Gunther v. Alaska Airlines, Inc.* (2021) 287 Cal.Rptr.3d 229, in this instance, Labor Code section 2699 would be the appropriate penalty for wage statement violations that are inaccurate, which prescribes penalties of $100 for an initial violation and $200 for each subsequent violation (*Id.* at 247-248). Using the initial pay period rate for all violations and a violation every single pay period for every single Aggrieved Employee in the PAGA Period, this amounts to a maximum exposure of $274,000 (2,740 pay periods x $100).

f. Waiting Time Penalties: Labor Code section 2699 prescribes penalties of $100 for an initial violation and $200 for each subsequent violation. Because this violation is merited only at separation of employment, a 100% violation rate would likely include just one violation per employee. The data produced by Defendants indicate that there were 96 Aggrieved Employees whose employment was separated during the PAGA Period. This amounts to a maximum exposure of $9,600 (96 Aggrieved Employees x $100).

g. 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

$968,600. Class Counsel understand 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 **$96,860** as a reasonable estimate of the likelihood of what Plaintiffs may recover at trial for PAGA penalties ($968,600 x 0.10).

9. 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 **$4,368,046**. In all, Class Counsel obtained a Gross Settlement Amount of **$600,000.00**. Particularly in light of the risks involving obstacles to class certification, all issues and risks related to liability, the issues with manageability at trial, the discretionary nature of PAGA penalties, and considering the case law regarding fair, reasonable and adequate settlements, Class Counsel strongly believe that the settlement reached is fair, reasonable and adequate, and in the best interest of Class Members.

Moreover, $100,000.00 of the Gross Settlement Amount was attributed to PAGA penalties. This allocation was decided mutually by the Parties and the mutual decision was based on: (1) the fact that damages are available for the failure to pay wage claims while only penalties are available for the PAGA claims; (2) the risk that the Court may exercise its discretion to decline to stack PAGA penalties; (3) the risk that the Court may exercise its discretion to not award the full amount of PAGA penalties available; and (4) the risk that the Court may decline to award any PAGA penalties at all in light of the fact that damages are available for Class Members and it may find any further liability against Defendants unnecessarily punitive.

VII. THE PROPOSED ATTORNEYS' FEES AND COSTS ARE REASONABLE

Class Counsel seek an attorneys' fees award of *up to* thirty-five percent (35%) of the Gross Settlement Amount, which, unless escalated pursuant to this Agreement, would amount to $210,000.00. Class Counsel also seek reimbursement of costs not to exceed $30,000.00. The requested fees fall well within the historical range of attorney's fees awards under the common fund theory, which is generally from 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. THE REQUESTED ENHANCEMENT AWARDS TO THE NAMED PLAINTIFFS AND CLASS REPRESENTATIVES ARE REASONABLE

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 plaintiffs 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. In the experience of Class Counsel, the typical enhancement award in wage and hour class actions ranges from approximately $10,000.00 to $25,000.00, although some awards are higher. In contrast, Class Counsel seek an extremely limited enhancement of up to $10,000.00 to plaintiff Jade Marie Adkins and up to $7,500.00 to plaintiff Edward Cage, for a total of not more than $17,500.00 to Plaintiffs.

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 persons currently or formerly employed by Defendants in California as non-exempt, hourly-paid employees within the State of California who worked for Defendants during the Class Period and have not previously released their claims through a separate agreement with Defendants) 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 person currently or formerly employed by Defendants in California as a non-exempt, hourly-paid employee within the State of California who worked for Defendants during the Class Period and has not previously released his claims through a separate agreement with Defendants, based solely from Defendants' payroll records, which amounts to approximately 212 persons.

2. Numerosity – According to the California Supreme Court, a putative class is sufficiently numerous to achieve the numerosity requirement if their joinder is impracticable and thus substantial benefits accrue both to litigants and the courts if the action proceeds as a class action. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435, 446.) Numerosity is presumed satisfied if there are forty (40) putative class members. (*Miri v. Dillon* (E.D. MI 2013) 292 F.R.D. 454, 461.)

However, as few as 10 class members has been found sufficient. (*See, e.g., Bowles v. Sup. Ct.* (1955) 44 Cal.2d 574.) Class Counsel understand from documents provided that Defendant identified at least 212 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 employees like other Class Members; (2) complain of not being paid for all time under Defendants' control or suffered and/or permitted to work for Defendant; (3) did not fully 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 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 212 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.

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Dated: August 3, 2026

BIBIYAN LAW GROUP, P.C.

/s/ Keaton D. Mendoza

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