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10 and all others similarly situated and aggrieved

11 *[Additional Counsel on following page]*

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **FOR THE COUNTY OF LOS ANGELES**

14 ANA ORTIZ-GOMEZ, an individual, and on
15 behalf of all others similarly situated and
16 aggrieved,

17 Plaintiff,

18 v.

19 BEYOND RESOURCE SOLUTIONS, INC., a
20 California Corporation; CAPLUGS, INC., a
21 Delaware Corporation; GEORGE PORTILLO,
22 an individual; and DOES 1 through 100,
23 inclusive,

24 Defendants.

CASE NO.: 24STCV15833

Related to Case No.: 24STCV32252

[Assigned for all purposes to the Hon. Elaine
Lu in Dept. 9]

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS AND
REPRESENTATIVE ACTION
SETTLEMENT AND PROVISIONAL
CLASS CERTIFICATION FOR
SETTLEMENT PURPOSES ONLY;
DECLARATIONS OF KEATON
MENDOZA, DAVID D. BIBIYAN, ANA
ORTIZ-GOMEZ, AND JODEY
LAWRENCE IN SUPPORT THEREOF**

HEARING INFORMATION:

DATE: November 4, 2026

TIME: 08:30 a.m.

DEPT: 9

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13 Attorneys for Defendants, CAPLUGS, INC., and JORGE MEJIA
14 (erroneously sued herein as GEORGE PORTILLO), an individual
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1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on November 4, 2026, at 8:30 a.m., or as soon thereafter as
3 they may be heard in Department 9 of the Superior Court of the State of California for the County
4 of Los Angeles, plaintiff Ana Ortiz-Gomez ("Plaintiff"), on behalf of herself and all others similarly
5 situated and aggrieved, will and hereby does move for this Court for entry of an Order:

6 1. Preliminarily certifying the following Settlement Class Member ("Class Member" or
7 "Settlement Class Member") as "BRS Class" and "Caplugs Class" respectively, for the purpose of
8 settlement only:

9 a. All persons employed by Defendant Beyond Resource Solutions, Inc.
10 (Defendant "BRS") in California and classified as non-exempt, hourly-paid
11 employees, who were placed to work for Caplugs, during the period from June
12 25, 2020, through (1) 90 days from the execution of the Memorandum of
13 Understanding ("MOU") executed by the Parties; or (2) the date upon which
14 the total number of workweeks from June 25, 2020 forward equals 9,460
15 workweeks; provided, however, that if BRS elects to pay additional amounts
16 pursuant to the Escalator Clause in Paragraph 9.1 of Settlement Agreement
17 rather than cut off the BRS Class Period at 9,460 workweeks, the BRS Class
18 Period shall extend to include all workweeks for which such additional
19 payment is made for the Defendant Beyond Resource Solutions, Inc. ("BRS
20 Class Period") and;

21 b. All persons directly employed by Defendant Caplugs, Inc. (Defendant
22 "Caplugs") and Jorge Mejia (erroneously sued as George Portillo) in California
23 and classified as non-exempt, hourly-paid employees who worked for Caplugs
24 during the period from August 26, 2021 through the earlier of (1) the date of
25 preliminary approval of the settlement; (2) 90 days from the execution of the
26 Memorandum of Understanding ("MOU") executed by the Parties; or (3) the
27 date upon which the total number of workweeks from August 26, 2021 forward
28 equals 24,640 workweeks; provided, however, that if Caplugs elects to pay

- 1 additional amounts pursuant to the Escalator Clause in Paragraph 9.1 rather
2 than cut off the Caplugs Class Period at 24,640 workweeks, the Caplugs Class
3 Period shall extend to include all workweeks for which such additional
4 payment is made. (“Caplug Class Period”)
- 5 2. Preliminarily approving Plaintiff Ana Ortiz-Gomez as Class Representative.
- 6 3. Preliminarily approving David D. Bibiyan and Vedang J. Patel of Bibiyan Law Group, P.C.
7 as Class Counsel.
- 8 4. Preliminarily approving the settlement claims under the terms set forth in the Class and
9 PAGA Settlement Agreement.
- 10 5. Preliminarily approving payment of the Gross Settlement Amount of \$900,000.00, and in
11 which Defendant Caplugs agrees to pay \$675,000.00 and Defendant BRS agrees to pay
12 \$225,000.00, which is subject to escalation pursuant to the Settlement Agreement.
- 13 6. Approving the form and content of the Notice of proposed Class Action Settlement and
14 Date for Final Approval Hearing (“Class Notice”) submitted herewith.
- 15 7. Appointing Phoenix Settlement Administrators (“Phoenix”) to administer the Settlement,
16 including distribution of the Class Notice, as set forth in the Settlement Agreement.
- 17 8. Preliminarily approving the payment of not to exceed \$8,000.00 for settlement
18 administration to Phoenix from the Gross Settlement Amount.
- 19 9. Preliminarily approving service award of not more than \$10,000.00; to Plaintiff in
20 consideration for her extensive efforts in prosecuting this case.
- 21 10. Preliminarily approving payment of reasonable attorneys’ fees to Class Counsel in the
22 amount of not more than (35%) of the Gross Settlement Amount which, unless escalated pursuant
23 to the Settlement Agreement, amounts to \$315,000.00.
- 24 11. Preliminarily approving reimbursement of Class Counsel’s costs in an amount, according
25 to proof, not to exceed \$30,000.00.
- 26 12. Preliminarily approving PAGA penalties in the amount of \$90,000.00, sixty-five percent
27 (65%) or \$58,500.00 of which will be paid to the Labor and Workforce Development Agency
28 (“LWDA”) out of the Gross Settlement Amount, and thirty-five percent (35%) or \$31,500.00 of

1 which will be distributed to “Aggrieved Employees,” defined as a person employed by Defendants
2 Beyond Resource Solutions, Inc., Caplugs, Inc., and Jorge Mejia, erroneously sued as George
3 Portillo (collectively, “Defendants”) in California and classified as a non-exempt, hourly-paid
4 employee who worked for Defendants during the period from June 19, 2023 through the date of
5 preliminary approval of the settlement, or September 14, 2026, whichever comes sooner (“PAGA
6 Period”).

7 13. Entering an Order preliminarily approving the Settlement consistent with the terms of the
8 Settlement Agreement.

9 Good cause exists for granting this Motion in that the proposed settlement is fair, reasonable
10 and adequate.

11 This Motion will be based on this Notice of Motion, the Memorandum of Points and
12 Authorities filed herewith, the Declarations of Keaton Mendoza, David D. Bibiyan, Ana Ortiz-
13 Gomez, and Jodey Lawrence, and exhibits attached thereto, arguments of counsel and upon such
14 other materials as contained in the file and pleadings of this action.

15
16 Dated: September 22, 2026

BIBIYAN LAW GROUP, P.C.

17 */s/ Keaton D. Mendoza*

18 _____
19 VEDANG J. PATEL
KEATON MENDOZA

20 Attorneys for Plaintiff, ANA ORTIZ-GOMEZ, on
21 behalf of herself and all others similarly situated and
22 aggrieved
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Ana Ortiz-Gomez ("Plaintiff"), on behalf of herself and all others similarly
4 situated and aggrieved, hereby applies for preliminary approval of the Class and PAGA Settlement
5 Agreement ("Settlement," "Agreement" or "Settlement Agreement") upon the terms and
6 conditions set forth in the Settlement Agreement, attached to the Declaration of Keaton Mendoza
7 as Exhibit "1."

8 On June 19, 2024, Plaintiff filed with the LWDA and served on Defendants a notice under
9 Labor Code section 2699.3, stating Plaintiff intended to serve as a proxy of the LWDA to recover
10 civil penalties on behalf of Aggrieved Employees for alleged Labor Code violations ("PAGA
11 Notice").

12 On June 25, 2024, Plaintiff commenced this action by filing a class action complaint alleging
13 causes of action against Defendants for: (1) failure to pay overtime wages; (2) failure to pay
14 minimum wages; (3) failure to provide meal periods or compensation in lieu thereof; (4) failure to
15 provide rest periods or compensation in lieu thereof; (5) failure to pay all wages due upon separation
16 from employment; (6) failure to provide accurate wage statements; (7) failure to timely pay wages
17 during employment; (8) failure to indemnify for business expenses; (9) failure to pay unused vested
18 vacation time; and (10) engaging in unfair competition (the "Class Action").

19 On August 22, 2024, Plaintiff filed with the LWDA and served on Defendants an amended
20 notice under Labor Code section 2699.3, stating Plaintiff intended to serve as a proxy of the LWDA
21 to recover civil penalties on behalf of Aggrieved Employees for alleged Labor Code violations
22 ("Amended PAGA Notice")

23 On December 9, 2024, Plaintiff filed a separate representative action under PAGA against
24 Defendants, captioned *Ana Ortiz-Gomez v. Beyond Resource Solutions, Inc. et al.*, in the Los
25 Angeles County Superior Court, Case No. 24STCV3225, for the Labor Code violations set out in
26 the PAGA Notice (the "PAGA Action").

27 On December 13, 2024, Plaintiff filed with the LWDA and served on Defendants a second
28 amended notice under Labor Code section 2699.3, stating Plaintiff intended to serve as a proxy of

1 the LWDA to recover civil penalties on behalf of Aggrieved Employees for alleged Labor Code
2 violations (“Second PAGA Notice” and collectively with the PAGA Notice and Amended PAGA
3 Notice, the “PAGA Notices”). A true and correct copy of the PAGA Notices are attached to the
4 Declaration of Keaton D. Mendoza as Exhibit “2.”

5 Thereafter, Plaintiff and Defendants (collectively, the “Parties”) agreed to exchange informal
6 discovery and attend mediation.

7 Prior to mediation, Plaintiff obtained, through informal discovery: (a) time and payroll
8 records for approximately 25% of the estimated 158 putative class members during the class period;
9 (b) data points, including the number of putative class members, workweeks and shifts during the
10 class period, the number of putative class members separated during the waiting time penalty period,
11 the number of pay periods in the PAGA period, and the average hourly rate of pay; (c) wage and
12 hour policy documents of Defendants; and (d) all documents pertaining to Plaintiff available to
13 Defendants.

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

17 On March 17, 2026, the Parties participated in an all-day mediation presided over by Lynn
18 Frank, Esquire. The mediation was successful, and the Parties agreed to globally resolve all class
19 and PAGA claims in the Action. As part and parcel to the Agreement, the Parties agreed to stipulate
20 to Plaintiff’s filing a First Amended Complaint in the Class Action, adding all allegations in the
21 PAGA Action, and after acceptance of the First Amended Complaint, request for dismissal without
22 prejudice of the PAGA Action, thereby effectively consolidating the allegations in the two actions
23 for purposes of the Settlement.

24 On September 9, 2026, Plaintiff filed a First Amended Complaint in the Class Action, adding
25 all allegations in the PAGA Action. The First Amended Complaint is the operative complaint in the
26 Action (“Operative Complaint”).

27 Class Counsel has conducted significant investigation of the law and facts relating to the
28 claims asserted in the Actions and the PAGA Notice, and have concluded that the Settlement is fair,

1 reasonable, adequate, and in the best interests of the Settlement Class, taking into account the
2 sharply contested issues involved, the expense and time necessary to litigate the Actions through
3 trial and any appeals, the risks and costs of further litigation of the Actions, the risk of an adverse
4 outcome, the uncertainties of complex litigation, the information learned through formal and
5 informal discovery regarding Plaintiff's allegations, and the substantial benefits to be received by
6 Settlement Class Members.

7 **II. THE SETTLEMENT**

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

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

- 14 • Certification of a Settlement Class Member ("Class Member" or "Settlement Class
15 Member") as "BRS Class" and "Caplugs Class" respectively, for the purpose of
16 settlement only:

- 17 I. All persons employed by Defendant Beyond Resource Solutions, Inc. (Defendant
18 "BRS") in California and classified as non-exempt, hourly-paid employees, who
19 were placed to work for Caplugs, during the period from June 25, 2020, through
20 (1) 90 days from the execution of the Memorandum of Understanding ("MOU")
21 executed by the Parties; or (2) the date upon which the total number of
22 workweeks from June 25, 2020 forward equals 9,460 workweeks; provided,
23 however, that if BRS elects to pay additional amounts pursuant to the Escalator
24 Clause in Paragraph 9.1 of Settlement Agreement rather than cut off the BRS
25 Class Period at 9,460 workweeks, the BRS Class Period shall extend to include
26 all workweeks for which such additional payment is made for the Defendant
27 Beyond Resource Solutions, Inc. ("BRS Class Period") and;
28

1 II. all persons directly employed by Defendant Caplugs, Inc. (Defendant “Caplugs”)
2 and Jorge Mejia (erroneously sued as George Portillo) in California and classified
3 as non-exempt, hourly-paid employees who worked for Caplugs during the
4 period from August 26, 2021 through the earlier of (1) the date of preliminary
5 approval of the settlement; (2) 90 days from the execution of the Memorandum
6 of Understanding (“MOU”) executed by the Parties; or (3) the date upon which
7 the total number of workweeks from August 26, 2021 forward equals 24,640
8 workweeks; provided, however, that if Caplugs elects to pay additional amounts
9 pursuant to the Escalator Clause in Paragraph 9.1 rather than cut off the Caplugs
10 Class Period at 24,640 workweeks, the Caplugs Class Period shall extend to
11 include all workweeks for which such additional payment is made. (“Caplug
12 Class Period”)

- 13 • Defendants will pay \$900,000.00 (“Gross Settlement Amount”) to resolve the matter
14 and in which Defendant Caplugs agrees to pay \$675,000.00 and Defendant BRS agrees
15 to pay \$225,000.00.
- 16 • Caplugs represents that there are no more than 22,400 Workweeks during the Caplugs
17 Class Period. In the event the number of Workweeks during the Caplugs Class Period
18 increases by more than 10%, or 2,240 Workweeks, then, at Caplugs’ election: (1) the
19 Gross Settlement Amount shall be increased proportionally by the Workweeks in excess
20 of 24,640 multiplied by the Workweek Value; or (2) the Caplugs Class Period shall end
21 on the date the number of Workweeks reaches 24,640. The Workweek Value shall be
22 calculated by dividing the Gross Settlement Amount by 31,000. The Parties agree that
23 the Workweek Value amounts to \$29 per Workweek ($\$900,000.00 / 31,000$
24 Workweeks). Thus, for example, should there be 24,700 Workweeks in the Caplugs
25 Class Period, then the Gross Settlement Amount shall be increased by \$1,740.00.
26 ($24,700 \text{ Workweeks} - 24,640 \text{ Workweeks} \times \$29/\text{Workweek}$). Caplugs shall provide the
27 class data to the administrator no later than 7 days after the Court grants preliminary
28 approval of the Settlement. Caplugs shall make its election regarding the above no later

1 than 7 days after receiving information from the Administrator regarding the Workweek
2 count. Should Caplugs fail to make its election within the above timeframe, then option
3 (1) shall automatically apply.

- 4 • BRS represents that there are no more than 8,600 Workweeks during the BRS Class
5 Period. In the event the number of Workweeks during the BRS Class Period increases
6 by more than 10%, or 860 Workweeks, then, at BRS' election: (1) the Gross Settlement
7 Amount shall be increased proportionally by the Workweeks in excess of 9,460
8 multiplied by the Workweek Value; or (2) the BRS Class Period shall end on the date
9 the number of Workweeks reaches 9,460. The Workweek Value shall be calculated by
10 dividing the Gross Settlement Amount by 31,000. The Parties agree that the Workweek
11 Value amounts to \$29 per Workweek (\$900,000.00 / 31,000 Workweeks). Thus, for
12 example, should there be 9,500 Workweeks in the BRS Class Period, then the Gross
13 Settlement Amount shall be increased by \$1,160. (9,500 Workweeks – 9,460
14 Workweeks x \$29/Workweek.). BRS shall provide the class data to the administrator no
15 later than 7 days after the Court grants preliminary approval of the Settlement. BRS
16 shall make its election regarding the above no later than 7 days after receiving
17 information from the Administrator regarding the Workweek count. Should BRS fail to
18 make its election within the above timeframe, then option (1) shall automatically apply.
- 19 • Defendants will pay the employer's share of taxes separate and apart from the Gross
20 Settlement Amount.
- 21 • This is a non-reversionary settlement.
- 22 • Class Members will be paid their *pro rata* share of the class action settlement based
23 on the total number of Workweeks¹ worked during the Class Period.
- 24 • The Settlement Administration costs, estimated not to exceed \$8,000.00, will be paid
25 out of the Gross Settlement Amount.

26
27
28 ¹ "Workweek(s)" 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).

- 1 • Class Counsel, comprised of David D. Bibiyan and Vedang J. Patel of Bibiyan Law
2 Group, P.C., may apply for, and Defendants will not oppose, attorneys' fees of not
3 more than thirty-five percent (35%) of the Gross Settlement Amount, which, unless
4 escalated pursuant to the Settlement Agreement, amounts to \$315,000.00, and actual
5 costs, not to exceed \$30,000.00, all of which will be paid out of the Gross Settlement
6 Amount.
- 7 • Class Counsel hereby applies for, and Defendants will not oppose, a service award of
8 not more than \$10,000.00; to Plaintiff, which will be paid out of the Gross Settlement
9 Amount.
- 10 • "Aggrieved Employees" means a person employed by Defendants Beyond Resource
11 Solutions, Inc., Caplugs, Inc., and Jorge Mejia, erroneously sued as George Portillo
12 (collectively, "Defendants") in California and classified as a non-exempt, hourly-paid
13 employee who worked for Defendants during the period from June 19, 2023 through the
14 date of preliminary approval of the settlement, or September 14, 2026, whichever comes
15 sooner ("PAGA Period").
- 16 • Defendants have agreed to pay \$90,000.00 as PAGA penalties, sixty-five percent
17 (65%) or \$58,500.00 of which will be paid to the LWDA out of the Gross Settlement
18 Amount, and thirty-five percent (35%) or \$31,500.00 of which will be distributed to
19 the Aggrieved Employees.
- 20 • For any Settlement Class Member whose Individual Class Payment check or
21 Individual PAGA Payment check is uncashed and cancelled after the void date, the
22 Administrator shall transmit the funds represented by such checks to the *cy pres*
23 recipient, Legal Aid at Work.

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

26 Any settlement of class litigation must be reviewed and approved by the Court. (*See* Cal.
27 Rules of Court, rule 3.769). This is done in two steps: (1) an early (preliminary) review by the
28 trial court; and (2) a final review after notice has been distributed to the class members for their

comment or objections. (*See id.*). Courts presume the absence of fraud or collusion in the negotiation of a settlement unless evidence to the contrary is offered. In short, there is a presumption that the negotiations were conducted in good faith. (Newberg on Class Actions, § 11.51; *In re Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability Litigation* (N.D. Cal. May 17, 2017) No. 16-cv-00295, 2017 WL 2214655, quoting *United States v. Oregon* (9th Cir. 1990) 913 F.2d 576, 580.)

IV. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS

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

Attached to the Declaration of Keaton Mendoza as Exhibit “1” thereto is the Settlement Agreement between the Parties. Attached to the Settlement Agreement as internal Exhibit “A” is the proposed Class Notice to be distributed to Class Members in English and Spanish. The proposed Class Notice satisfies these requirements.

The Parties respectfully request that this Court approve the above-referenced Class Notice and dissemination of the Class Notice to the Class Members, consistent with the manner and timing as set forth in the Settlement Agreement. The Parties have agreed to use Phoenix Settlement Administrators (“Phoenix”), 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 Plaintiff and expert consultant; analysis of shifts and Workweeks worked by Class Members in the Class Period, analysis

1 of the number of pay periods and number of Aggrieved Employees in the PAGA Period for
2 calculating PAGA penalties, number of Class Members eligible for wage statement penalties and
3 waiting time penalties; an analysis of Defendants' financial ability to fund the settlement; an analysis
4 of Plaintiff's employment records; extensive correspondence and communication between counsel;
5 a review of pleadings, evidence and rulings in similar actions litigated elsewhere in the state; a
6 review of similar cases in the same industry elsewhere in the country; and preparation for and
7 attendance at a full-day mediation, followed by further discussions and coordination to finalize the
8 terms and conditions of the general settlement parameters agreed to by the Parties.

9 While Class Counsel believes in the chance of success of certifying the claims, Class
10 Counsel recognized the potential risk, expense and complexity posed by further litigation.
11 Moreover, litigating Plaintiff's claims in this litigation—claims that involve approximately 276
12 Class Members during the Class Period—would require substantial preparation and discovery and
13 ultimately would involve the deposition and presentation of numerous more witnesses (including
14 Class Members and expert witnesses), as well as the consideration, preparation and analysis of
15 expert reports. Therefore, should litigation have progressed any further, there would have been
16 significant expense incurred by each side (above and beyond the expense already incurred).

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

18 The settlement amount reached in this case provides significant recovery to Class Members
19 and Aggrieved Employees and easily falls within the range of reasonableness. Based on documents
20 and information provided by Defendants, Class Counsel understands there are no more than 31,000
21 Workweeks during the Class Period.

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

24 Class Counsel theorized, based on Plaintiff's narrative evidence and documents
25 produced by Defendants, that Defendants failed to pay all wages due to Class Members because
26 Defendants required Class Members to work off-the-clock by requiring them waiting in line to clock
27 in, making phone calls, cleaning their workstations and finishing their manufacturing duties off the
28 clock. Class Counsel theorized, based on documents produced by Defendants, that Defendants

1 rounded time entries in a manner detrimental to Class Members' interest. Class Counsel theorized
2 based on Plaintiff's narrative evidence and documents produced by Defendants that Defendants
3 rounded time entries exactly 8 hours every shift which create a non-rebuttable presumption that time
4 entries were entirely synthetic, false, and did not accurately track Class Members' time worked.
5 Class Counsel theorized based on documents produced by Defendants and Plaintiff's narrative
6 evidence that Class Members have spent extensive amounts of uncompensated time under
7 Defendants' control.

8 One theory advanced by Class Counsel alleged, based on Plaintiff's narrative evidence, that
9 Class Members worked off-the-clock for approximately three (3) minutes each shift throughout the
10 Class Period, without pay. Class Counsel understand, based on time and payroll records produced
11 by Defendants and analysis thereof by expert data consultants retained by Class Counsel, that there
12 were approximately 146,255 shifts during the Class Period, 67.9% of which were over eight (8)
13 hours in length, and Class Members had an average hourly rate of pay of \$20.78. Thus, one
14 calculation performed by Class Counsel at mediation resulted in Defendants' exposure for unpaid
15 off-the-clock work in an approximate amount of **\$252,328** ([146,255 shifts x 0.679 shifts over eight
16 hours x 0.05 hour x \$20.78 x 1.5 overtime rate] + [146,255 shifts x 0.321 shifts under eight hours x
17 0.05 hour x \$20.78 x 2 in liquidated damages]).

18 Class Counsel understand that Defendants explicitly deny these contentions and make the
19 following defenses in connection with this claim: Defendants contend that their policies
20 specifically prohibit off-the-clock work. Defendants contend that they did not require Class
21 Members to work off-the-clock, they were paid for all time suffered or permitted to work.
22 Defendants contend that any allegations that Class Members were required to be under
23 Defendants' control off-the-clock would necessitate an individualized inquiry into when and why,
24 making this claim not subject to class treatment and any trial in this litigation unmanageable. Thus,
25 Defendants contend that no damages can be recovered here, and, even if, *arguendo*, they could,
26 an estimate of three (3) minutes of unpaid work off-the-clock of Class Members for *every single*
27 *shift* during the Class Period is a wild exaggeration of time spent working off-the-clock if *any*
28 such time was spent.

1 Class Period were non-compliant. Class Counsel understand from Defendants' policy documents,
2 that Defendants policies did not make any reference of rest break premiums. Class Counsel theorized
3 based on data produced by Defendants that non-payment of any rest break premium to Class
4 Members raises a rebuttable presumption that all rest periods throughout the Class Period were non-
5 compliant.

6 Thus, one calculation performed by Class Counsel at mediation resulted in, assuming a 40%
7 violation rate, **Defendants' exposure for failure to provide compliant rest periods in a**
8 **conservative amount of \$1,194,260** (143,679 shifts x 0.4 violation rate x \$20.78/hour).

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

19 4. Wage Statement Violations

20 Class Counsel theorized that Class Members are entitled to recover penalties for
21 Defendants' alleged failure to issue compliant wage statements under Labor Code section 226,
22 subdivision (e), for the derivative impact of the failure to pay all wages owed on providing
23 accurate information on wage statements. Specifically, Class Counsel theorized that penalties are
24 owed under Labor Code section 226 due to, at minimum, Defendants' failure to pay premium
25 wages. A non-exempt employee suffering injury as a result of a knowing and intentional failure
26 by an employer to comply with Labor Code section 226, subdivision (a), is entitled to recover the
27 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
28 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period.

1 Class Counsel understand from the data provided by Defendants that there were 13,074 pay
2 periods during the relevant statutory time period for Class Members. If, in fact, Class Members
3 worked every off-the-clock every shift as set forth above, and no rest premiums were paid, every
4 wage statement would thus, Class Counsel theorized, violate Labor Code section 226. However,
5 due to the derivative nature of wage statement penalties, as well as the requirement that
6 Defendants' failure to comply with Labor Code section 226 be knowing and intentional, one
7 calculation performed by Class Counsel at mediation, based on the initial penalty of fifty dollars
8 (\$50) in light of Defendants' defenses, resulted in **Defendants' maximum exposure for wage**
9 **statement violations in the amount of \$653,700** (13,074 pay periods x \$50/pay period).

10 Class Counsel understand that Defendants make the following defenses in connection with
11 this claim: Defendants contend that the wage statements issued to the employees fully complied
12 with Labor Code section 226. Defendants contend that because it believes no wages are unpaid
13 that, thus, there can be no derivative penalties. However, Class Counsel also understand the risks
14 inherent in this claim if the above claims were not certified. Class Counsel also had to factor in,
15 and did factor in, the risk that the Court would find there was no injury to Class Members even if
16 the wage statements were inaccurate or that Defendants' conduct was not intentional, both of
17 which are requirements of Labor Code section 226 before penalties can issue. Class Counsel also
18 note that the calculation used does not take into account the fact that all Class Members did not
19 work all pay periods and, therefore, Class Counsels' calculation does not take into account the
20 maximum penalty of \$4,000 in Plaintiff's exposure model used at mediation.

21 5. Waiting Time Penalties

22 Pursuant to Labor Code sections 201, 202 and 203, each employee in the relevant statutory
23 period (*i.e.*, three years before the filing of the initial Complaint) is entitled to 30 days' worth of
24 wages as waiting time penalty for not being paid all wages due upon separation from employment.
25 Class Counsel theorized at mediation, based on relevant documents provided by Defendants, that,
26 under Labor Code section 203, Defendants are liable to pay each Class Member, who was terminated
27 during the relevant statutory period, a full 30-day worth of wages as waiting time penalty for failure
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1 to pay compensation in lieu of compliant meal and rest periods, and failure to timely pay all wages
2 due at the time of termination or resignation.

3 Based on relevant documents provided by Defendants, there were approximately 44 Class
4 Members who were terminated or resigned during the relevant statutory period. Thus, one
5 calculation performed at mediation by Class Counsel resulted in **Defendants' exposure for waiting**
6 **time penalties to be approximately \$219,437** (44 separated Class Members x \$20.78/hour x 8
7 hours x 30 days).

8 Class Counsel understand that Defendants contend that there is no credence to Plaintiff's
9 off-the-clock theory and that, thus, no waiting time penalties are owed based on that theory.
10 Finally, Defendants contend that its actions were not "willful" and that, thus, waiting time
11 penalties cannot be awarded. Thus, Defendants argued that no waiting time penalties are owed.

12 6. PAGA Penalties

13 Class Counsel understand from the time and payroll data provided by Defendants that there
14 are approximately 114 Aggrieved Employees who collectively worked 13,074 pay periods in the
15 PAGA Period. Plaintiff's claims in the Action under PAGA are substantially similar to those
16 described herein. PAGA penalties include penalties for initial violations and subsequent
17 violations. Defendants contend that only initial violation rates may be used instead of the
18 subsequent violation rates initially used by Class Counsel. With this in mind and because Class
19 Counsel through investigation and discovery did not come to the conclusion that Defendants at
20 any time was notified by any governmental entity that they violated any Labor Code sections
21 presented in the PAGA Notice and PAGA claims, Class Counsel adjusted the exposure model for
22 Defendants to include only initial violation rates.

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

26 a. Overtime Violations: Labor Code section 558 prescribes penalties of \$50 for an
27 initial violation and \$100 for each subsequent violation. Using the initial pay period rate for all
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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 \$653,700 (13,074 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 \$1,307,400 (13,074 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 \$653,700 (13,074 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 \$653,700 (13,074 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 \$1,307,400 (13,074 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 Defendant indicate that there were 44 Aggrieved Employees
whose employment was separated during the PAGA Period. This amounts to a maximum exposure
of \$4,400 (44 Aggrieved Employees x \$100).

1 g. Conclusion: In sum, Class Counsel calculated Defendants' total maximum
2 exposure for PAGA violations if the Court were to find a 100% violation rate for every Aggrieved
3 Employee every pay period and not exercise its discretion to reduce any of those penalties to be
4 **\$4,580,300**. Class Counsel understand from the mediator and the mediation process that
5 Defendants argued the following in connection with this claim: Defendants contend that no PAGA
6 penalties are likely to be awarded and, even if they were, the maximum exposure calculated by
7 Class Counsel is vastly overstated. First, Defendants defend that PAGA penalties cannot and
8 should not be stacked. Second, Defendants assert that individualized issues predominate the
9 PAGA claims, making the claims unmanageable for trial. Third, Defendants deny that a violation
10 for each pay period can be established. Fourth, Defendants contend that a Court is unlikely to
11 exercise its discretion to award civil penalties under PAGA where, as here, there is no conduct
12 shown by Plaintiffs that would show any Labor Code violation by Defendants are knowing and
13 intentional. Defendants insist that this is especially true in this Action where class action damages
14 are available to Class Members, rendering an award of PAGA penalties in addition to class action
15 damages to be double recovery.

16 Class Counsel maintain that it is possible to recover the subsequent violation rate for
17 penalties, that stacking is permissible, and that there is no manageability requirement under PAGA
18 (citing *Estrada v. Royalty Carpet Mills, Inc.*). As such, Class Counsel believes a 90% discount of
19 this claim to be reasonable, resulting in a valuation of **\$458,030** as a reasonable estimate of the
20 likelihood of what Plaintiff may recover at trial for PAGA penalties ($\$4,580,300 \times .10$).

21 **10. Conclusion**

22 When including derivative penalties, such as waiting time penalties, wage statement
23 violations, and discretionary PAGA penalties, Class Counsel theorized Defendants' maximum
24 exposure to be approximately **\$2,997,420**. In all, Class Counsel obtained a Gross Settlement
25 Amount of **\$900,000.00**. Particularly in light of the risks involving obstacles to class certification,
26 all issues and risks related to liability, the issues with manageability at trial, the discretionary
27 nature of PAGA penalties, and considering the case law regarding fair, reasonable and adequate
28 settlements, Class Counsel strongly believe that the settlement reached is fair, reasonable and

adequate, and in the best interest of Class Members.

Moreover, \$90,000.00 of the Gross Settlement Amount was attributed to PAGA penalties. This allocation was decided mutually by the Parties and the mutual decision was based on: (1) the fact that damages are available for the failure to pay wage claims while only penalties are available for the PAGA claims; (2) the risk that the Court may exercise its discretion to decline to stack PAGA penalties; (3) the risk that the Court may exercise its discretion to not award the full amount of PAGA penalties available; and (4) the risk that the Court may decline to award any PAGA penalties at all in light of the fact that damages are available for Class Members and it may find any further liability against Defendant unnecessarily punitive.

VII. THE PROPOSED ATTORNEYS' FEES AND COSTS ARE REASONABLE

Class Counsel seeks an attorneys' fees award of not more than thirty-five percent (35%) of the Gross Settlement Amount, which, unless escalated pursuant to this Agreement, would amount to \$315,000.00. 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 AWARD TO THE NAMED PLAINTIFF AND CLASS REPRESENTATIVES ARE REASONABLE

Plaintiff is entitled to enhanced award for her service as class representative, for answering extensive questions by Class Counsel, for being subjected to intrusive questioning during his deposition, for being available and answering questions during mediation, for the risks in being the named 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 Plaintiff. Plaintiff risked intrusive

1 discovery and the payment of employer costs. In the experience of Class Counsel, the typical
2 enhancement award in wage and hour class actions ranges from approximately \$10,000.00 to
3 \$25,000.00, although some awards are higher. In contrast, Class Counsel seeks an extremely limited
4 enhancement of \$10,000.00 to Plaintiff for her service.

5 **IX. CONDITIONAL CERTIFICATION FOR SETTLEMENT PURPOSES**

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

7 In California, there are two certification prerequisites: (1) the existence of an “ascertainable
8 class;” and (2) “a well-defined community of interest in the questions of law and fact involved
9 affecting the parties to be represented.” (*Sotelo v. MediaNews Group, Inc.* (2012) 207 Cal.App.4th
10 639, 647.) To certify a class, the party advocating class treatment must demonstrate: (1) a numerous
11 class; (2) predominant common questions of law or fact; (3) class representatives with claims or
12 defenses typical of the class; and (4) class representatives who can adequately represent the class.”
13 (*Williams v. Sup. Ct.* (2013) 221 Cal.App.4th 1353, citing *Brinker Restaurant Corp. v. Sup. Ct.*
14 (2012) 53 Cal.4th 1004, 1021.) Each of the criteria for class certification is satisfied in this instance:

15 **1. Ascertainability** – “Ascertainability” is a due process requirement that
16 ensures it is possible to decide who will be bound by the judgment (*res judica* effect). The
17 determination is made by examining the class definitions and the sizes of the class. Here, the Class
18 Members definition for both Defendants respectively are; ((1) for BRS; all persons employed by
19 BRS in California and classified as non-exempt, hourly-paid employees, who were placed to work
20 for Caplugs, during the BRS Class Period, and (2) for Defendant Caplugs: all persons directly
21 employed by Caplugs in California and classified as non-exempt, hourly-paid employees who
22 worked for Caplugs during the Caplugs Class Period) are derived from the operative complaint,
23 which complains of alleged violations of Labor Code sections that are chiefly and, in some instances,
24 solely applicable to non-exempt, hourly paid employees. There is no difficulty ascertaining who is
25 a Class Member based on the above-described definition as it is readily apparent to all involved who
26 is a non-exempt, hourly-paid employee who worked in California for Defendants during the Class
27 Period based solely from Defendants’ payroll records, which amounts to approximately 276 persons.

28 **2. Numerosity** – According to the California Supreme Court, a putative class is

1 sufficiently numerous to achieve the numerosity requirement if their joinder is impracticable and
2 thus substantial benefits accrue both to litigants and the courts if the action proceeds as a class action.
3 (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435, 446.) Numerosity is presumed satisfied if
4 there are forty (40) putative class members. (*Miri v. Dillon* (E.D. MI 2013) 292 F.R.D. 454, 461.)
5 However, as few as 10 class members have been found sufficient. (*See, e.g., Bowles v. Sup. Ct.*
6 (1955) 44 Cal.2d 574.) Class Counsel understands from documents provided that Defendants
7 identified at least 276 Class Members. That is sufficiently numerous to establish the numerosity
8 requirement.

9 **3. Commonality** – California law also requires that “questions of law or fact
10 common to the class [be] substantially similar and predominate over the questions affecting the
11 individual members.” (*In re Steroid Hormone Product Cases* (2010) 181 Cal.App.4th 145, 153.)

12 This litigation is brought to resolve common issues that include whether Defendants failed
13 to pay for all hours worked; whether Defendants provided full, timely and un-interrupted meal and
14 rest periods; whether Class Members are entitled to premium pay for incomplete, untimely or
15 interrupted meal or rest periods, among other claims as set forth above.

16 **4. Typicality** – Typicality requires only that the named plaintiff’s interests in
17 the action be significantly similar to those of other class members. (*Williams v. Sup. Ct.* (2013)
18 221 Cal.App.4th 1353, citing *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1021.)
19 Plaintiff’s claims are typical of those of other Class Members as Plaintiff: (1) is a non-exempt,
20 hourly-paid employee like other Class Members; (2) complains of not being paid for all time under
21 Defendants’ control or suffered and/or permitted to work for Defendants; (3) did not receive full
22 premium pay for meal periods that were not compliant with the Labor Code; (4) did not receive
23 premium pay for rest periods that were not provided, among others as set forth above.

24 **5. Adequacy of Representation** - To maintain a class action, the representative
25 plaintiff must adequately protect the interests of the class. (*Williams v. Sup. Ct.* (2013) 221
26 Cal.App.4th 1353, citing *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1021.)
27 Adequacy of representation consists of two components. First, there must be no disabling conflicts
28 of interest between the class representatives and the class. Second, the class representative must be

1 represented by counsel who is competent and experienced in the kind of litigation to be undertaken.
2 (*See McGhee v. Bank of Am.* (1976) 60 Cal.App.3d 442, 450; *accord In re Juniper Networks, Inc.*
3 *Securities Litigation* (N.D. Cal. 2009) 264 F.R.D. 584, 590.) Both criteria are met in this instance:

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

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

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

11 As set forth in the Declarations of Class Counsel, Class Counsel in this matter consist of
12 experienced class action attorneys, have been appointed as class counsel in other class actions and
13 have a successful "track record" in litigating class actions.

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

17 It deals with common issues that are most efficiently adjudicated together, as indicated
18 above. Moreover, with at least 276 Class Members, presentation of all of them before this Court
19 may be problematic, impractical, and burdensome. On the contrary, a class action allows claims of
20 many individuals to be resolved at the same time, eliminates the possibility of repetitious litigation
21 and affords small claimants with a method of obtaining redress for claims which otherwise would
22 be too insufficient to warrant individual litigation.

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

26 **X. CONCLUSION**

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

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Dated: September 22, 2026

BIBIYAN LAW GROUP, P.C.

/s/ Keaton D. Mendoza

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