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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

ISAAC TANNER an individual and on behalf of all other similarly situated,

Plaintiff,

v.

ROYAL TRUCK BODY LLC, a California limited liability company, and DOES 1 through 100, inclusive,

Defendant.

CASE NO.: 24CV011304

[Assigned for all purposes to the Hon. Lauri Damrell in Dept. 8B]

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 D. MENDOZA, DAVID D. BIBIYAN, ISAAC TANNER, AND JODEY LAWRENCE IN SUPPORT THEREOF

HEARING INFORMATION:

DATE: August 7, 2026
TIME: 9:00 a.m.
DEPT: 8B

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 7, 2026 at 9:00 a.m. or as soon thereafter as they may be heard in Department 16 of the Superior Court of the State of California for the County of Sacramento, plaintiff Isaac Tanner ("Plaintiff"), on behalf of himself 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 ("Class," "Settlement Class Members" or "Class Members") for the purpose of settlement only: all current and former non-exempt employees that worked for Defendant Royal Truck Body LLC ("Defendant") in California during the period from June 7, 2020 through and including July 6, 2025 ("Class Period").

2. Preliminarily approving Plaintiff as Class Representative.

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

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

5. Preliminarily approving payment of the Gross Settlement Amount of $770,000.00, which is subject to escalation pursuant to the Settlement Agreement.

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

7. Appointing Phoenix Class Action Administration Solutions ("Phoenix") 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 $9,250.00 for settlement administration to Phoenix from the Gross Settlement Amount.

9. Preliminarily approving a service award of up to $10,000.00 to Plaintiff in consideration for Plaintiff's extensive efforts in prosecuting this case.

10. Preliminarily approving payment of reasonable attorneys' fees to Class Counsel in the amount of thirty-five percent (35%) of the Gross Settlement Amount which, unless escalated pursuant to the Settlement Agreement, amounts to $269,500.00.

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

12. Preliminarily approving PAGA penalties in the amount of $50,000.00, seventy-five percent (75%) or $37,500.00 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 $12,500.00 of which will be distributed to "Aggrieved Employees," defined as all current or former non-exempt employees that worked for Defendant in California during the period from June 7, 2023 through and including July 6, 2025 ("PAGA Period").

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

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

This Motion will be based on this Notice of Motion, the Memorandum of Points and Authorities filed herewith, the Declarations of Jay Goldbaum, Shareef S. Farag, Keaton D. Mendoza, David D. Bibiyan, Isaac Tanner, and Jodey Lawrence, and exhibits attached thereto, arguments of counsel and upon such other materials contained in the file and pleadings of this action.

Dated: July 16, 2026

BIBIYAN LAW GROUP, P.C.

/s/ Keaton D. Mendoza

KEATON D. MENDOZA

Attorneys for Plaintiff, ISAAC TANNER, on behalf of himself and all others similarly situated and aggrieved

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Isaac Tanner ("Plaintiff"), on behalf of himself and all others similarly situated and aggrieved, hereby applies for preliminary approval of the Class and PAGA Settlement Agreement ("Settlement," "Agreement" or "Settlement Agreement") upon the terms and conditions set forth in the Settlement Agreement, attached to the Declaration of Keaton D. Mendoza as Exhibit "1."

On June 7, 2024, Plaintiff filed with the California Labor and Workforce Development Agency ("LWDA") and served on defendant Royal Truck Body LLC ("Defendant"), a notice under Labor Code section 2699.3, stating Plaintiff intended to serve as a proxy of the LWDA to recover civil penalties on behalf of Aggrieved Employees for alleged Labor Code violations ("PAGA Notice"). A true and correct copy of the PAGA Notice is attached to the Declaration of Keaton D. Mendoza as Exhibit "2."

Also on June 7, 2024, Plaintiff commenced this action by filing a putative class action in Sacramento County Superior Court against Defendant seeking damages and statutory penalties for various violations of California's wage and hour laws. (the "Class Action" or "Action").

On October 10, 2024, Plaintiff filed a First Amended Complaint for Damages alleging: (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal periods or compensation in lieu thereof; (4) failure to provide rest periods or compensation in lieu thereof; (5) failure to pay all wages due upon separation; (6) failure to provide accurate wage statements; (7) failure to timely pay wages during employment; (8) failure to indemnify for business expenses; (9) failure to pay unused vested vacation time; and (10) engaging in unfair competition.

On January 21, 2025, after sixty-five (65) days had passed since Plaintiff filed and served the PAGA Notice, without any action by the LWDA with respect to the alleged Labor Code violations, Plaintiff filed a separate representative action under PAGA, captioned *Isaac Tanner v. Royal Truck Body LLC*, in the Sacramento County Superior Court, Case No. 25CV001505, seeking PAGA civil penalties against Defendant for the Labor Code violations alleged in the PAGA Notice (the "PAGA Action").

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

Prior to mediation, Plaintiff obtained, through informal discovery: (a) time and payroll records from the estimated 362 putative class members from June 7, 2020 through mediation; (b) data points, including the number of putative class members and workweeks from June 7, 2020 through mediation, the number of putative class members separated during the waiting time penalty period, and the number of putative aggrieved employees, pay periods and putative aggrieved employees separated from November 17, 2023 through mediation, and the average hourly rate of pay; (c) wage and hour policy documents of Defendant; and (d) all documents pertaining to Plaintiff available to Defendant.

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

On May 6, 2025, the Parties participated in an all-day mediation presided over by Lynn Frank, Esquire. The mediation was successful, and the Parties agreed to globally resolve all class and PAGA claims in the Action. As part and parcel to the Agreement, the Parties agreed to stipulate to Plaintiff's filing a Second Amended Complaint in the Class Action, adding all allegations in the PAGA Action, and after acceptance of the Second Amended Complaint, request for dismissal without prejudice of the PAGA Action, thereby effectively consolidating the allegations in the two actions for purposes of the Settlement. The Second Amended Complaint in the Class Action is the operative complaint in the Action ("Operative Complaint").

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

II. THE SETTLEMENT

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

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

- Certification of a class ("Settlement Class," "Settlement Class Members" or "Class Members") defined as: all current and former non-exempt employees that worked for Defendant Royal Truck Body LLC ("Defendant") in California during the period from June 7, 2020 through and including July 6, 2025 ("Class Period").
- Defendant will pay $770,000.00 ("Gross Settlement Amount") to resolve the matter.
- Based on their records, Defendant estimates that Class Members collectively worked a total of 35,000 Workweeks during the period from June 7, 2020 through May 5, 2025. Should the Workweeks during the Class Period increase beyond 10% of 35,000 (i.e., more than 3,500 Workweeks), Defendant may, at its option, either: (a) increase the Gross Settlement Amount on a pro-rata basis equal to the percentage increase in the number of Workweeks worked by the Class Members above ten percent (10%) (e.g., if the number of Workweeks increases by 11%, Defendant may increase the Gross Settlement Amount by 1%), or (b) set an end date to the Class Period which results in the number of Workweeks worked by the Class Members increasing by 10% or less.
- Defendant will pay the employer's share of taxes separate and apart from the Gross Settlement Amount.
- This is a non-reversionary settlement.
- Class Members will be paid their *pro rata* share of the class action settlement based

on the total number of Workweeks[1] worked during the Class Period.

- The Settlement Administration costs, estimated not to exceed $9,250.00, will be paid out of the Gross Settlement Amount.
- Class Counsel, comprised of David D. Bibiyan and Vedang J. Patel of Bibiyan Law Group, P.C., may apply for, and Defendant will not oppose, attorneys' fees of *up to* thirty-five percent (35%) of the Gross Settlement Amount, which, unless escalated pursuant to the Settlement Agreement, amounts to $269,500.00, and actual costs, not to exceed $30,000.00, all of which will be paid out of the Gross Settlement Amount.
- Class Counsel hereby apply for, and Defendant will not oppose, a service award of up to $10,000.00 to Plaintiff, which will be paid out of the Gross Settlement Amount.
- "Aggrieved Employees" means all current or former non-exempt employees that worked for Defendant in California during the period from June 7, 2023 through and including July 6, 2025 ("PAGA Period").
- Defendant has agreed to pay $50,000.00 as PAGA penalties, seventy-five percent (75%) or $37,500.00 of which will be paid to the LWDA out of the Gross Settlement Amount, and twenty-five percent (25%) or $12,500.00 of which will be distributed to the Aggrieved Employees.
- For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date (180 days after the date of mailing), the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

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.

[1] "Workweek" means any week during which a Class Member worked for Defendant for at least one day, during the Class Period.

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

IV. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS

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

Attached to the Declaration of Keaton D. 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 Class Action Administration Solutions ("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 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 Plaintiff's employment records; extensive correspondence and communication between counsel; a review of pleadings, evidence and rulings in similar actions litigated elsewhere in the state; a review of similar cases in the same industry elsewhere in the country; and preparation for and attendance at a full-day mediation, followed by further discussions and coordination to finalize the terms and conditions of the general settlement parameters agreed to by the Parties.

While Class Counsel believe in the chance of success of certifying the claims, Class Counsel recognized the potential risk, expense and complexity posed by further litigation. Moreover, litigating Plaintiff's claims in this litigation—claims that involve approximately 362 Class Members during the Class Period—would require substantial preparation and discovery, and ultimately would involve the deposition and presentation of numerous more witnesses (including Class Members and expert witnesses), as well as the consideration, preparation and analysis of expert reports. Therefore, should litigation have progressed any further, there would have been significant expense incurred by each side (above and beyond the expense already incurred).

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

The settlement amount reached in this case provides significant recovery to Class Members and Aggrieved Employees, and easily falls within the range of reasonableness. Based on documents and information provided by Defendant, Class Counsel understand, as of the date of the mediation, there are no more than 35,000 Workweeks during the period of June 7, 2020 through May 5, 2025.

1. Unpaid Wages for Failure to Pay for All Hours Worked

a. <u>Detrimental Rounding of Time</u>

Class Counsel theorized at mediation, based on Plaintiff's narrative evidence and documents produced by Defendant that, during at least until July 11, 2021, Defendant practiced rounding of

Class Members' time entries to the nearest quarter hour, ultimately resulting in unrecorded and unpaid time worked by Class Members.

Class Counsel theorized, based on documents produced by Defendant and analysis thereof by expert data consultants retained by Class Counsel, that there was a net of approximately 483 hours worked by Class Members during the Class Period which were unrecorded and unpaid due to detrimental rounding, and that Class Members had an average hourly rate of pay of $20.89. Thus, one calculation performed by Class Counsel at mediation resulted in Defendant's exposure for detrimental rounding in the amount of $10,089 (483 hours x $20.89/hour).

b. *Off-the-Clock Work*

Class Counsel theorized, based on Plaintiff's narrative evidence, that Defendant failed to pay all wages due to Class Members because Defendant required Class Members to work off-the-clock or Class Members spent time off-the-clock under Defendant's control, including, without limitation: (1) walking from the facility's entrance near the manager's office to the biometric timeclock located at the very back of the facility, at times being asked questions by the manager and/or other employees; and (2) waiting in line together with many other employees, as most of the employees, if not all, had the same shifts, to clock in on only one biometric timeclock. This process was repeated as employees clocked out at the end of their shifts.

One theory advanced by Class Counsel alleged, based on Plaintiff's narrative evidence, that Class Members worked off-the-clock for a conservative estimate of five (5) minutes each shift throughout the Class Period, without pay. Class Counsel understand, based on time and payroll records produced by Defendant and analysis thereof by expert data consultants retained by Class Counsel, that there were approximately 155,802 shifts during the Class Period, 69% of which were over eight (8) hours in length, and Class Members had an average regular hourly rate of pay of $20.89. Thus, one calculation performed by Class Counsel resulted in Defendant's exposure for unpaid off-the-clock work in a conservative amount of $447,082 ([155,802 shifts x 0.69 shifts over 8 hours x 0.083 hour x $20.89 x 1.5 overtime rate] + [155,802 shifts x 0.31 shifts less than 8 hours x 0.083 hour x $20.89 x 2 in liquidated damages]).

/ / /

Thus, one calculation performed by Class Counsel at mediation resulted in **Defendant's exposure for unpaid wages for failure to pay for all time worked in a total amount of $457,171** ($10,089 for detrimental rounding + $447,082 for unpaid off-the-clock work).

Class Counsel understand from the mediator and the mediation process that Defendant defends that their rounding practice was neutral on its face as it resulted in roughly equal amounts of overpaid and underpaid shifts. Thus, Defendants took the position that their rounding practice resulted in no harm to Class Members. Defendant also contends that its policies specifically prohibit off-the-clock work. Defendant contends that it did not require Class Members to work off-the-clock and, rather, they were paid for all time suffered or permitted to work. Defendant asserts that they provided a sufficient number of timeclocks at their facilities, and Class Members would not have been required to wait in line for clocking in and out before and after their shifts. Defendant contends that any allegations that Class Members were required to be under Defendant's 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, Defendant contends that no damages can be recovered here, and, even if, *arguendo*, it could, an estimate of five (5) minutes of unpaid time for *every single* shift worked by all Class Members during the Class Period is an exaggeration of time spent working off-the-clock if *any* such time was spent.

2. Damages for Failure to Include Regular Rate of Pay for the Purpose of Calculating Overtime and Sick Pays, and Meal Break Premiums

Class Counsel understand from Plaintiff's narrative evidence and documents produced by Defendant, that Class Members received non-discretionary bonuses and commissions during the Class Period. However, Class Counsel theorized, on the same bases, that these bonuses and commissions were never included in the regular rate of pay for the purpose of calculating overtime and sick leave pays, and meal break premiums. Class Counsel theorized, based on documents produced by Defendant and analysis thereof by expert data consultants retained by Class Counsel, that, **because of Defendant's failure to include these bonuses and commissions in the regular**

rate of pay for the purpose of calculating overtime and sick leave pays, and meal break premiums, Defendant has a conservative exposure of $15,110.

Class Counsel understand that Defendant argued the following in connection with this claim: Defendant contends that any bonuses and commissions paid were discretionary, and thus, are not to be included in the regular rate of pay for the purpose of calculating overtime and sick leave pays, and meal break premiums under the applicable Wage Order. Defendant further defends that it did properly include all bonuses under the applicable Wage Order in Class Members' regular rate of pay for the purpose of calculating overtime and sick leave pays, and meal break premiums, and thus, no monies are owed in connection with this theory either.

3. Recovery of Damages for Non-Compliant Meal Periods

Class Counsel theorized, based on Plaintiff's narrative evidence, that Defendant's meal period practices throughout the Class Period were non-compliant because meal periods were on-duty and interrupted. For example, Class Members, specifically drivers, were regularly expected to take "drive-by" lunches while driving Defendant's trucks to their delivery destination and Class Members would receive calls from supervisors for work-related inquiries during meal periods. Class Counsel further theorized, based on documents produced by Defendants and Plaintiff's narrative evidence, that Class Members would receive no meal period at all at least two times per week.

Class Counsel theorized, based on documents produced by Defendants and analysis thereof by expert data consultants retained by Class Counsel that 25,828 (18.2%) of 141,684 meal-eligible shifts had unique facial meal break violations (late, short, or missed meal periods) and that there were only 2,064 meal premium payments made by Defendant throughout the Class Period. Thus, one calculation advanced by Class Counsel resulted in **Defendant's exposure for unique facial meal period violations in the approximate amount of $496,429** ([25,828 unique facial meal break violations – 2,064 meal premium payments x $20.89/hour).

Class Counsel understand that Defendant makes the following defenses in connection with this claim: Defendant argues that Class Members agreed to valid meal period waivers. Defendant argues that it had compliant meal period policies and practices. Defendant argues that Class Members took timely and full meal periods. Defendant contends that its policy requires its employees to take timely and full meal periods. Defendant further contends 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, Defendant contends that *no* monies are owed for this account but, even if any amounts were due, the amount calculated by Class Counsel is excessive.

4. Recovery of Damages for Non-Compliant Rest Periods

Class Counsel theorized at mediation, based on Plaintiff's narrative evidence, that Class Members never received a rest break or were never told by Defendant to take a rest break throughout the Class Period. Notably, there were no rest period premiums ever issued throughout the Class Period.

Thus, one calculation performed by Class Counsel resulted in, assuming a 40% violation rate for the 150,195 rest-eligible shifts, **Defendant's exposure for failure to provide compliant rest periods in a conservative amount of $1,255,029** (150,195 shifts x 0.40 violation rate x $20.89/hour).

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

5. Failure to Indemnify for Business Expenses

Class Counsel initially theorized, based on Plaintiff's narrative evidence, that Defendant failed to indemnify Class Members for necessary business expenses because Defendant required their employees to use their cellphones for work-related calls without compensation. However, Class Counsel discounted this theory of liability at the time of mediation to focus on Plaintiff's wage claims, among others.

6. Wage Statement Violations

Class Counsel theorized that Class Members are entitled to recover penalties for Defendant's alleged failure to issue compliant wage statements under Labor Code section 226, subdivision (e), for the derivative impact of the failure to pay all wages owed on providing accurate information on wage statements. Specifically, Class Counsel theorized that penalties are owed under Labor Code section 226 due to, at minimum, Defendant's failure to pay premium wages. A non-exempt employee suffering injury as a result of a knowing and intentional failure by an employer to comply with Labor Code section 226, subdivision (a), is entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period. Class Counsel understand from the data provided by Defendant that there were 12,708 pay periods during the relevant statutory time period for Class Members. If, in fact, Class Members worked every off-the-clock every shift as set forth above, and no rest premiums were paid, every wage statement would thus, Class Counsel theorized, violate Labor Code section 226. Thus, one calculation performed by Class Counsel, resulted in **Defendant's maximum exposure for wage statement violations in the amount of $1,270,800** (12,708 pay periods x $100/pay period).

Class Counsel understand that Defendant makes the following defenses in connection with this claim: Defendant contends that the wage statements issued to the employees fully complied with Labor Code section 226. Defendant contends that because it believes no wages are unpaid that, thus, there can be no derivative penalties. However, Class Counsel also understand the risks inherent in this claim if the above claims were not certified. Class Counsel also had to factor in, and did factor in, the risk that the Court would find there was no injury to Class Members even if the wage statements were inaccurate or that Defendant's conduct was not intentional, both of which are requirements of Labor Code section 226 before penalties can issue. Class Counsel also note that the calculation used does not take into account the first pay period violation only being

$50 and the fact that all Class Members did not work all pay periods and, therefore, do not qualify for the maximum penalty of $4,000 as calculated in Plaintiff's exposure model used at mediation.

7. Waiting Time Penalties

Pursuant to Labor Code sections 201, 202 and 203, each employee in the relevant statutory period (*i.e.*, three years before the filing of the initial Complaint) is entitled to 30 days' worth of wages as waiting time penalty for not being paid all wages due upon separation from employment. Class Counsel theorized, based on relevant documents provided by Defendant, that, under Labor Code section 203, Defendant is liable to pay each Class Member, who was terminated during the relevant statutory period, a full 30-day worth of wages as waiting time penalty for failure to pay compensation in lieu of compliant meal and rest periods, and failure to timely pay all wages due at the time of termination or resignation. Based on relevant documents provided by Defendant, there were approximately 164 Class Members who were terminated or resigned during the relevant statutory period. Thus, one calculation performed by Class Counsel resulted in **Defendant's exposure for waiting time penalties to be approximately $822,230** (164 separated Class Members x $20.89/hour x 8 hours x 30 days).

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

8. PAGA Penalties

Class Counsel understand, as of the date of mediation, from the time and payroll data provided by Defendant that Aggrieved Employees collectively worked 12,708 Pay Periods in the PAGA Period. Plaintiff's claims in the Action under PAGA are substantially similar to those described herein. PAGA penalties include penalties for initial violations and subsequent violations. Defendant contends 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 Defendant at any time were notified by any governmental entity that it violated any Labor Code sections presented in the PAGA Notice and PAGA claims, Class Counsel adjusted the exposure model for Defendant 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 Defendant's maximum exposure in PAGA penalties as follows:

a. <u>Overtime Violations</u>: Labor Code section 558 prescribes penalties of $50 for an initial violation and $100 for each subsequent violation. Using the initial pay period rate for all violations, and a violation every single pay period for every single non-exempt employee in the PAGA Period, this amounts to a maximum exposure of $635,400 (12,708 pay periods x $50).

b. <u>Minimum Wage Violations</u>: Labor Code section 1197.1 prescribes penalties of $100 for an initial violation and $250 for each subsequent violation. Using the initial pay period rate for all violations and a violation every single pay period for every single Aggrieved Employee in the PAGA Period, this amounts to a maximum exposure of $1,270,800 (12,708 pay periods x $100).

c. <u>Meal Period Violations</u>: Labor Code section 558 prescribes penalties of $50 for an initial violation and $100 for each subsequent violation. Using the initial pay period rate for all violations and a violation every single pay period for every single non-exempt employee in the PAGA Period, this amounts to a maximum exposure of $635,400 (12,708 pay periods x $50).

d. <u>Rest Period Violations</u>: Labor Code section 558 prescribes penalties of $50 for an initial violation and $100 for each subsequent violation. Using the initial pay period rate for all violations and a violation every single pay period for every single non-exempt employee in the PAGA Period, this amounts to a maximum exposure of $635,400 (12,708 pay periods x $50).

e. <u>Wage Statement Violations</u>: 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 $1,270,800 (12,708 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 31 Aggrieved Employees whose employment was separated during the PAGA Period. This amounts to a maximum exposure of $3,100 (31 Aggrieved Employees x $100).

g. Conclusion: In sum, Class Counsel calculated Defendant's total maximum exposure for PAGA violations if the Court were to find a 100% violation rate for every Aggrieved Employee every pay period and not exercise its discretion to reduce any of those penalties to be $4,450,900. Class Counsel understand that Defendant argued the following in connection with this claim: Defendant contends that no PAGA penalties are likely to be awarded and, even if they were, the maximum exposure calculated by Class Counsel is vastly overstated. First, Defendant defends that PAGA penalties cannot and should not be stacked. Second, Defendant asserts that individualized issues predominate the PAGA claims, making the claims unmanageable for trial. Third, Defendant denies that a violation for each pay period can be established. Fourth, Defendant contends that a Court is unlikely to exercise its discretion to award civil penalties under PAGA where, as here, there is no conduct shown by Plaintiff that would show any Labor Code violation by Defendant is knowing and intentional. Defendant insists that this is especially true in the Action where class action damages are available to Class Members, rendering an award of PAGA penalties in addition to class action damages to be double recovery.

Class Counsel maintain that it is possible to recover the subsequent violation rate for penalties, that stacking is permissible, and that there is no manageability requirement under PAGA (citing *Estrada v. Royalty Carpet Mills, Inc.*). As such, Class Counsel believe a 90% discount of this claim to be reasonable, resulting in **$445,090** as a reasonable estimate of the likelihood of what Plaintiff may recover at trial for PAGA penalties ($4,450,900x 0.10).

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9. Conclusion

When including derivative penalties, such as waiting time penalties, wage statement violations, and discretionary PAGA penalties, Class Counsel theorized Defendant's maximum exposure to be approximately **$4,761,859**. In all, Class Counsel obtained a Gross Settlement Amount of **$770,000.00**. Particularly in light of the risks involving obstacles to class certification, all issues and risks related to liability, the issues with manageability at trial, the discretionary nature of PAGA penalties, and considering the case law regarding fair, reasonable and adequate settlements, Class Counsel strongly believe that the settlement reached is fair, reasonable and adequate, and in the best interest of Class Members.

Moreover, $50,000.00 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 seek an attorneys' fees award of *up to* thirty-five percent (35%) of the Gross Settlement Amount, which, unless escalated pursuant to this Agreement, would amount to $269,500.00. 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 Defendant and are well within established guidelines.

VIII. THE REQUESTED ENHANCEMENT AWARD TO THE NAMED PLAINTIFF AND CLASS REPRESENTATIVE IS REASONABLE

Plaintiff is entitled to an enhancement award for his service as class representative, for answering extensive questions by Class Counsel, for being available and answering questions during mediation, for the risks in being the named plaintiff and for providing Defendant with a more expansive release of claims, including a waiver based upon California Civil Code section 1542, in exchange for the enhancement award. Defendant does not oppose the requested enhancement to Plaintiff. Plaintiff risked intrusive discovery and the payment of employer costs. In the experience of Class Counsel, the typical enhancement award in wage and hour class actions ranges from approximately $10,000.00 to $25,000.00, although some awards are higher. In contrast, Class Counsel seek an extremely limited enhancement of $10,000.00 to Plaintiff.

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 (*i.e.*, all current and former non-exempt employees that worked for Defendant in California during the Class Period) is derived from the operative complaint, which complains of alleged violations of Labor Code sections that are chiefly and, in some instances, solely applicable to non-exempt employees. There is no difficulty ascertaining who is a Class Member based on the above-described definition as it is readily apparent to all involved who is a current and former non-exempt employee that worked for Defendant in California during the Class Period based solely from Defendant's payroll records, which amounts to approximately 362 persons.

2. **Numerosity** – According to the California Supreme Court, a putative class is sufficiently numerous to achieve the numerosity requirement if their joinder is impracticable and thus substantial benefits accrue both to litigants and the courts if the action proceeds as a class action. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435, 446.) Numerosity is presumed satisfied if there are forty (40) putative class members. (*Miri v. Dillon* (E.D. MI 2013) 292 F.R.D. 454, 461.) However, as few as 10 class members has been found sufficient. (*See, e.g., Bowles v. Sup. Ct.* (1955) 44 Cal.2d 574.) Class Counsel understand from documents provided that Defendant identified at least 362 Class Members. That is sufficiently numerous to establish the numerosity requirement.

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

This litigation is brought to resolve common issues that include whether Defendant failed to pay for all hours worked; whether Defendant 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.) Plaintiff contends that his claims are typical of those of other Class Members as Plaintiff: (1) is a non-exempt, hourly-paid employee like other Class Members; (2) complains of not being paid for all time under Defendant's control or suffered and/or permitted to work for Defendant; (3) did not receive premium pay for meal periods that were not compliant with the Labor Code; (4) did not receive premium pay for rest periods that were not provided, among others as set forth above. Thus, Plaintiff's claims are typical of other Class Members.

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

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

No conflicts, disabling or otherwise, exists between Plaintiff and Class Members because Plaintiff alleges to have been damaged by the same alleged conduct of Defendant (*i.e.*, Plaintiff is classified as non-exempt, hourly-paid employee, 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, Plaintiff asserts that, with at least 362 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.

Dated: July 16, 2026

BIBIYAN LAW GROUP, P.C.

/s/ Keaton D. Mendoza

KEATON D. MENDOZA
Attorneys for Plaintiff, ISAAC TANNER, on behalf of himself and all others similarly situated and aggrieved