

BIBIYAN LAW GROUP, P.C.

Vedang J. Patel (SBN 328647)

vedang@tomorrowlaw.com

Keaton D. Mendoza (SBN 321172)

kmendoza@tomorrowlaw.com

1460 Westwood Boulevard

Los Angeles, California 90024

Telephone: (310) 438-5555

Facsimile: (310) 300-1705

Attorneys for Plaintiff, BRANDON NIELSEN,
on behalf of himself and of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SUTTER

BRANDON NIELSEN, on behalf of himself
and of all others similarly situated,

Plaintiff,

v.

BTR TIRES LLC, a California limited liability
Company; BAINS TRUCK REPAIR LLC, a
California limited liability Company; BAINS
TOWING & RECOVERY LLC, a California
limited liability Company; BAINS TOWING
& REPAIR LLC, a California limited liability
Company; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: CVCS24-0002443

[Assigned to the Hon. Laura J. Davis in Dept.
1]

**DECLARATION OF KEATON D.
MENDOZA IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND REPRESENTATIVE ACTION
SETTLEMENT**

DECLARATION OF KEATON D. MENDOZA

1
2 1. I am an attorney at law, duly licensed to practice before all the Courts of the State of
3 California, an associate attorney at Bibiyan Law Group, P.C., counsel for plaintiff Brandon Nielsen
4 (“Plaintiff”), and all others similarly situated and aggrieved. As such, I am familiar with the file in
5 this matter and, if called as a witness, I could and would competently testify to the following facts
6 of my own personal knowledge.

7 2. On or around October 8, 2024, Plaintiff commenced this action by filing a class
8 action complaint against Defendants BTR Tires LLC, Bains Trust Repair LLC, Bains Towing &
9 Recovery LLC, and Bains Towing & Repair LLC (collectively, “Defendants”) for: (1) failure to pay
10 overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal periods or
11 compensation in lieu thereof; (4) failure to provide rest periods or compensation in lieu thereof; (5)
12 failure to pay all wages due upon separation from employment; (6) failure to provide accurate wage
13 statements; (7) failure to timely pay wages during employment; (8) failure to indemnify for business
14 expenses; (9) failure to pay unused vested vacation time; and (10) engaging in unfair competition.
15 (the “Class Action”)

16 3. On or around October 4, 2024, Plaintiff filed with the LWDA and served on
17 Defendants a notice under Labor Code section 2699.3, stating Plaintiff intended to serve as a proxy
18 of the LWDA to recover civil penalties on behalf of Aggrieved Employees for alleged Labor Code
19 violations. A true and correct copy of the PAGA Notice is attached to the Declaration of Vedang J.
20 Patel as Exhibit “2.”

21 4. On or around December 10, 2024, after sixty-five (65) days had passed since the
22 filing and serving of the PAGA Notice, without any action by the LWDA with respect to the Labor
23 Code violations alleged in the PAGA Notice, Plaintiff filed a separate representative action under
24 PAGA against Defendants, captioned Brandon Nielsen v. BTR Tires LLC, et al., in the Sutter
25 County Superior Court, Case No. CVCS24-0002947, for the Labor Code violations set out in the
26 PAGA Notice. (“PAGA Action”)

27 5. Thereafter, the Parties agreed to exchange informal discovery and attend mediation.
28

6. Prior to mediation, Defendants agreed to informally produce the following: (a) 100% of dispatch times and payroll records for the putative class members from October 8, 2020, through mediation; and (b) applicable wage and hour policy documents of Defendants, including employee handbooks.

7. 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").

8. On or around October 8, 2025, the Parties participated in an all-day mediation presided over by Marc Feder, 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 of a First Amended Complaint in the Class Action, adding all allegations in the PAGA Action, and after acceptance of the First 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 First Amended Complaint in the Class Action is the operative complaint in the Action ("Operative Complaint").

9. 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 Actions through trial and any appeals, the risks and costs of further litigation of the Actions, the risk of an adverse outcome, the uncertainties of complex litigation, the information learned through formal and informal discovery regarding Plaintiff's allegations, and the substantial benefits to be received by Settlement Class Members.

The Proposed Settlement

10. 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

1 Agreement, a copy of which is attached hereto as Exhibit "1" thereto. A summary of the terms of
2 the settlement are as follows:

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

- 4 • Certification of a class Member ("Class Member" or "Settlement Class Members")
5 defined as: all persons currently or formerly employed by Defendants BTR Tires LLC,
6 Bains Trust Repair LLC, Bains Towing & Recovery LLC, and Bains Towing & Repair
7 LLC (collectively, "Defendants"), either directly or through any subsidiary, staffing
8 agency, or professional employer organization, as non-exempt, hourly-paid employees
9 during the period from October 8, 2020 through January 5, 2026 in the State of
10 California.
- 11 • Defendants will pay \$480,000.00, ("Gross Settlement Amount") to resolve the matter.
- 12 • Defendants represent that there are no more than 4,044 Workweeks during the Class
13 Period. In the event the number of Workweeks during the Class Period increases by
14 more than 10%, or 405 Workweeks, then, at Defendants' election: (1) the Gross
15 Settlement Amount shall be increased proportionally by the Workweeks in excess of
16 4,449 multiplied by the Workweek Value; or (2) the Class Period shall end on the date
17 the number of workweeks reaches 4,449. The Workweek Value shall be calculated by
18 dividing the Gross Settlement Amount by 4,044. The Parties agree that the Workweek
19 Value amounts to \$118.69 per Workweek (\$480,000.00 / 4,044 Workweeks). Thus, for
20 example, should there be 5,000 Workweeks in the Class Period and Defendants elect
21 option (1), then the Gross Settlement Amount shall be increased by \$65,398.19. (5,000
22 Workweeks — 4,449 Workweeks x \$118.69/Workweek.). Defendants shall make its
23 election and provide the class data to the administrator no later than 7 days after full
24 execution of this agreement. Should Defendants fail to make its election within the
25 above timeframe, then option (1) shall automatically apply.
- 26 • Defendants will pay the employer's share of payroll taxes separate and apart from the
27 Gross Settlement Amount.

- 1 • This is a non-reversionary settlement.
- 2 • Settlement Class Members will be paid their *pro rata* share of the class action
- 3 settlement based on the total number of Workweeks¹ worked during the Class Period.
- 4 • The Settlement Administration costs, estimated not to exceed \$5,450.00, will be paid
- 5 out of the Gross Settlement Amount.
- 6 • Class Counsel, comprised of David D. Bibiyan and Vedang J. Patel of Bibiyan Law
- 7 Group, P.C., may apply for, and Defendants will not oppose, attorneys' fees of not
- 8 more than (35%) of the Gross Settlement Amount which, unless escalated pursuant to
- 9 the Settlement Agreement, amounts to \$168,000.00, and actual costs, not to exceed
- 10 \$20,000.00, all of which will be paid out of the Gross Settlement Amount.
- 11 • Class Counsel hereby apply for, and Defendants will not oppose, a service award of
- 12 up to \$10,000.00 to Plaintiff, which will be paid out of the Gross Settlement Amount.
- 13 • "Aggrieved Employees" means all persons currently or formerly employed by
- 14 Defendants BTR Tires LLC, Bains Trust Repair LLC, Bains Towing & Recovery LLC,
- 15 and Bains Towing & Repair LLC (collectively, "Defendants"), either directly or through
- 16 any subsidiary, staffing agency, or professional employer organization, as non-exempt,
- 17 hourly-paid employees during the period from October 4, 2023 through the end of the
- 18 Class Period in the State of California.
- 19 • Defendants have agreed to pay \$30,000.00 as PAGA penalties, sixty-five percent
- 20 (65%) or \$19,500.00 of which will be paid to the Labor and Workforce Development
- 21 Agency ("LWDA") out of the Gross Settlement Amount, and thirty-five percent (35%)
- 22 or \$10,500.00 of which will be distributed to Aggrieved Employees.
- 23 • For any Class Member whose Individual Class Payment check or Individual PAGA
- 24 Payment check is uncashed and cancelled after the void date, the Administrator shall
- 25 transmit the funds represented by such checks to the *cy pres* recipient, Legal Aid at
- 26 Work.

27 ¹ "Workweek" means any week during which a Class Member worked for Defendants, for at least one day during the

28 Class Period, based on hire dates, re-hire dates (as applicable), and termination dates (as applicable).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Settlement Agreement and Accompanying Documents

11. Attached hereto as Exhibit “1” is the Settlement Agreement. Attached to the Settlement Agreement as Exhibit A is the proposed “Class Notice” to be distributed to Class Members in English and Spanish.

12. Class Counsel has selected to use Apex Class Action Administration (“Apex”), an experienced Settlement Administrator, to administer the settlement.

13. On or about August 26, 2026, I submitted a copy of the Settlement Agreement to the California Labor and Workforce Development Agency (“LWDA”) in compliance with Labor Code section 2699, subdivision (l)(2). A true and correct copy of each confirmation from the LWDA in connection with Plaintiff is attached hereto as Exhibit 3.

The Settlement Is Fair and Reasonable Based Upon Objective Evidence

The Settlement was Negotiated at Arm’s-Length and is not Collusive

14. 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 formal and 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 Settlement 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 Settlement 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, and coordination to finalize the terms and conditions of the general settlement parameters agreed to by the Parties.

1 15. While Class Counsel believe in the chance of success of certifying the claims, Class
2 Counsel recognized the potential risk, expense and complexity posed by further litigation.
3 Moreover, litigating Plaintiff's claims in this litigation—claims that involve approximately 95
4 Settlement Class Members during the Class Period—would require substantial preparation and
5 discovery and ultimately would involve the deposition and presentation of numerous more witnesses
6 (including Settlement Class Members and expert witnesses), as well as the consideration,
7 preparation and analysis of expert reports. Therefore, should litigation have progressed any further,
8 there would have been significant expense incurred by each side (above and beyond the expense
9 already incurred).

10 **The Settlement Amount is Well Within Range of Reasonableness**

11 16. The settlement amount reached in this case provides significant recovery to
12 Settlement Class Members and Aggrieved Employees and easily falls within the range of
13 reasonableness. Based on documents and information provided by Defendants, Settlement Class
14 Counsel understand there are approximately 4,044 Workweeks during the Class Period.

15 **Unpaid Wages for Failure to pay Off-the-Clock Work**

16 17. Class Counsel theorized, based on Plaintiff's narrative evidence and information
17 provided by Defendant, that Defendants failed to pay all wages due to Class Members because
18 Defendants required Class Members to work off-the-clock or Class Members spent time off-the-
19 clock under Defendants' control, including, without limitation: (1) remain with their tow vehicles
20 in their service area; (2) monitor the major roadways for disabled vehicles; and (3) Defendants'
21 illegal policy and practice of not paying Plaintiff and other class members for all hours worked but
22 altering their punches to artificially cap their work time at 8 hours. As a result, Defendants failed to
23 compensate Class Members for all time under Defendants' control or direction.

24 18. One theory advanced by Class Counsel alleged, based on Plaintiff's narrative
25 evidence, that Class Members worked off-the-clock for an average of one (1) hour each shift without
26 pay. Class Counsel understand, based on time and payroll records produced by Defendants and
27 analysis thereof by expert data consultants retained by Class Counsel, that there were approximately
28

1 16,289 shifts during the Class Period, 23.9% of which were over eight (8) hours in length, and Class
2 Members had an average hourly rate of pay of \$25.00. Thus, one calculation performed by Class
3 Counsel at mediation resulted in contend that no damages can be recovered here **\$765,786** ([16,289
4 shifts x 0.239 shifts exactly eight hours x 1.00 hour x \$25.00 x 1.5 overtime rate] + [16,289 shifts x
5 0.761 shifts under eight hours x 1.00 hour x \$25.00 x 2 in liquidated damages]).

6 19. Class Counsel understand that Defendants make the following defenses in
7 connection with this claim: Defendants contend that its policies specifically prohibit off-the-clock
8 work. Defendants contend that it did not require Class Members to work off-the-clock and, rather,
9 they were paid for all time suffered or permitted to work. Defendants contend that any allegations
10 that Class Members were required to be under Defendants' control off-the-clock would necessitate
11 an individualized inquiry into when and why, making this claim not subject to class treatment and
12 any trial in this litigation unmanageable. Thus, Defendants contend that no damages can be
13 recovered here, and, even if, *arguendo*, they could, an estimate of one (1) hour of unpaid time
14 worked for every single shift worked by Class Members during the Class Period is a wild
15 exaggeration of time spent working off-the-clock if *any* such time was spent.

16 Recovery of Damages for Non-Compliant Meal Periods

17 20. Class Counsel theorized, based on Plaintiff's narrative evidence and documents
18 produced by Defendants, that Defendants' meal period policies and practices throughout the Class
19 Period were non-compliant, as they were either late, short, or missed entirely. Class Counsel
20 theorized that Defendants' policies were non-compliant because they did not inform Settlement
21 Class Members when they are entitled to meal periods, that they are entitled to a second meal period,
22 and due to Defendants' rounding policy. Class Counsel also theorized, based on Plaintiff's narrative
23 evidence, that meal periods were oftentimes late, missed, or short.

24 21. Class Counsel theorized that there are approximately 5,458 unique meal period
25 violations (*i.e.* meal periods that were missed, short, or were exactly 30 minutes in length). Thus,
26 one calculation performed by Class Counsel at mediation resulted in **Defendants' exposure for**
27
28

1 **failure to provide compliant meal periods in a conservative amount of \$136,450** [5,458 shifts x
2 25.00/hour].

3 22. Class Counsel understand that Defendants make the following defenses in
4 connection with this claim: Defendants argued that they had compliant meal period policies and
5 practices. Defendants argued that Settlement Class Members took timely and full meal periods, as
6 they were required to do. Defendants further contend that any instance of a Settlement Class
7 Member failing to take a compliant meal period was voluntary, in violation of their meal period
8 policy, would necessitate an individualized inquiry and would not lend itself to a manageable trial.
9 Finally, Defendants point to the numerous meal period premiums paid as evidence of compliance.
10 Thus, Defendants contend that no monies are owed for this account but, even if any amounts were
11 due, the amount calculated by Class Counsel is excessive.

12 **Recovery of Damages for Non-Compliant Rest Periods**

13 23. Class Counsel theorized at mediation, based on documents produced by Defendants
14 and Plaintiff's narrative evidence, that Defendants' rest period policies and practices throughout the
15 Class Period were non-compliant due many of the reasons outlined for meal period violations.
16 Furthermore, there were no rest period premiums ever issued throughout the Class Period.

17 24. Class Counsel theorized that there are approximately 10,079 rest break violations
18 Thus, one calculation performed by Class Counsel at mediation resulted in, assuming a 40%
19 violation rate, **Defendants' exposure for failure to provide compliant rest periods in a**
20 **conservative amount of \$100,790** (10,079 rest break violations x 0.4 violation rate x \$25.00/hour).

21 25. Class Counsel understands that Defendants make the following defenses in
22 connection with this claim: Defendants argued that they had compliant rest period policies and
23 practices. Defendants argued that Settlement Class Members took timely and full rest periods.
24 Defendants contend that their policies require employees to take timely and full rest periods.
25 Defendants further contend that any instance of a Settlement Class Member failing to take a
26 compliant rest period was voluntary, in violation of their rest period policy, would necessitate an
27 individualized inquiry and would not lend itself to a manageable trial. Finally, Defendants contend
28

1 that a 40% violation rate is a wild exaggeration of non-compliant rest periods, if there were any.
2 Thus, Defendants contend that *no* monies are owed for this account but, even if any amounts were
3 due, the amount calculated by Class Counsel is excessive.

4 **Failure to Reimburse Business Expenses**

5 26. Class Counsel theorized at mediation, based on documents produced by Defendants
6 and Plaintiff's narrative evidence, that Defendant failed to indemnify Class Members for necessary
7 business expenses because Class Members were required to purchase vehicle and branding supplies,
8 hotel rooms, gas, and tools without reimbursement. Class Counsel theorized, on the same basis, that
9 each Class Member would incur expenses of approximately \$250 per workweek in unreimbursed
10 business expenses.

11 27. Thus, one calculation performed by Class Counsel at mediation resulted in
12 Defendants' exposure for failure to reimburse business expenses of \$1,011,000 (\$250 x 4,044
13 Workweeks).

14 28. Class Counsel understands from the mediator and the mediation process that
15 Defendants argued the following: Defendants argued that they reimbursed employees for all
16 expenses incurred in furtherance of work. Defendants also argued that a large portion of these
17 expenses claimed by Class Members were for personal use and Defendants have no obligation to
18 reimburse Class Members for such expenses. Thus, Defendants contend that they owe no monies to
19 Class Members under this theory, either.

20 **Wage Statement Violations**

21 29. Class Counsel theorized that Settlement Class Members are entitled to recover
22 penalties for Defendants' alleged failure to issue compliant wage statements under Labor Code
23 section 226, subdivision (e), because their shift involved off-the-clock work that was not included
24 on wage statements. Further, many shifts included meal period and rest period violations for which
25 premiums were not paid. Thus, Plaintiff contends that Defendants are liable for wage statement
26 violations for every period during the wage statement penalty period. Class Counsel understand
27 from the data provided by Defendants that there were 1,342 pay periods in the wage statement
28

1 liability period. Thus, Plaintiff contends that Defendants' maximum exposure at trial for wage
2 statement violations would be **\$134,200** (1,342 pay periods in wage statement period x \$100
3 penalty).

4 30. Class Counsel understand that Defendants make the following defenses in
5 connection with this claim: Defendants contend that the wage statements issued to the employees
6 fully complied with Labor Code section 226. Defendants contend that because they believe no wages
7 are unpaid that, thus, there can be no derivative penalties. However, Class Counsel also understand
8 the risks inherent in this claim if the above claims were not certified. Class Counsel also had to
9 factor in, and did factor in, the risk that the Court would find there was no injury to Settlement Class
10 Members even if the wage statements were inaccurate or that Defendants' conduct was not
11 intentional, both of which are requirements of Labor Code section 226 before penalties can issue.
12 Class Counsel also note that the calculation used does not consider the first pay period violation
13 only being \$50 and the fact that all Settlement Class Members did not work all pay periods.

14 **Waiting Time Penalties**

15 31. Pursuant to Labor Code sections 201, 202 and 203, each employee in the relevant
16 statutory period (*i.e.*, three years before the filing of the initial Complaint) is entitled to 30 days'
17 worth of wages as waiting time penalty for not being paid all wages due upon separation from
18 employment. Class Counsel theorized, based on relevant documents provided by Defendants that,
19 under Labor Code section 203, Defendants are liable to pay each Settlement Class Member, who
20 was terminated during the relevant statutory period, a full 30-day worth of wages as waiting time
21 penalty for failure to pay compensation in lieu of compliant meal and rest periods, and failure to
22 timely pay all wages due at the time of termination or resignation. Based on relevant documents
23 provided by Defendants, there were approximately 63 Settlement Class Members who were
24 terminated or resigned during the relevant statutory period. Thus, one calculation performed by
25 Class Counsel resulted in **Defendants' exposure for waiting time penalties to be approximately**
26 **\$378,000** (63 separated Settlement Class Members x \$25.00/hour x 8 hours x 30 days).

32. Class Counsel understands that Defendants contend 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, Defendants contend that their alleged actions were not "willful" and that, thus, waiting time penalties cannot be awarded. Thus, Defendants argued that no waiting time penalties should be issued.

PAGA Penalties

33. Class Counsel understand, as of the date of the mediation, from the time and payroll data provided by Defendants that Aggrieved Employees collectively worked 1,342 pay periods in the PAGA Period. Plaintiff's claims in the Actions under PAGA are substantially similar to those described herein. PAGA penalties include penalties for initial violations and subsequent violations. Defendants contend that only initial violation rates may be used instead of the subsequent violation rates initially used by Class Counsel. With this in mind and because Class Counsel through investigation and discovery did not come to the conclusion that Defendants at any time were notified by any governmental entity that they violated any Labor Code sections presented in the PAGA Notice and PAGA claims, Class Counsel adjusted the exposure model for Defendants to include only initial violation rates.

34. 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:

35. a. Overtime Violations: Labor Code section 558 prescribes penalties of \$50 for an initial violation and \$100 for each subsequent violation. Using the initial pay period rate for all violations, and a violation every single pay period for every single non-exempt employee in the PAGA Period, this amounts to a maximum exposure of \$67,100 (1,342 pay periods x \$50).

36. 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

1 in the PAGA Period, this amounts to a maximum exposure of \$134,200 (1,342 pay periods x
2 \$100).

3 37. c. Meal Period Violations: Labor Code section 558 prescribes penalties of
4 \$50 for an initial violation and \$100 for each subsequent violation. Using the initial pay period
5 rate for all violations and a violation every single pay period for every single non-exempt
6 employee in the PAGA Period, this amounts to a maximum exposure of \$67,100 (1,342 pay
7 periods x \$50).

8 38. d. Rest Period Violations: Labor Code section 558 prescribes penalties of \$50
9 for an initial violation and \$100 for each subsequent violation. Using the initial pay period rate
10 for all violations and a violation every single pay period for every single non-exempt employee in
11 the PAGA Period, this amounts to a maximum exposure of \$67,100 (1,342 pay periods x \$50).

12 39. e. Wage Statement Violations: According to *Gunther v. Alaska Airlines, Inc.*
13 (2021) 287 Cal.Rptr.3d 229, in this instance, Labor Code section 2699 would be the appropriate
14 penalty for wage statement violations that are inaccurate, which prescribes penalties of \$100 for
15 an initial violation and \$200 for each subsequent violation (*Id.* at 247-248). Using the initial pay
16 period rate for all violations and a violation every single pay period for every single Aggrieved
17 Employee in the PAGA Period, this amounts to a maximum e exposure of \$134,200 (1,342 pay
18 periods x \$100).

19 40. f. Waiting Time Penalties: Labor Code section 2699 prescribes penalties of
20 \$100 for an initial violation and \$200 for each subsequent violation. Because this violation is
21 merited only at separation of employment, a 100% violation rate would likely include just one
22 violation per employee. The data produced by Defendants indicates that there were 49 Aggrieved
23 Employees whose employment was separated during the PAGA Period. This amounts to a
24 maximum exposure of \$6,300 (63 Aggrieved Employees x \$100).

25 41. g. Conclusion: In sum, Class Counsel calculated Defendants' total maximum
26 exposure for PAGA violations if the Court were to find a 100% violation rate for every Aggrieved
27 Employee every pay period and not exercise its discretion to reduce any of those penalties to be
28

1 **\$476,000.** Class Counsel understand that Defendants argued the following in connection with this
2 claim: Defendants contend that no PAGA penalties are likely to be awarded and, even if they
3 were, the maximum exposure calculated by Class Counsel is vastly overstated. First, Defendants
4 defend that PAGA penalties cannot and should not be stacked. Second, Defendants assert that
5 individualized issues predominate the PAGA claims, making the claims unmanageable for trial.
6 Third, Defendants deny that a violation for each pay period can be established. Fourth, Defendants
7 contend that a Court is unlikely to exercise its discretion to award civil penalties under PAGA
8 where, as here, there is no conduct shown by Plaintiff that would show any Labor Code violation
9 by Defendants is knowing and intentional. Defendants insist that this is especially true in the
10 Actions where class action damages are available to Settlement Class Members, rendering an
11 award of PAGA penalties in addition to class action damages to be double recovery.

12 42. Class Counsel maintains that it is possible to recover the subsequent violation rate
13 for penalties, that stacking is permissible, and that there is no manageability requirement under
14 PAGA (citing *Estrada v. Royalty Carpet Mills, Inc.*). As such, Class Counsel believes a 90%
15 discount of this claim to be reasonable, resulting in a valuation of **\$47,600** as a reasonable estimate
16 of the likelihood of what Plaintiff may recover at trial for PAGA penalties ($\$472,150 \times 0.10$).

17 **Conclusion**

18 43. When including derivative penalties, such as waiting time penalties, wage statement
19 violations, and discretionary PAGA penalties, Class Counsel theorized Defendants' maximum
20 exposure to be approximately **\$2,573,826**. In all, Class Counsel obtained a Gross Settlement
21 Amount of **\$480,000**. Particularly in light of the risks involving obstacles to class certification, all
22 issues and risks related to liability, the issues with manageability at trial, the discretionary nature of
23 PAGA penalties, and considering the case law regarding fair, reasonable and adequate settlements,
24 Class Counsel strongly believe that the settlement reached is fair, reasonable and adequate, and in
25 the best interest of Settlement Class Members.

26 44. Moreover, \$30,000.00 of the Gross Settlement Amount was attributed to PAGA
27 penalties. This allocation was decided mutually by the Parties and the mutual decision was based
28

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 Settlement Class Members and it may find any further liability against Defendants unnecessarily punitive.

Proposed Attorneys' Fees and Costs Are Reasonable

45. Class Counsel seek an attorneys' fees award of not more than 35% of the Gross Settlement Amount, which, unless escalated pursuant to this Agreement, would amount to \$168,000.00. Class Counsel also seek reimbursement of costs not to exceed \$20,000.00.

The Requested Enhancement Award to The Named Plaintiff and Class Representative Is Reasonable

46. Class Counsel believe plaintiff is entitled to an enhanced 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 Defendants with a more expansive release of claims, including a waiver based upon California Civil Code section 1542, in exchange for the enhancement award.

47. I am informed and believe Defendants does not oppose the requested enhancement to Plaintiff. Plaintiff risked intrusive discovery and the payment of employer costs. Class Counsel seeks a limited enhancement of not more than \$10,000.00 for Plaintiff for his service.

Conditional Certification for Settlement Purposes

Ascertainability

48. The Settlement Class Members definition (i.e., all persons currently or formerly employed by Defendants, either directly or through any subsidiary, staffing agency, or professional employer organization, as non-exempt, hourly-paid employees during the Class Period in the State of California) is derived from the operative complaint, which complains of alleged violations of

1 Labor Code sections that are chiefly and, in some instances, solely applicable to non-exempt, hourly
2 paid employees.

3 **Numerosity**

4 49. Class Counsel understand from documents provided that Defendants identified at
5 least 95 Class Members.

6 **Commonality**

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

11 **Typicality**

12 51. I believe Plaintiff: (1) is a non-exempt, hourly-paid employee like other Settlement
13 Class Members; (2) complains of not being paid for all time under Defendants' control or suffered
14 and/or permitted to work for Defendants; (3) alleges that he did not receive full premium pay for
15 meal periods that were not compliant with the Labor Code; and (4) alleges that he did not receive
16 premium pay for rest periods that were not provided, among others as set forth above. The Parties
17 agree for settlement purposes only that Plaintiff's claims regarding policies and practices that are
18 at the core of the lawsuit are typical of the Settlement Class.

19 **Adequacy of Keaton Mendoza**

20 52. I graduated with a Bachelor of Science degree in Business Administration from San
21 Diego State University in 2011.

22 53. I received my Juris Doctorate from California Western School of Law in 2016.

23 54. From 2018 to 2022, I practiced law in the General Counsel's office for Adventist
24 Health, handling labor and employment matters for the health system, specifically in harassment,
25 discrimination, retaliation, and wage and hour matters.

26 55. From 2023 through 2026, I practiced law as an attorney for Lewis Brisbois Bisgaard
27 & Smith handling general liability defendant-side litigation.

56. Thereafter, I joined Bibiyan Law Group, P.C., practicing law on behalf of plaintiffs in matters of employment law, and specifically on issues of unpaid wages and class action settlements. Among other tasks, I oversee and manage class action and PAGA action settlements at Bibiyan Law Group, P.C. I have led settlement negotiations and the approval process for class action and PAGA settlements, including some of those set forth in the declaration of David D. Bibiyan, filed concurrently with this declaration.

Adequacy of Plaintiff

57. Class Counsel believe no conflicts, disabling or otherwise, exists between Plaintiff and Class Members because Plaintiff alleges to have been damaged by the same alleged conduct of Defendants (i.e., Plaintiff was classified as non-exempt employees, was not paid premium pay, etc.) and thus have the incentive to fairly represent all Class Members' claims to achieve the maximum possible recovery.

Superiority of Class Action

58. Class Counsel believe this wage and hour class action is a superior vehicle for resolution of the issues it seeks to resolve. It deals with common issues that are most efficiently adjudicated together, as indicated above. Moreover, with at least 95 Class Members, presentation of all of them before this Court may be problematic, impractical, and burdensome.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct this August 26, 2026, at Los Angeles, California.

/s/ Keaton D. Mendoza

Keaton D. Mendoza