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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]

**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,
PLAINTIFF, AND SEAN HARTRANFT
IN SUPPORT THEREOF**

HEARING INFORMATION:

DATE: September 21, 2026

TIME: 9:00 a.m.

DEPT: 1

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on September 21, 2026 at 9:00 a.m., or as soon thereafter
3 as they may be heard in Department 1 of the Superior Court of the State of California for the County
4 of Sutter, plaintiff Brandon Nielsen (“Plaintiff”), on behalf of himself and all others similarly
5 situated and aggrieved, will and hereby do move for this Court for entry of an Order:

6 1. Preliminarily certifying the following class Member (“Class Member” or “Settlement
7 Class Members”) for the purpose of settlement only: all persons currently or formerly employed by
8 Defendants BTR Tires LLC, Bains Trust Repair LLC, Bains Towing & Recovery LLC, and Bains
9 Towing & Repair LLC (collectively, “Defendants”), either directly or through any subsidiary,
10 staffing agency, or professional employer organization, as non-exempt, hourly-paid employees
11 during the period from October 8, 2020 through January 5, 2026 in the State of California.

12 2. Preliminarily approving Plaintiff as Class Representative.

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

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

17 5. Preliminarily approving payment of the Gross Settlement Amount of \$480,000.00, which
18 is subject to escalation pursuant to the Settlement Agreement.

19 6. Approving the form and content of the Notice of proposed Class Action Settlement and
20 Date for Final Approval Hearing (“Class Notice”) submitted herewith.

21 7. Appointing Apex Class Action Administration (“Apex”), to administer the Settlement,
22 including distribution of the Class Notice, as set forth in the Settlement Agreement.

23 8. Preliminarily approving the payment of not to exceed \$5,450.00 for settlement
24 administration to Apex from the Gross Settlement Amount.

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

27 10. Preliminarily approving payment of reasonable attorneys’ fees to Class Counsel in the
28 amount of not more than (35%) of the Gross Settlement Amount which, unless escalated pursuant

1 to the Settlement Agreement, amounts to \$168,000.00.

2 11. Preliminarily approving reimbursement of Class Counsel's costs in an amount, according
3 to proof, not to exceed \$20,000.00.

4 12. Preliminarily approving PAGA penalties in the amount of \$30,000.00, sixty-five percent
5 (65%) or \$19,500.00 of which will be paid to the Labor and Workforce Development Agency
6 ("LWDA") out of the Gross Settlement Amount, and Thirty-five percent (35%) or \$10,500.00 of
7 which will be distributed to "Aggrieved Employees," defined as all persons currently or formerly
8 employed by Defendants BTR Tires LLC, Bains Trust Repair LLC, Bains Towing & Recovery
9 LLC, and Bains Towing & Repair LLC (collectively, "Defendants"), either directly or through any
10 subsidiary, staffing agency, or professional employer organization, as non-exempt, hourly-paid
11 employees during the period from October 4, 2023 through the end of the Class Period in the State
12 of California.

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

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

17 This Motion will be based on this Notice of Motion, the Memorandum of Points and
18 Authorities filed herewith, the Declarations of Keaton D. Mendoza, David D. Bibiyan, Plaintiff, and
19 Sean Hartranft, and exhibits attached thereto, arguments of counsel and upon such other materials
20 contained in the file and pleadings of this action.

21
22 Dated: August 26, 2026

BIBIYAN LAW GROUP, P.C.

23 */s/ Keaton D. Mendoza*

24 _____
25 VEDANG J. PATEL
26 KEATON D. MENDOZA

27 Attorneys for Plaintiff, on behalf of himself and all
28 others similarly situated and aggrieved

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Brandon Nielsen (“Plaintiff”), on behalf of himself and all others similarly
4 situated and aggrieved, hereby applies for preliminary approval of the proposed Class and PAGA
5 Settlement Agreement (“Settlement,” “Agreement” or “Settlement Agreement”) upon the terms
6 and conditions set forth in the Settlement Agreement, attached to the Declaration of Keaton D.
7 Mendoza as Exhibit “1.”

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

17 On October 4, 2024, Plaintiff filed with the LWDA and served on Defendants a notice under
18 Labor Code section 2699.3, stating Plaintiff intended to serve as a proxy of the LWDA to recover
19 civil penalties on behalf of Aggrieved Employees for alleged Labor Code violations. A true and
20 correct copy of the PAGA Notice is attached to the Declaration of Keaton D. Mendoza as Exhibit
21 “2.”

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

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

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

5 Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in
6 *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.*
7 (2008) 168 Cal.App.4th 116, 129-130 ("Dunk/Kullar").

8 On October 8, 2025, the Parties participated in an all-day mediation presided over by Marc
9 Feder, Esquire. The mediation was successful, and the Parties agreed to globally resolve all class
10 and PAGA claims in the Action. As part and parcel to the Agreement, the Parties agreed to stipulate
11 to Plaintiff's filing of a First Amended Complaint in the Class Action, adding all allegations in the
12 PAGA Action, and after acceptance of the First Amended Complaint, request for dismissal without
13 prejudice of the PAGA Action, thereby effectively consolidating the allegations in the two actions
14 for purposes of the Settlement. The First Amended Complaint in the Class Action is the operative
15 complaint in the Action ("Operative Complaint").

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

24 **II. THE SETTLEMENT**

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

1 of the terms of the settlement are as follows:

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

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

1 settlement based on the total number of Workweeks¹ worked during the Class Period.

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

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27 _____
28 ¹ "Workweek" means any week during which a Class Member worked for Defendants, for at least one day during the Class Period, based on hire dates, re-hire dates (as applicable), and termination dates (as applicable).

1 **III. THE TWO-STEP APPROVAL PROCESS AND THE PRESUMPTION OF**
2 **FAIRNESS**

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

12 **IV. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS**

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

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

21 The Parties respectfully request that this Court approve the above-referenced Class Notice
22 and dissemination of the Class Notice to the Settlement Class Members, consistent with the manner
23 and timing as set forth in the Settlement Agreement. The Parties have agreed to use Apex Class
24 Action Administration (“Apex”), an experienced Settlement Administrator, to administer the
25 settlement.

26 ///

27 ///

28 ///

1 **V. THE SETTLEMENT IS FAIR AND REASONABLE BASED UPON**
2 **OBJECTIVE EVIDENCE**

3 **A. The Settlement was Negotiated at Arm's-Length and is not Collusive**

4 The Settlement that has been reached, subject to this Court's approval, is a product of
5 substantial efforts by the Parties and their counsel. The Settlement was reached after extensive
6 factual and legal investigation and research; the exchange of formal and informal discovery;
7 substantial negotiation regarding the scope of informal discovery; exchange of documents and
8 information that included review of time and pay records and analysis thereof with the aid of Plaintiff
9 and expert consultant; analysis of shifts and Workweeks worked by Settlement Class Members in
10 the Class Period, analysis of the number of pay periods and number of Aggrieved Employees in the
11 PAGA Period for calculating PAGA penalties, number of Settlement Class Members eligible for
12 wage statement penalties and waiting time penalties; an analysis of Plaintiff's employment records;
13 extensive correspondence and communication between counsel; a review of pleadings, evidence and
14 rulings in similar actions litigated elsewhere in the state; a review of similar cases in the same
15 industry elsewhere in the country; and preparation for and attendance at a full-day mediation, and
16 coordination to finalize the terms and conditions of the general settlement parameters agreed to by
17 the Parties.

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

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

27 The settlement amount reached in this case provides significant recovery to Settlement Class
28 Members and Aggrieved Employees and easily falls within the range of reasonableness. Based on

documents and information provided by Defendants, Settlement Class Counsel understand there are approximately 4,044 Workweeks during the Class Period.

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

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

One theory advanced by Class Counsel alleged, based on Plaintiff's narrative evidence, that Class Members worked off-the-clock for an average of one (1) hour each shift without pay. Class Counsel understand, based on time and payroll records produced by Defendants and analysis thereof by expert data consultants retained by Class Counsel, that there were approximately 16,289 shifts during the Class Period, 23.9% of which were over eight (8) hours in length, and Class Members had an average hourly rate of pay of \$25.00. Thus, one calculation performed by Class Counsel at mediation resulted in contend that no damages can be recovered here **\$765,786** ([16,289 shifts x 0.239 shifts exactly eight hours x 1.00 hour x \$25.00 x 1.5 overtime rate] + [16,289 shifts x 0.761 shifts under eight hours x 1.00 hour x \$25.00 x 2 in liquidated damages]).

Class Counsel understand that Defendants make the following defenses in connection with this claim: Defendants contend that its policies specifically prohibit off-the-clock work. Defendants contend 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. Defendants contend that any allegations that Class Members were required to be under Defendants' control off-the-clock would necessitate an individualized inquiry into when and why, making this claim not subject to class treatment and any trial in this litigation unmanageable. Thus, Defendants contend that no damages can be recovered here, and, even if, *arguendo*, they could, an estimate of one (1) hour

1 of unpaid time worked for every single shift worked by Class Members during the Class Period
2 is a wild exaggeration of time spent working off-the-clock if *any* such time was spent.

3 2. Recovery of Damages for Non-Compliant Meal Periods

4 Class Counsel theorized, based on Plaintiff's narrative evidence and documents produced
5 by Defendants, that Defendants' meal period policies and practices throughout the Class Period
6 were non-compliant, as they were either late, short, or missed entirely. Class Counsel theorized that
7 Defendants' policies were non-compliant because they did not inform Settlement Class Members
8 when they are entitled to meal periods, that they are entitled to a second meal period, and due to
9 Defendants' rounding policy. Class Counsel also theorized, based on Plaintiff's narrative evidence,
10 that meal periods were oftentimes late, missed, or short.

11 Class Counsel theorized that there are approximately 5,458 unique meal period violations
12 (*i.e.* meal periods that were missed, short, or were exactly 30 minutes in length). Thus, one
13 calculation performed by Class Counsel at mediation resulted in **Defendants' exposure for failure**
14 **to provide compliant meal periods in a conservative amount of \$136,450** [5,458 unique meal
15 period violations x 25.00/hour].

16 Class Counsel understands that Defendants make the following defenses in connection with
17 this claim: Defendants argued that they had compliant meal period policies and practices.
18 Defendants argued that Settlement Class Members took timely and full meal periods, as they were
19 required to do. Defendants further contend that any instance of a Settlement Class Member failing
20 to take a compliant meal period was voluntary, in violation of their meal period policy, would
21 necessitate an individualized inquiry and would not lend itself to a manageable trial. Thus,
22 Defendants contend that *no* monies are owed for this account but, even if any amounts were due,
23 the amount calculated by Class Counsel is excessive.

24 3. Recovery of Damages for Non-Compliant Rest Periods

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

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

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

15 4. Failure to Reimburse Business Expenses

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

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

24 Class Counsel understands from the mediator and the mediation process that Defendants
25 argued the following: Defendants argued that they reimbursed employees for all expenses incurred
26 in furtherance of work. Defendants also argued that a large portion of these expenses claimed by
27 Class Members were for personal use and Defendants have no obligation to reimburse Class
28

1 Members for such expenses. Thus, Defendants contend that they owe no monies to Class Members
2 under this theory, either.

3 **5. Wage Statement Violations**

4 Class Counsel theorized that Settlement Class Members are entitled to recover penalties
5 for Defendants' alleged failure to issue compliant wage statements under Labor Code section 226,
6 subdivision (e), because their shift involved off-the-clock work that was not included on wage
7 statements. Further, many shifts included meal period and rest period violations for which
8 premiums were not paid. Thus, Plaintiff contends that Defendants are liable for wage statement
9 violations for every period during the wage statement penalty period. Class Counsel understand
10 from the data provided by Defendants that there were 1,342 pay periods in the wage statement
11 liability period. Thus, Plaintiff contends that Defendants' maximum exposure at trial for wage
12 statement violations would be **\$134,200** (1,342 pay periods in wage statement period x \$100
13 penalty).

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

24 **6. Waiting Time Penalties**

25 Pursuant to Labor Code sections 201, 202 and 203, each employee in the relevant statutory
26 period (*i.e.*, three years before the filing of the initial Complaint) is entitled to 30 days' worth of
27 wages as waiting time penalty for not being paid all wages due upon separation from employment.
28 Class Counsel theorized, based on relevant documents provided by Defendants that, under Labor

1 Code section 203, Defendants are liable to pay each Settlement Class Member, who was terminated
2 during the relevant statutory period, a full 30-day worth of wages as waiting time penalty for failure
3 to pay compensation in lieu of compliant meal and rest periods, and failure to timely pay all wages
4 due at the time of termination or resignation. Based on relevant documents provided by Defendants,
5 there were approximately 63 Settlement Class Members who were terminated or resigned during
6 the relevant statutory period. Thus, one calculation performed by Class Counsel resulted in
7 **Defendants' exposure for waiting time penalties to be approximately \$378,000** (63 separated
8 Settlement Class Members x \$25.00/hour x 8 hours x 30 days).

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

14 7. PAGA Penalties

15 Class Counsel understand, as of the date of the mediation, from the time and payroll data
16 provided by Defendants that 81 Aggrieved Employees collectively worked 1,342 pay periods in
17 the PAGA Period. Plaintiff's claims in the Actions under PAGA are substantially similar to those
18 described herein. PAGA penalties include penalties for initial violations and subsequent
19 violations. Defendants contend that only initial violation rates may be used instead of the
20 subsequent violation rates initially used by Class Counsel. With this in mind and because Class
21 Counsel through investigation and discovery did not come to the conclusion that Defendants at
22 any time were notified by any governmental entity that they violated any Labor Code sections
23 presented in the PAGA Notice and PAGA claims, Class Counsel adjusted the exposure model for
24 Defendants to include only initial violation rates.

25 While Class Counsel are informed and believe that reasonable minds differ with regard to
26 calculation of PAGA penalties, Class Counsel believe it is reasonable to calculate Defendants'
27 maximum exposure in PAGA penalties as follows:
28

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

5 b. Minimum Wage Violations: Labor Code section 1197.1 prescribes penalties of
6 \$100 for an initial violation and \$250 for each subsequent violation. Using the initial pay period
7 rate for all violations and a violation every single pay period for every single Aggrieved Employee
8 in the PAGA Period, this amounts to a maximum exposure of \$134,200 (1,342 pay periods x
9 \$100).

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

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

18 e. Wage Statement Violations: According to *Gunther v. Alaska Airlines, Inc.* (2021)
19 287 Cal.Rptr.3d 229, in this instance, Labor Code section 2699 would be the appropriate penalty
20 for wage statement violations that are inaccurate, which prescribes penalties of \$100 for an initial
21 violation and \$200 for each subsequent violation (*Id.* at 247-248). Using the initial pay period rate
22 for all violations and a violation every single pay period for every single Aggrieved Employee in
23 the PAGA Period, this amounts to a maximum exposure of \$134,200 (1,342 pay periods x \$100).

24 f. Waiting Time Penalties: Labor Code section 2699 prescribes penalties of \$100 for
25 an initial violation and \$200 for each subsequent violation. Because this violation is merited only
26 at separation of employment, a 100% violation rate would likely include just one violation per
27 employee. The data produced by Defendants indicates that there were 63 Aggrieved Employees
28

1 whose employment was separated during the PAGA Period. This amounts to a maximum exposure
2 of \$6,300 (63 Aggrieved Employees x \$100).

3 g. Conclusion: In sum, Class Counsel calculated Defendants' total maximum
4 exposure for PAGA violations if the Court were to find a 100% violation rate for every Aggrieved
5 Employee every pay period and not exercise its discretion to reduce any of those penalties to be
6 **\$476,000**. Class Counsel understand that Defendants argued the following in connection with this
7 claim: Defendants contend that no PAGA penalties are likely to be awarded and, even if they
8 were, the maximum exposure calculated by Class Counsel is vastly overstated. First, Defendants
9 defend that PAGA penalties cannot and should not be stacked. Second, Defendants assert that
10 individualized issues predominate the PAGA claims, making the claims unmanageable for trial.
11 Third, Defendants deny that a violation for each pay period can be established. Fourth, Defendants
12 contend that a Court is unlikely to exercise its discretion to award civil penalties under PAGA
13 where, as here, there is no conduct shown by Plaintiff that would show any Labor Code violation
14 by Defendants is knowing and intentional. Defendants insist that this is especially true in the
15 Actions where class action damages are available to Settlement Class Members, rendering an
16 award of PAGA penalties in addition to class action damages to be double recovery.

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

22 **8. Conclusion**

23 When including derivative penalties, such as waiting time penalties, wage statement
24 violations, and discretionary PAGA penalties, Class Counsel theorized Defendants' maximum
25 exposure to be approximately **\$2,573,826**. In all, Class Counsel obtained a Gross Settlement
26 Amount of **\$480,000**. Particularly in light of the risks involving obstacles to class certification, all
27 issues and risks related to liability, the issues with manageability at trial, the discretionary nature
28 of PAGA penalties, and considering the case law regarding fair, reasonable and adequate

1 settlements, Class Counsel strongly believe that the settlement reached is fair, reasonable and
2 adequate, and in the best interest of Settlement Class Members.

3 Moreover, \$30,000.00 of the Gross Settlement Amount was attributed to PAGA penalties.
4 This allocation was decided mutually by the Parties and the mutual decision was based on: (1) the
5 fact that damages are available for the failure to pay wage claims while only penalties are available
6 for the PAGA claims; (2) the risk that the Court may exercise its discretion to decline to stack
7 PAGA penalties; (3) the risk that the Court may exercise its discretion to not award the full amount
8 of PAGA penalties available; and (4) the risk that the Court may decline to award any PAGA
9 penalties at all in light of the fact that damages are available for Settlement Class Members and it
10 may find any further liability against Defendants unnecessarily punitive.

11 **VII. THE PROPOSED ATTORNEYS' FEES AND COSTS ARE REASONABLE**

12 Class Counsel seek an attorneys' fees award of not more than 35% of the Gross Settlement
13 Amount, which, unless escalated pursuant to this Agreement, would amount to \$168,000.00. Class
14 Counsel also seek reimbursement of costs not to exceed \$20,000.00. The requested fees fall well
15 within the historical range of attorney's fees awards under the common fund theory, which is
16 generally from 25% to 50%. The requested fee is fair compensation for undertaking complex, risky,
17 expensive and time-consuming litigation on a contingent fee basis. Thus, the Court should
18 preliminarily approve the requested attorneys' fees and costs, which are justified by the results
19 achieved, the complexity of the issues, the difficulty of the case and the great risks undertaken by
20 Class Counsel. The requested attorneys' fees will not be opposed by Defendants and are well within
21 established guidelines.

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

24 Plaintiff is entitled to an enhancement award for his service as class representative, for
25 answering extensive questions by Class Counsel, for being available and answering questions during
26 mediation, for the risks in being the named plaintiff and for providing Defendants with a more
27 expansive release of claims, including a waiver based upon California Civil Code section 1542, in
28 exchange for the enhancement award. Defendants do not oppose the requested enhancement to

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

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 definition and the size of the class. Here, the
18 Settlement Class Members definition (*i.e.*, all persons currently or formerly employed by
19 Defendants, either directly or through any subsidiary, staffing agency, or professional employer
20 organization, as non-exempt, hourly-paid employees during the Class Period in the State of
21 California) is derived from the operative complaint, which complains of alleged violations of Labor
22 Code sections that are chiefly and, in some instances, solely applicable to non-exempt, hourly paid
23 employees. There is no difficulty ascertaining who is a Settlement Class Member based on the
24 above-described definition as it is readily apparent to all involved who is a Settlement Class
25 Member.

26 **2. Numerosity** – According to the California Supreme Court, a putative class is
27 sufficiently numerous to achieve the numerosity requirement if their joinder is impracticable and
28 thus substantial benefits accrue both to litigants and the courts if the action proceeds as a class action.

1 (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435, 446.) Numerosity is presumed satisfied if
2 there are forty (40) putative class members. (*Miri v. Dillon* (E.D. MI 2013) 292 F.R.D. 454, 461.)
3 However, as few as 10 class members has been found sufficient. (*See, e.g., Bowles v. Sup. Ct.* (1955)
4 44 Cal.2d 574.) Class Counsel understand from documents provided that Defendants identified at
5 least 95 Settlement Class Members. That is sufficiently numerous to establish the numerosity
6 requirement.

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

10 This litigation is brought to resolve common issues that include whether Defendants failed
11 to pay for all hours worked; whether Defendants provided full, timely and un-interrupted meal and
12 rest periods; whether Settlement Class Members are entitled to premium pay for incomplete,
13 untimely or interrupted meal or rest periods, among other claims as set forth above. While
14 Defendants reserve their rights to object that commonality exists in the Actions if the litigation were
15 to continue, the Parties agree for purposes of this Settlement only that Plaintiff’s allegations meet
16 the commonality requirement.

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

28 **5. Adequacy of Representation** - To maintain a class action, the representative

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

9 (i) **No Disabling Conflict of Interest Exists Between the Class**
10 **Representative and the Settlement Class**

11 No conflicts, disabling or otherwise, exists between Plaintiff and Settlement Class Members
12 because Plaintiff alleges to have been damaged by the same alleged conduct of Defendants (*i.e.*,
13 Plaintiff was classified as a non-exempt, hourly-paid employee, not paid premium pay, etc.) and thus
14 has the incentive to fairly represent all Settlement Class Members' claims to achieve the maximum
15 possible recovery.

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

17 As set forth in the Declaration of Class Counsel, Class Counsel in this matter consist of
18 experienced class action attorneys, have been appointed as class counsel in other class actions and
19 have a successful "track record" in litigating class actions.

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

23 It deals with common issues that are most efficiently adjudicated together, as indicated
24 above. Moreover, Plaintiff asserts that, with at least 95 Settlement Class Members, presentation of
25 all of them before this Court may be problematic, impractical, and burdensome. On the contrary, a
26 class action allows claims of many individuals to be resolved at the same time, eliminates the
27 possibility of repetitious litigation and affords small claimants with a method of obtaining redress
28 for claims which otherwise would be too insufficient to warrant individual litigation.

1 **7. Conclusion** – Thus, because this settlement meets all criteria for
2 certification and a lesser standard of scrutiny applies when evaluating these criteria for settlement
3 purposes, the Settlement Class should be certified for purposes of effectuating this settlement.

4 **X. CONCLUSION**

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

8 Dated: August 26, 2026

BIBIYAN LAW GROUP, P.C.

9 */s/ Keaton D. Mendoza*

10 _____
VEDANG J. PATEL

11 KEATON D. MENDOZA

12 Attorneys for Plaintiff, on behalf of himself and all
13 others similarly situated and aggrieved