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[Additional Counsel on Next Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

IVAN RAMIREZ, an individual and on behalf of all others similarly situated, Plaintiff, v. J & J SNACK FOODS CORP. OF CALIFORNIA, a California Corporation; and DOES 1 through 100, inclusive, Defendants.	CASE NO.: 24STCV23019 [Assigned for All Purposes to the Honorable Elaine Lu, Department 9] **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT; DECLARATIONS OF VEDANG J. PATEL, DAVID D. BIBIYAN, PLAINTIFFS, AND IN SUPPORT THEREOF** <u>HEARING INFORMATION:</u> DATE: June 2, 2026 TIME: 10:00 A.M. DEPT: 9

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on June 2, 2026 at 9:00 a.m. or as soon thereafter as they may be heard in Department 9 of the Superior Court of the State of California for the County of Los Angeles, Plaintiffs Ivan Ramirez ("Plaintiff Ramirez"), Brianne Aguilar ("Plaintiff Aguilar") and Lloyd Smith ("Plaintiff Smith", and collectively, with Plaintiff Ramirez and Plaintiff Aguilar, the "Plaintiffs"), on behalf of themselves and all others similarly situated and aggrieved, will and hereby does move for this Court for entry of an Order:

1. Preliminarily certifying the following settlement class ("Settlement Class," "Settlement Class Members" or "Class Members") for the purpose of settlement only: all persons employed by defendants J&J Snack Foods Corp. of California and J & J Snack Foods Sales Corp ("Defendants") in California and classified as a non-exempt, hourly-paid employee who worked for Defendants during the Class Period from April 28, 2023 through May 10, 2025.

2. Preliminarily approving Plaintiffs as Class Representatives.

3. Preliminary 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 $685,000.00, which is subject to escalation pursuant to the Settlement Agreement.

6. Approving the form and content of the Notice of Class Action Settlement ("Class Notice") submitted herewith.

7. Appointing Apex Class Action, LLC. ("Settlement Administrator") 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 $10,490.00 for settlement administration to the Settlement Administrator from the Gross Settlement Amount.

9. Preliminarily approving a service award of $10,000.00 to each of the Plaintiffs, for a total

amount of $30,000.00 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 not more than thirty-five (35%) of the Gross Settlement Amount which, unless increased pursuant to the Settlement Agreement, amounts to $239,750.00.

11. Preliminarily approving reimbursement of Class Counsel's costs in an amount, according to proof, not to exceed $70,000.00.

12. "Aggrieved Employees" means all persons employed by Defendants in California and classified as a non-exempt, hourly-paid employee who worked for Defendants during the period from April 28, 2023 through the end of the Class Period ("PAGA Period") in the State of California.

13. Preliminarily approving PAGA penalties in the amount of $75,000.00, seventy-five percent (75%) or $56,250.00 of which will be paid to the Labor and Workforce Development Agency ("LWDA") out of the Gross Settlement Amount, and twenty-five percent (25%) or $18,750.00 of which will be distributed to Aggrieved Employees.

14. 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 in support and exhibits attached thereto, arguments of counsel and upon such other materials contained in the file and pleadings of this action.

Dated: March 25, 2026

BIBIYAN LAW GROUP, P.C.

/s/ Vedang J. Patel

VEDANG J. PATEL
Attorneys for Plaintiffs, on behalf of themselves and all others similarly situated and aggrieved

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Ivan Ramirez ("Plaintiff Ramirez"), Brianne Aguilar ("Plaintiff Aguilar")and Lloyd Smith ("Plaintiff Smith", and with Plaintiff Ramirez and Plaintiff Aguilar, the "Plaintiffs"), on behalf of themselves and all others similarly situated and aggrieved, hereby applies for preliminary approval of the proposed 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 ("Patel Decl.") attached as Exhibit "1."

On March 8, 2024, Plaintiff Aguilar filed a representative action, seeking civil penalties under the Private Attorneys' General Act ("PAGA") against defendants J&J Snack Foods Corp. of California and J & J Snack Foods Sales Corp ("Defendants") for Labor Code violations ("Aguilar Action"). On June 20, 2024, Plaintiff Ramirez also filed a notice with the Labor and Workforce Development Agency ("LWDA") to seek civil penalties for various Labor Code violations. ("Ramirez PAGA Notice"). A true and correct copy of the Ramirez PAGA Notice is attached to the declaration to Vedang J. Patel ("Patel Decl.") as Exhibit 2. On August 30, 2024, Plaintiff Smith commenced a separate class action against Defendants ("Smith Action").

On September 6, 2024, Plaintiff Ramirez filed his class action complaint for damages in the Superior Court of the State of California for the County of Los Angeles, Case No. 24STCV23019. Plaintiff Ramirez alleged violations, including but not limited to, failure to pay overtime wages; failure to pay minimum wages; failure to provide meal periods; failure to provide rest periods; waiting time penalties; wage statement violations; failure to timely pay wages; failure to indemnify; violation of Labor Code section 227.3; and unfair competition. Thereafter, the Parties agreed to exchange informal discovery and attend mediation.

Prior to mediation Plaintiffs obtained, through informal discovery: (a) policy documents; and (b) Aggrieved Employees' timekeeping and payroll records from April 27, 2023 to October 30, 2024.Plaintiffs' investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").

On February 26, 2025, the Parties participated in an all-day consolidated mediation presided over by Dan Turner. In the months thereafter, the Parties agreed to globally resolve all class and PAGA claims in the Action, as well as the separate actions filed by Plaintiff Aguilar and Plaintiff Smith.

As part of the Settlement, the Parties agree to stipulate to filing a First Amended Complaint in the Ramirez Action to add all claims and allegations contained in the Smith Action and the Aguilar Action. The First Amended Complaint shall be the "Operative Complaint." The Parties request the Court grant Plaintiff leave to file the First Amended Complaint. The First Amended Complaint is attached to the Patel Decl. as Exhibit 4.

Class Counsel had strong positions at mediation regarding the certifiability of Plaintiff's claims, the merits thereof, the manageability of a trial, and the likelihood of recovering civil penalties. Nevertheless, Class Counsel concluded, after considering the sharply disputed factual and legal issues involved in this litigation, the risks associated with further prosecution, and the substantial benefits to be received pursuant to the compromise and settlement of the lawsuit as set forth in the Settlement Agreement, that settlement on the terms set forth herein is in the best interest of Plaintiffs, putative class members, aggrieved employees, and Defendant, and is fair, reasonable, and adequate

II. <u>THE SETTLEMENT</u>

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 Patel Decl. 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 employed by defendants J&J Snack Foods Corp. of

California and J & J Snack Foods Sales Corp ("Defendants") in California and classified as a non-exempt, hourly-paid employee who worked for Defendants during the Class Period from April 28, 2023 through May 10, 2025.

- Defendants will pay $685,000.00 ("Gross Settlement Amount") to resolve the matter.
- Defendants represent that there are no more than 35,000 Workweeks during the Class Period. In the event the number of Workweeks during the Class Period increases by more than 10%, or 3,500 Workweeks, then, at Defendants' election: (1) the Gross Settlement Amount shall be increased proportionally by the Workweeks in excess of 38,500 Workweeks multiplied by the Workweek Value; or (2) the Class Period shall end on the date the number of Workweeks reaches 38,500. The Workweek Value shall be calculated by dividing the originally agreed-upon Gross Settlement Amount ($750,000.00) by 35,000.00, which amounts to a Workweek Value of $19.57. Thus, for example, should there be 40,000 Workweeks during the Class Period, and Defendants election option (1) above, then the Gross Settlement Amount shall be increased by $29,355.00 ((40,000 Workweeks – 38,500 Workweeks) x $19.57 per Workweek.).
- 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 $10,490.00 will be paid out of the Gross Settlement Amount.
- Class Counsel will apply for, and Defendants will not oppose, attorneys' fees of not more than thirty-five (35%) of the Gross Settlement Amount, which, unless escalated pursuant to the Settlement Agreement, amounts to $239,750.00, and actual costs, not to exceed $70,000 all of which will be paid out of the Gross Settlement Amount. Class Counsel may seek less than 35% in fees at the time of final approval.

[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).

- Class Counsel will apply for, and Defendants will not oppose, a service award in the amount of $10,000.00 each, to a total amount of $30,000, for the Class Representatives, which will be paid out of the Gross Settlement Amount.
- "Aggrieved Employees" means all persons employed by Defendants in California and classified as a non-exempt, hourly-paid employee who worked for Defendants during the period from April 28, 2023 through the end of the Class Period ("PAGA Period") in the State of California.
- Defendants have agreed to pay $75,000.00 as PAGA penalties, seventy-five percent (75%) or $56,2500.00 of which will be paid to the LWDA out of the Gross Settlement Amount, and twenty-five percent (25%) or $18,750.00 of which will be distributed to the Aggrieved Employees.
- For any Class Member or Aggrieved Employee whose check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Office, Unclaimed Property Fund.

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.). Here, the negotiations were conducted in good faith.

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 Patel Decl. as Exhibit "1" 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, Inc. an experienced settlement administrator, to administer the Settlement.

V. <u>THE SETTLEMENT IS FAIR AND REASONABLE BASED UPON OBJECTIVE EVIDENCE</u>

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

The Settlement that has been reached, subject to this Court's approval, is a product of substantial efforts by Class Counsel. The Settlement was reached after extensive factual and legal investigation and research; substantial negotiation regarding the scope of informal discovery; an exchange of documents and information that included review of time and pay records and analysis thereof with the aid of Plaintiffs and expert consultants; an 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 two full-day session of mediations, followed by months of 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 557 Class Members during the Class Period—would require enormous preparation and discovery, and ultimately would involve the deposition and presentation of numerous more witnesses (including Class Members and expert witnesses), as well as the consideration, preparation and analysis of expert reports. Therefore, should litigation have progressed any further, there would have been significant expense incurred by each side (above and beyond the expense already incurred.

B. The Settlement Amount is Well Within Range of Reasonableness

The settlement amount reached in this case provides significant recovery to Class Members and Aggrieved Employees, and easily falls within the range of reasonableness. Based on documents and information provided by Defendants, Class Counsel understand there are approximately 35,000 Workweeks during the Class Period.

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

Class Counsel theorized at the mediation, based on Plaintiffs' narrative evidence that Defendants' practices during the Class Period resulted in off-the-clock work. Class Counsel theorized that Class Members spent time off-the-clock because they were required to walk to the time clock to clock in and out, performance of various works related tasks off the clock before their shift for instance plaintiff were required to change their uniforms and/ or don ("PPE"), and wait in line Defendants maintained few timekeeping stations. Furthermore, based upon Plaintiffs' and Class Members' narrative evidence, Class Counsel theorized that Class Members were prohibited to clock in more than 15 minutes before start time, forcing employees to arrive en masse, and wait up to complete the clock in process.

Class Counsel advanced a theory that all Class Members worked off-the-clock for an estimate of 5 minutes each shift throughout the Class period, without pay. Class Counsel understand from the data provided and analyzed by expert data consultants that there were 185,855 shifts during the Class Period 73.65% of shifts worked were over 6 hours, and that Class Members were paid an average of $20.18 per hour. Thus, one theory advanced by Class Counsel resulted in Defendants' exposure for unpaid overtime wages due to failure to track and pay for all time worked of $662,497 (0.083 hr. x $20.18/hr x 1.5 OT rate x 185,855 shifts x 0.736 shifts over 6 hrs.). Additionally, Class Counsel theorized Defendants' exposure for unpaid minimum wages is $1,200,178.9 (0.083 hr. x $20.18/hr x 2 liquidated damages x 185,855 shifts x 0.264 shifts under 6 hrs.). Thus, Class Counsel theorized Defendants' total exposure for failure to pay for all time worked at the time of mediation was **$508,035.**

Class Counsel understand from the mediator and the mediation process that Defendants made the following defenses in connection with this claim: 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 also state that they provided numerous computers for Class Members to clock in and out, and therefore Class Members would not have to wait in line. Furthermore, Defendants argued 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*, they could, an estimate of five (5) minutes of unpaid work off-the-clock of Class Members for every single shift 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 the narrative evidence of Plaintiffs, as well as documents produced by Defendants, that Defendants' meal period policies and practices throughout the Class Period were non-compliant as Plaintiffs and Class Members did not receive full, timely and uninterrupted meal periods. Class Counsel theorized that Plaintiffs and Class Members were frequently required to end meal periods early to meet mandatory quotas.

Class Counsel understand from the documents produced by Defendants and analyzed by expert data consultants that there were 183,360 meal period eligible shifts worked during the Class

Period and no meal period premiums were ever paid. Assuming a conservative 40% violation rate, one calculation performed by Class Counsel resulted in Defendants' liability for unpaid meal premiums in the approximate amount of **$1,480,082** (183,360 shifts x $20.18/hour x 0.40 violation rate).

Class Counsel understand from the mediator and the mediation process that Defendants makes the following defenses in connection with this claim: Defendants argued that they had compliant meal period policies and practices. Defendants argued 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 its 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 at mediation, based on Plaintiffs' and Class Members' narrative evidence, that Class Members did not receive compliant rest periods throughout the Class Period based on many of the reasons stated above for meal period violations, including that they were cut short, interrupted, or just not provided in some instances. Class Counsel theorized from Plaintiffs' and Class Members' narrative evidence that Class Members rest periods were cut short in completing an assignment or providing coverage. Moreover, Class Counsel also theorized from Plaintiffs' narrative evidence that rest periods were frequently cut short or interrupted by managers or customers with time-sensitive questions and tasks. Notably, no rest period premiums were paid during the Class Periods through the mediation. One calculation performed by Class Counsel resulted in, assuming a conservative 40% violation rate for rest-eligible shifts, of **$1,495,524** ($20.18/hr. x 185,273 shifts x 0.40 violation rate).

Class Counsel understand from the mediator and the mediation process that Defendants make the following defenses in connection with this claim: Defendants argued that they had compliant rest period policies and practices and that its policy requires their employees to take timely and full rest breaks. Defendants argued that Class Members took timely and full rest breaks or received the required rest period premium for each instance of rest period violations. Defendants further contends that any instance of a Class Member failing to take a compliant rest period was voluntary and therefore 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.

4. Other Claims

Plaintiffs also alleged in their complaint several other claims including failure to reimburse business expenses, failure to pay vested vacation wages upon termination, failure to provide safe and reasonable working conditions, including exposure to excessive head and moisture, and failure to accrue, pay, or track sick leave. After diligent investigation and discovery, Class Counsel did not attribute significant value to these claims for purposes of this settlement. Rather, the driving force of this settlement were the above-described claims, as well as the derivative claims detailed below and the claims for civil penalties under PAGA.

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), because shift involved off-the-clock work that was not included on wage statements. Further, many shifts included meal period and rest period violations for which premiums were not paid. Thus, Defendants are liable for wage statement violations for each pay period. Class Counsel understand from the data provided by Defendants that there were 19,469 pay periods in the wage statement liability period. Thus, Class Counsel theorized Defendants' exposure for this claim to be **$1,946,900** (19,469 pay periods in the wage statement period x $50 penalty).

Class Counsel understand from the mediator and the mediation process 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 contends that because they believe 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 a 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 consider the fact that all Class Members did not work all pay periods.

5. Waiting Time Penalties

Pursuant to Labor Code sections 201, 202 and 203, each employee in the relevant statutory period (*i.e.*, three years before the filing of the initial Complaint) is entitled to 30 days' worth of wages as waiting time penalty for not being paid all wages due upon separation of employment. Class Counsel theorized at mediation, 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. Class Counsel further theorized that there are putative Class Members who were provided their final paycheck late and in addition to this, numerous putative Class Members were given their final paycheck as a pay card. That pay card had fees associated with it and therefore all final wages were not paid properly to any of those Class Members. Class Counsel understand from documents provided by Defendants that there were 304 separated employees during the relevant statutory period. Thus, Class Counsel theorized Defendants' exposure for this claim to be **$1,472,333** (304 separated Class Members x $20.18/hr. x 8 hrs x 30 days).

Class Counsel understand from the mediator and the mediation process that Defendants contends 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. Thus, Defendants argued that no waiting time penalties are owed.

6. PAGA Penalties

Class Counsel understand from the time and payroll data provided by Defendants that there were 17,500 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 was notified by any governmental entity that they violated any Labor Code sections presented in the PAGA Notice and PAGA claims, Class Counsel adjusted the exposure model for 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 $875,000 (17,500 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 non-exempt employee in the PAGA Period, this amounts to a maximum exposure of $1,750,000 (17,500 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

Settlement Period, this amounts to a maximum exposure of $875,000 (17,500 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 Settlement Period, this amounts to a maximum exposure of $875,000 (17,500 pay periods x $50).

e. 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 indicates that there were 304 Aggrieved Employees whose employment was separated during the PAGA Period. This amounts to a maximum exposure of $30,400 (304 Aggrieved Employees 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 non-exempt employee in the PAGA Period, this amounts to a maximum exposure of $1,750,000 (17,500 pay periods 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 PAGA Member every pay period and not exercise its discretion to reduce any of those penalties to be $6,155,400. Class Counsel understand from the mediator and the mediation process 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 are knowing and intentional. Defendants insist that this is especially true in this Action where class action damages are available to Class Members, rendering an award of PAGA penalties in addition to class action damages to be double recovery.

Class Counsel maintain that it is possible to recover the subsequent violation rate for penalties, that stacking is permissible, and that there is no manageability requirement under PAGA (citing *Estrada v. Royalty Carpet Mills, Inc.*). As such, Class Counsel believe a 90% discount of this claim to be reasonable, resulting in a valuation of $**615,540** as a reasonable estimate of the likelihood of what Plaintiffs may recover at trial for PAGA penalties ($6,155,400 x .10).

7. 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 **$6,544,964**. In all, Class Counsel obtained a Gross Settlement Amount of **$685,000.** 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, $75,000.00 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 *not more than* thirty-five percent (35%) of the Gross Settlement Amount, which, unless escalated pursuant to this Agreement, would amount to $239,750.00. Class Counsel also seek reimbursement of costs not to exceed $75,000. Class Counsel may seek less than 35% at the time of final approval. 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 AWARD TO THE NAMED PLAINTIFFS AND CLASS REPRESENTATIVES IS REASONABLE

Plaintiffs are entitled to enhanced awards 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. Class Counsel seek a limited enhancement of $10,000.00 each for Plaintiffs or a total of $30,000.00 for their services.

IX. CONDITIONAL CERTIFICATION FOR SETTLEMENT PURPOSES

A. The Class should be Preliminarily Certified

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

1. Ascertainability – "Ascertainability" is a due process requirement that ensures it is possible to decide who will be bound by the judgment (*res judica* effect). The determination is made by examining the class definition and the size of the class. Here, the Class Members definition 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 employees. There is no difficulty ascertaining who is a Class Member based on the above-described definition as it is readily apparent to all involved who is a non-exempt employee who worked in California for Defendants during the Class Period based solely from Defendants' payroll records, which amounts to approximately 557 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 Defendants identified at least 557 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' claims are typical of those of other Class Members as Plaintiffs: (1) were non-exempt 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 full premium pay for meal periods that were not compliant with the Labor Code; (4) did not receive premium pay for rest periods that were not provided, among others as set forth above.

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

(i) <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 classified were non-exempt, hourly-paid employees, not paid premium pay, etc.) and thus has 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, with at least 557 Class Members, presentation of all of them before this Court may be problematic, impractical, and burdensome. On the contrary, a class action allows claims of many individuals to be resolved at the same time, eliminates the possibility of repetitious litigation and affords small claimants with a method of obtaining redress for claims which otherwise would be too insufficient to warrant individual litigation.

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

X. CONCLUSION

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

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