

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)

Eduardo Garcia (State Bar # 290572)

5440 Morehouse Drive, Suite 3600

San Diego, CA 92121

Telephone: (619) 599-8292

Facsimile: (619) 599-8291

jlapuyade@jcl-lawfirm.com

egarcia@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)

Jackland Hom (State Bar #327243)

5440 Morehouse Drive, Suite 3600

San Diego, CA 92121

Telephone: (619) 255-9047

Facsimile: (858) 404-9203

shani@zakaylaw.com

jackland@zakaylaw.com

Attorneys for Plaintiff COURTENAY ARNERSON

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

COURTENAY ARNESON, an individual, on
behalf of herself and on behalf of all persons
similarly situated,

Plaintiff,

v.

BAHN THAI, INC. (dba Thai Basil Café / Veg
Café & Bar), a California Corporation; and
DOES 1-50, Inclusive,

Defendants.

Case No: 34-2021-00295429

**DECLARATION OF JEAN-CLAUDE
LAPUYADE, ESQ. IN SUPPORT OF
MOTION FOR PRELIMINARY
APPROVAL OF CLASS SETTLEMENT**

Hearing Date: January 11, 2022

Hearing Time: 1:30 p.m.

Reservation ID: 2602238

Judge: Shama H. Mesiwala

Dept.: 53

Trial Date: Not Set

Action Filed: February 26, 2021

1 I, Jean-Claude Lapuyade, Esq., declare as follows:

2 1. I am over eighteen years of age and if called as a witness, I could and would competently
3 testify to the following facts from my own personal knowledge. I am an attorney-at-law and the owner
4 of the law firm of JCL LAW FIRM, APC (hereinafter "Class Counsel"). I am counsel of record for
5 Plaintiff COURTENAY ARNESON, (hereafter "Plaintiff") in this wage and hour class action filed
6 against BAHN THAI, INC. (hereinafter "Defendant").

7 2. This declaration is being submitted in support of Plaintiff's motion for Preliminary
8 Approval of Class Action Settlement.

9 **I. EXHIBITS**

10 3. Attached hereto as **Exhibit "1"** is a true and correct copy of the fully executed Joint the
11 Stipulation of Settlement of Class Action Claims and Release of Claims ("Agreement" or "Settlement
12 Agreement"). Attached as **Exhibit "A"** to the Agreement is a true and correct copy of the proposed Class
13 Notice.

14 4. Attached hereto as **Exhibit "2"** is a true and correct copy of the proof of filing with the
15 Labor and Workforce Development Agency notice of this settlement with the Settlement Agreement and
16 Motion for Preliminary Approval of Class Action and PAGA Action Settlement evidencing Class
17 Counsel's compliance with California Labor Code Section 2699(l)(2).

18 **II. INTRODUCTION**

19 5. An objective evaluation of the Settlement confirms that the relief negotiated on behalf of
20 the Class is fair, reasonable, and valuable. The Settlement was negotiated by the Parties at arm's length.
21 The Settlement confers substantial benefits to the Settlement Class. The relief offered by the Settlement
22 is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage
23 and hour cases (*see infra*). Indeed, by settling now rather than proceeding to trial, Class Members will
24 not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being
25 denied or of Defendant prevailing at trial. Given there are approximately 110 Settlement Class Members,
26 and assuming 100% participation, the average gross settlement recovery is approximately **\$537.87** (Net
27 Settlement Amount divided by Settlement Class Members)

28 6. As discussed below, the proposed Settlement satisfies all criteria for preliminary
settlement approval under California law and falls within the range of reasonableness. The average

Individual Settlement Share to the Settlement Class meet or exceeds awards in similar wage and hour class actions. Moreover, the proposed Settlement Class is appropriate for provisional certification. Accordingly, Plaintiff respectfully requests that this Court grant preliminary approval of the Settlement.

III. FACTS AND PROCEDURE

A. Overview of the Litigation

7. Defendant owns and operates two restaurants in Sacramento County. Plaintiff was employed by Defendant as an hourly, non-exempt, waitress from approximately January 2020 to February 2020. Plaintiff was paid on an hourly basis and was entitled to overtime pay and California-compliant meal and rest breaks. Plaintiff was responsible for receiving customers, taking their orders, serving the customers food, and generally being attentive to customers' requests

8. On October 22, 2020, Plaintiff served Defendant and the Labor and Workforce Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff's PAGA Notice set forth the facts and theories supporting Defendant's alleged violations of various provisions of the California Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of his intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 et seq ("PAGA").

9. Subsequently, on February 26, 2020, Plaintiff filed this class action against Defendant in the Sacramento Superior Court alleging claims for (1) unfair business practices; (2) failure to pay minimum wage; (3) failure to pay overtime; (4) failure to authorize or permit meal breaks; (5) failure to authorize or permit rest breaks; (6) failure to furnish accurate wage statements; (7) failure to provide wages when due; (8) violations of the Private Attorney General Act at Labor Code section 2698 *et seq.*; (9) and failure to reimburse for required business expenses in violation of Cal. Lab. Code §2802 (the "Action").

10. Generally, Plaintiff alleges that Defendant failed to pay employees for all time worked, including overtime, failed to provide them with proper meal breaks and rest breaks, failed to separately compensate employees for rest breaks, failed to provide them with complete and accurate wage statements, failed to reimburse them for business expenses, engaged in unfair business practices, and failed to timely pay them all wages owed at the time of the separation of their employment. Plaintiff's

1 complaint seeks unpaid wages, statutory penalties, civil penalties, attorneys' fees, litigation costs¹, and
2 any other equitable or legal relief allegedly due and owing to Plaintiff and the other Class Members by
3 virtue of the foregoing claims.

4 11. After filing the complaint, Plaintiff propounded written discovery aimed at identifying the
5 Class Members. Prior to answering the written discovery, the Parties agreed to mediate Plaintiff's class
6 and representative PAGA claims.

7 12. In anticipation of mediation, the Parties stipulated to stay formal discovery. To prepare
8 for mediation, the Parties agreed to informally produce certain documents and data points subject to the
9 mediation privilege, including but not limited to, the Class Members' time and payroll data. As
10 discussed *infra*, Plaintiff's counsel retained the Berger Consulting Group, to analyze Defendant's time
11 and payroll data.

12 13. On September 17, 2021, the Parties participated in a full day mediation with Jill Sperber,
13 Esq. The mediation concluded with a settlement after both sides agreed to a Mediator's proposal which
14 was subsequently memorialized in the form of a Memorandum of Understanding. After reaching an
15 agreement in principle, the parties drafted and negotiated a long-form settlement agreement, which is
16 the subject of the instant motion.

17 **B. Class Counsel Thoroughly Investigated the Factual and Legal Issues**

18 14. In May 2020, Class Counsel began its pre-filing investigation into Plaintiff's complaints.
19 Class Counsel's investigation started with several lengthy interviews with Plaintiff. As part of the
20 interview process, Plaintiff produced numerous documents related to her employment for Defendant. At
21 the conclusion of the interviews, Class Counsel determined that Plaintiff's complaints justified further
22 inquiry.

23 15. Class Counsel subsequently requested Plaintiff's employee file from Defendant. In
24 response, Defendant produced a number of documents, including but not limited, a copies of Plaintiff's
25 hiring documents. Class Counsel reviewed and analyzed the documents and determined the documents
26 substantiated Plaintiff's claim that Defendant's failed to, among other things, provide complaint meal
27 and rest periods. Shortly thereafter, Class Counsel summarized the known factual and legal issues in the
28 PAGA Notice addressed to the LWDA. Several weeks later, Class Counsel filed this class action.

¹ Plaintiff will provide a lodestar analysis for the fees and supporting evidence of the costs with the final approval papers.

1 16. In anticipation of mediation, Defendant produced the time and payroll records for the Class
2 members, aggregate workweek and pay period data for 100% of the Settlement Class, and copies of
3 applicable handbooks containing, *inter alia*, compensation, timekeeping and, meal and rest period
4 policies. In total, Defendant produced approximately 4,500 pages containing nearly one-half million
5 unique cells of time and payroll data for Class Counsel to.

6 17. Class Counsel then retained the statisticians and economists at Berger Consulting Group
7 (“BCG”), to evaluate the Class Members’ payroll and time data. BCG provides data analysis and damage
8 modeling consulting services specializing in wage and hour class actions. BCG’s team of financial and
9 data analysts are credentialed and experienced experts in their fields and have provided their expertise
10 on thousands of cases. Stated differently, the BCG is uniquely qualified to analyze Defendant’s time
11 and payroll data.

12 18. BCG analyzed Defendant’s time and payroll data to assist in the development of various
13 damage models. Among other things, BCG determined the approximate number of work shift, work
14 weeks, pay periods, average rate of pay, average length of shift and average number of hours worked per
15 week and pay period during the Class Period. BCG also estimated the number of missed, late or
16 truncated meal and rest periods and the amount of meal period premiums paid during the Class Period.

17 19. In advance of mediation, Class Counsel created several damage models predicated on
18 BCG analysis. Class Counsel’s models calculated Defendant’s potential liability exposure while
19 accounting for the uncertainties of continued litigation. These damage models informed and guided
20 Class Counsel during the mediated settlement discussions.

21 20. Overall, Class Counsel thoroughly investigated the claims at issue, including: (1)
22 determining Plaintiff’s suitability as a putative class representative through interviews, background
23 investigations, and analysis of his employment files; (2) evaluating all of Plaintiff’s potential claims;
24 (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions,
25 and the type of employer; (4) analyzing the Settlement Class’ time and payroll records; (5) analyzing
26 Defendant’s labor policies and practices; (6) researching settlements in similar cases as well as
27 outstanding issues which could affect settlement approval; (7) evaluating Plaintiff’s claims and
28 estimating Defendant’s liability for purposes of settlement; (8) drafting the mediation brief and (9)
participating in the mediation. This investigation allowed Class Counsel to fully assess the nature and

1 magnitude of the claims being settled, as well as the impediments to recovery, such as to make an
2 independent assessment of the reasonableness of the terms to which the parties have agreed. Class
3 Counsel only agreed to enter the Settlement following his thorough investigation and evaluation of
4 Plaintiff's claims. Based on his investigation of the facts, applicable law, and marketplace for similar
5 settlements, and in light of the risk of significant delay, uncertainty associated with litigation, and the
6 various defenses asserted by Defendant, Class Counsel firmly believes this Agreement to be in the best
7 interests of Settlement Class. Because the Settlement's terms are fair, reasonable, and adequate, the
8 Court should preliminarily approve the Settlement

9 **C. The Parties Settled at Mediation**

10 21. On September 17, 2021, the Parties conducted a mediation with Jill Sperber, Esq., a highly
11 regarded wage and hour mediator. Mediator Sperber helped to manage the Parties' expectations and
12 provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial
13 progress with the Mediator's assistance. Namely, the parties exchanged information regarding their
14 respective claims and defense, including their respective evaluation of the damages. After hours of arm's
15 length and adversarial negotiations, the mediation nearly concluded without a settlement. However, at
16 the conclusion of the mediation, Mediator Sperber issued a proposal for settlement that the Parties
17 accepted. The complete and final terms of the Parties' settlement are now set forth in the Agreement.
18 Class Counsel submits that the Settlement constitutes a fair, adequate, and reasonable compromise of
19 the claims at issue.

20 22. At all times, the Parties' negotiations were at an arm's length, adversarial and non-
21 collusive. In fact, despite a full day of mediated negotiations, the Parties reached an impasse and the
22 mediation session nearly concluded without a settlement. The matter resolved only when the Mediator
23 issued a mediator's proposal that the Parties accepted. Th Mediator only arrived at his proposal after
24 hearing arguments, reviewing evidence and evaluating the Parties' respective claims and defenses.

25 23. Once the Parties agreed to the Mediator's proposal, the Parties engaged in protracted
26 negotiations regarding the written terms of the class action settlement. The Parties maintained the arm's
27 length, non-collusive and adversarial negotiations while arriving at the final terms of the Settlement. The
28 Agreement is the final product of these mediated negotiations. Objectively, the Settlement terms are fair,
adequate and represent a reasonable compromise of the claims at issue.

1 **IV. ARGUMENT**

2 **A. The Court Should Preliminarily Approve the Settlement**

3 24. The Total Settlement Amount of \$130,000 is fair and reasonable considering the nature
4 and magnitude of the claims being settled and the various potential impediments to recovery. Prior to
5 mediation, Class Counsel retained BCG to develop varied economic damages models measuring
6 Defendant's liability exposure while accounting for the uncertainties of continued litigation. The various
7 models were informed by Class Counsel's investigation, including the analysis of a significant sample
8 of time and payroll data. Class Counsel projected Defendant's liability exposure for class-wide and
9 PAGA damages and penalties ranged between approximately \$1,029,527 dollars ("Conservative
10 Model") and approximately \$1,519,927 dollars ("Aggressive Model") if successful at trial. Both models,
11 account for the maximum class-wide **damages** of approximately \$624,227. However, the range between
12 the Conservative and Aggressive model reflects the uncertainty regarding Plaintiff's ability to obtain
13 subsequent violation rate penalties under PAGA. Consequently, Defendant's PAGA exposure ranged
14 between \$405,300 - \$895,700. Thus, the Total Settlement Amount of \$130,000 represents approximately
15 20% of the class-wide verdict value of the claims being released and between 8% and 12% of the full
16 verdict value of class and PAGA claims.

17 (1) Estimated Damages for Meal Period Violations

18 25. Plaintiff alleges that Defendant failed to provide compliant meal periods. Specifically,
19 Plaintiff alleges that because of their rigorous work schedules and Defendant's understaffing, Plaintiff
20 and the Class Members, regularly worked through what should have been off-the-clock and duty-free
21 meal periods without compensation. Consequently, Plaintiff alleges that she is owed meal period
22 premiums and compensation for the off-the-clock work performed during what should have been his
23 duty-free meal periods.

24 26. Labor Code 512 requires employers to provide employees with thirty (30) minute
25 uninterrupted and duty-free meal period within the first five hours of work. Moreover, an employee who
26 works more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and
27 duty-free meal period. Pursuant to Labor Code§ 512, an employer may not employ an employee for a work
28 period of more than ten (10) hours, without providing the employee with a second meal period of not less
than thirty (30) minutes. Moreover, the second meal period may not be waived if the total hours worked is

1 more than twelve (12) hours. California Lab. Code § 226.7(c) provides that "if an employer fails to provide
2 an employee a meal or rest or recovery period in accordance with a state law, including ... an ... order of the
3 Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the
4 employee's regular rate of compensation for each workday that the meal or rest or recovery period is not
5 provided."

6 27. Defendant argued that they fully complied with California meal period laws and maintained
7 legally compliant policies and practices. Defendant also argued that the Class Members executed valid meal
8 period waivers for shifts that did not exceed six hours. Most – 52% of all identified violations – of Plaintiff's
9 identified meal period violations occurred on these so-called "short shifts." Courts have found that where an
10 employer's meal period policies are compliant, individualized issues exist as to the reasons for missed, late
11 or truncated meal periods. *See e.g. Lampe v. Queen of the Valley Medical Center*, 19 Cal.App.5th 832, 851
12 (2018) (holding that although only 11.1% of the employees' time punches for meal periods were within the
13 first 5 hours, the claim was not certifiable because individualized issues existed as to the reasons for the late
14 meal periods). Consequently, Defendant asserted several viable defenses that could have eviscerated
15 Plaintiff's meal period claim. Assuming Plaintiff prevailed at trial, Plaintiff estimated Defendant's class
16 wide damage exposure for this claim was \$157,294. Plaintiff estimated Defendant's PAGA liability ranged
17 between \$100,100 and \$187,100. Again, Plaintiff's ability to obtain an award for a subsequent violation rate
18 explains the range of PAGA liability.

19 (2) Estimated Damages for Rest Period Violations

20 28. Plaintiff also alleged that Defendant failed to provide compliant rest periods. Specifically,
21 Plaintiff alleged that because of their rigorous work schedule they were not able to take timely and duty-free
22 rest periods. Moreover, Plaintiff alleged that Defendant implemented on an "on-premises" rest break practice
23 that prohibited Class Members from leaving Defendant's premises during rest breaks. JCL Dec., ¶ XX. WC
24 Wage Orders 5-2001 and 7-20017 provide that "[a]uthorized rest period times shall be counted as hours
25 worked for which there shall be no deduction from wages." Lab. Code § 226.7(c) provides that "if an
26 employer fails to provide an employee a meal or rest or recovery period in 13 accordance with a state law,
27 including ... an ... order of the Industrial Welfare Commission, the employer shall pay the employee one
28 additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest
or recovery period is not provided."

29. Again, Defendant denied liability and asserted that they maintained legally compliant rest period policies and practices throughout the Class Period. Moreover, Plaintiff recognizes the evidentiary burdens establishing this claim. Establishing Plaintiff's rest period claim would rely, almost entirely, on Class Member testimony, making it a riskier claim at class certification and liability stages. Defendant likely would have argued that only a small number of Class Members missed their rest breaks. Certification likely would have required depositions of Class Members who provided declarations, and Defendant surely would have obtained opposing declarations stating either rest breaks were taken, or rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11 ("Because of the competing testimony before the Court, plaintiff's evidence that defendant may have an illegal, written rest break policy is insufficient for this Court to find that common issues predominate."); *Villa v. United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 ("Indeed, Plaintiff's own evidence confirms that the written policy does not generate uniform practices."). Assuming Plaintiff prevailed at trial, Plaintiff estimated Defendant's class wide damage exposure for this claim was \$249,208. Plaintiff estimated Defendant's PAGA liability ranged between \$100,100 and \$225,900.

(3) Off-the-Clock Work – Minimum Wage and Overtime

30. Plaintiff alleged that during portions of the Class Period, Defendant failed to pay Plaintiff and the Class Members for all hours worked. More specifically, Plaintiff alleged that during portions of the Class Period, Defendant required Plaintiff and the Class Members to perform work during what should have been off -duty and off-the-clock meal periods. In evaluating this claim, Plaintiff assumed that every Class Member performed 10 minutes of off-the-clock work per work shift.

31. Generally, "[t]o Prove an off-the-clock claim, a plaintiff must demonstrate that she actually worked off the clock, that she was not compensated for it, and that the employer was aware or should have been aware that she was performing off the clock work." *Ortiz v. CVS Caremark Corp.*, 2014 U.S. Dist. LEXIS 36833 at *4 (N.D. Cal. Mar. 19, 2014) (citing *York v. Starbucks Corp.*, 2011 U.S. Dist. LEXIS 155682 at * 15 (C.D. Cal. Nov. 23, 2011)); *Morillion v. Royal Packing Co.*, 22 Cal. 4th 575, 94 (2000). Plaintiff is confident that she will carry their evidentiary burden and establish that Class Members performed work while off the clock, that Defendant knew or should have known about the work and, despite that knowledge, Defendant failed to pay the Class Members for all hours worked.

1 32. Again, Defendant denies Plaintiff's allegations and argue that it never required Class
2 Members to perform work while off-the-clock during meal periods. Defendant further points to written
3 policies that prohibit off-the-clock work and facially complaint meal period policies and practices.
4 Further, Defendant argued that it maintained fully compliant overtime policies and practices. Although,
5 Plaintiff believed strongly that she could establish liability for this claim, the estimated damages
6 remained relatively modest. Plaintiff's consultant estimated Defendant's class-wide exposure for the
7 unpaid overtime claim at approximately \$51,327. Plaintiff estimated Defendant's PAGA liability ranged
8 between \$100,100 and \$238,900.

9 (4) Exposure for Wage Statement Violations

10 33. Generally, Plaintiff alleges that Defendant's aforementioned violations resulted in
11 derivative violations of Labor Code sections 203 and 226(a). Class Counsel considered the arguable
12 presence of various penalties and weighed the potential recoveries against probable defenses.
13 Specifically, Defendant could argue that Plaintiff could not prove the "willful" prong needed to obtain
14 waiting time penalties under Cal. Lab. Code § 203. Additionally, Defendant could argue that Plaintiff
15 could not show that Class Members suffered an "injury" because of wage statement violations, as
16 required by Cal. Lab. Code § 226. Defendant could also argue that that meal and rest period violations
17 do not entitle employees like Plaintiff and the Class Members to pursue the derivative waiting time and
18 itemized wage statement penalties. *See Naranjo v. Spectrum Security Services, Inc.*, (2019) 40 Cal.
19 App. 5th 444; *Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal. App. 5th 1308.) Although the
20 Settlement Class arguably could have seen a payout of nearly \$1.1 million for these penalties if Plaintiff
21 prevailed on every penalty claim, Plaintiff would not recover any derivative penalties if they failed to
22 prove the underlying claims. Moreover, Plaintiff would have to overcome damaging precedent to prove
23 the Class deserved the penalties. JCL Dec., ¶ 33; *See, e.g., Howard v. CVS Caremark Corp.*, 2014 U.S.
24 Dist. LEXIS 172406 (C.D. Cal. Dec. 9, 2014) (denying class certification for the same penalty claims);
25 *Alonzo v. Maximus, Inc.*, 832 F. Supp. 2d 1122, 1134-1137 (C.D. Cal. 2011) (finding insufficient
26 evidence of bad faith or actual injury). Notwithstanding the perilous nature of the claim, Plaintiff
27 estimated Defendant's class-wide exposure for these claims at \$97,150. Plaintiff estimated Defendant's
28 PAGA liability ranged between \$100,100 and \$238,900.

(5) Defendant's Waiting Time Penalty Exposure

1 34. Plaintiff seeks waiting time penalties under Labor Code § 203 for all former employees
2 who were not paid at least minimum wages, all overtime wages and at the correct rates. Defendant asserts
3 that even if successful, Plaintiff cannot establish that Defendant's actions were willful within the
4 meaning of the Labor Code. Plaintiff estimated Defendant's class-wide waiting time penalties at
5 \$69,248. Plaintiff estimated Defendant's PAGA exposure for the same claim at \$4,900.

6 35. Accordingly, the Gross Settlement Fund of \$130,000 represents approximately 20% of the
7 class-wide verdict value of the claims being released and between 8% and 12% of the full verdict value
8 of class and PAGA claims. This is well within the bounds of reasonableness. (See *Viceral v. Mistras*
9 *Grp., Inc.* (N.D. Cal. 2016) 2016 WL 5907869, at *3, 7 (approving a California wage and hour settlement
10 where the class received 11.6% of the estimated total liability); *Leverage v. Traeger Pellet Grills, LLC*
11 (N.D. Cal. 2017) 2017 WL 2797811, at *7 (Approving a California wage and hour settlement where the
12 class received 18% of the estimated total liability); *Stovall-Gusman v. W.W. Granger, Inc.*, (N.D. Cal.
13 2015) 2015 WL 3776765 at * 4 (Approving California wage and hour misclassification settlement where
14 the class received approximately 7.3% of the estimated trial award was within the "range of
15 reasonableness.")

16 36. Federal district courts recognize that there is an inherent "range of reasonableness" in
17 determining whether to approve a settlement "which recognizes the uncertainties of law and fact in any
18 particular case and the concomitant risks and costs necessarily inherent in taking any litigation to
19 completion." *Newman v. Stein* (2d. Cir. 2002) 464 F.2d 689, 693; see *In re Omnivision Tech, Inc.* (N.D.
20 Cal. 2008) 559 F.Supp.2d 1036; see also *Nat'l Rural Telecomm. Coop. v. Directv. Inc.* (C.D. Cal. 2004)
21 221 F.R.D. 523, 527 ("well settled law that a proposed settlement may be acceptable even though it
22 amounts to only a fraction of the potential recovery"); *In re Global Crossing Sec. and ERISA Litig.*
23 (S.D.N.Y 2004) 225 F.R.D. 436, 460 ("settlement amount's ratio to the maximum potential recovery
24 need not be the sole, or even dominant, consideration when assessing settlements fairness"); *In re IKON*
25 *Office Solutions, Inc Sec Litig.* (E.D. Pa. 2000) 194 F.R.D. 166, 184 ("the fact that a proposed settlement
26 constitutes a relatively small percentage of the most optimistic estimate does not, in itself, weigh against
27 the settlement; rather the percentage should be considered in light of strength of the claims"); *Officers*
28 *for Justice v. Civil Serv. Comm.* (9th Cir. 1982) 688 F.2d 615, 628 (it is "the complete package, taken as
a whole rather than the individual component parts, that must be examined for overall fairness").

B. Risks of Continued Litigation

37. Plaintiff is confident about the strength of her claims. Nonetheless, Plaintiff recognizes that Defendant has factual and legal defenses that, if successful, would potentially defeat or substantially impair the value of Plaintiff's lawsuit. Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring settlement.

38. Finally, continuing to litigate this action would require continued and extensive resources coupled with significant Court time to proceed through trial and post-trial motions; which can often take years. Furthermore, wage and hour litigation are complex and expensive, as it often necessitates extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that Defendant would appeal any favorable judgment.

39. In this matter, Class Counsel negotiated a Total Settlement Amount of \$130,000 that is roughly between 8% and 20% of Defendant's maximum liability exposure. Given the amount of the settlement here, as compared to the potential value of the claims, offset by the various inherent risks to continued litigation, the settlement is fair and reasonable.

C. Proposed Notice Informs the Class About the Case and Settlement

40. The Parties jointly drafted the Class Notice which fairly and neutrally informs the Settlement Class of their rights and remedies in this action. The Settlement Administrator will first verify addresses, then mail the proposed Class Notice to entire Settlement Class. The Notice will include information regarding the nature of the lawsuit, a summary of the substance of the Settlement's terms, the class definition, the procedure and time period within which to requests for exclusions or objections to the Settlement, the date for the final approval hearing, the formula used to calculate settlement payments, and the terms and scope of the Released Claims. Agreement at §III(L). This method was negotiated by the Parties to ensure delivering the most reasonable method of notice to the Settlement Class while ensuring cost effective administration of the Settlement.

41. As detailed in the Agreement, the method of disseminating the proposed Class Notice and contents of the Proposed Class Notice satisfy due process and the California Rule of Court 3.766.

D. The Court Should Preliminarily Approve the Enhancement Award

42. Approximately 110 members of the Settlement Class will share in the Net Settlement Amount due entirely to the effort and commitment of Plaintiff. Subject to Court approval, therefore, the Settlement provides for a Class Representative Service Award of \$7,500² for Plaintiff. The service award is fair and reasonable compensation for Plaintiff's efforts bringing the action, assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status of her case and the strategies for prosecuting the claims, reviewing the proposed Settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class, and agreeing to provide Defendant a general release of all claims arising out of her employment.

43. The amount of the requested enhancement payment-\$7,500-is reasonable by reference to the amounts that California courts (both federal and state) have repeatedly found to be reasonable for wage and hour class action settlements: *See Baker v. LA. Fitness Int'l, LLC*, No. BC438654 (L.A. County Super. Ct. Dec. 12, 2012) (awarding \$10,000 enhancement payments to three of the named plaintiffs); *Blue v. Codwell Banker Residential Brokerage Co.*, No. BC417335 (L.A. County Super. Ct. Mar. 21, 2011) (awarding \$10,000 enhancement payment); *Buckmire v. Jo-Ann Stores, Inc.*, No. BC394795 (L.A. County Super. Ct. June 11, 2010) (awarding \$10,000 enhancement payments to the named plaintiff);

² The amount of the requested enhancement payment-\$7,500-is reasonable by reference to the amounts that California courts (both federal and state) have repeatedly found to be reasonable for wage and hour class action settlements: *See Baker v. LA. Fitness Int'l, LLC*, No. BC438654 (L.A. County Super. Ct. Dec. 12, 2012) (awarding \$10,000 enhancement payments to three of the named plaintiffs); *Blue v. Codwell Banker Residential Brokerage Co.*, No. BC417335 (L.A. County Super. Ct. Mar. 21, 2011) (awarding \$10,000 enhancement payment); *Buckmire v. Jo-Ann Stores, Inc.*, No. BC394795 (L.A. County Super. Ct. June 11, 2010) (awarding \$10,000 enhancement payments to the named plaintiff); *Coleman v. Estes Express Lines, Inc.*, No. BC429042 (L.A. County Super. Ct. Oct. 3, 2013) (awarding \$10,000 enhancement payment); *Ethridge v. Universal Health Services, Inc.*, No. BC391958 (L.A. County Super. Ct. May 27, 2011) (awarding \$10,000 enhancement payment); *Hickson v. South Coast Auto Insurance Marketing, Inc.*, No. BC390395 (L.A. County Super. Ct. Mar. 27, 2012) (awarding \$10,000 enhancement payment); *Hill v. Sunglass Hut Int'l, Inc.*, No. BC422934 (L.A. County Super. Ct. July 2, 2012) (awarding \$10,000 enhancement payments to the named plaintiffs); *Kabamba v. Victoria's Secret Stores, LLC*, No. BC368528 (L.A. County Super. Ct. Aug. 19, 2011) (awarding enhancement payments of \$ 10,000 to the named plaintiffs along with additional compensation for their general release of claims); *Magee v. American Residential Services, LLC*, No. BC423798 (L.A. County Super. Ct. Apr. 21, 2011) (awarding \$15,000 enhancement payment); *Mares v. BFS Retail & Commercial Operations, LLC*, No. BC375967 (L.A. County Super. Ct. June 24, 2010) (awarding \$15,000 enhancement payments to the named plaintiffs); *Nevarez v. Trader Joe's Co.*, No. BC373910 (L.A. County Super. Ct. Jan. 29, 2010) (awarding \$10,000 enhancement payment); *Ordaz v. Rose Hills Mortuary, LP.*, No. BC386500 (L.A. County Super. Ct. Mar. 19, 2010) (awarding 10,000 enhancement payments to the named plaintiffs); *Sheldon v. AHMC Monterey Park Hospital LP*, No. BC440282 (L.A. County Super. Ct. Feb. 22, 2013) (awarding \$10,000 enhancement payment); *Silva v. Catholic Moray Services, Inc.*, No. BC408054 (L.A. County Super. Ct. Feb. 8, 2011) (awarding \$10,000 enhancement payments to the named plaintiffs); *Weisbarth v. Banc West Investment Services, Inc.*, No. BC422202 (L.A. County Super. Ct. May 24, 2013) (awarding \$10,000 enhancement payment); *Zamora v. Balboa Life & Casualty LLC*, No. BC360026 (L.A. County Super. Ct. Mar. 7, 2013) (awarding \$25,000 enhancement payments to the named plaintiffs); *Acheson v. Express, LLC*, No. 109CV135335 (Santa Clara County Super. Ct. Sep. 13, 2011) (awarding \$10,000 enhancement payment); *Aguilar v. Cingular Wireless, LLC*, No. CV 06-8197 DDP (AJWx) (C.D. Cal. Mar. 17, 2011) (awarding \$14,767 enhancement payment); *Bejarano v. Amerisave Mortgage Corp.*, No. EDCV 08-00599 SGL (Opx) (C.D. Cal. June 22, 2010) (awarding \$10,000 enhancement payment); *Carbajal v. Sally Beauty Supply LLC*, No. CIVVS 1004307 (San Bernardino Super. Ct. Aug. 6, 2012) (awarding \$10,000 enhancement payments to the named Plaintiffs); *Contreras v. Serco Inc.*, No. 10-cv-04526-CAS-JEMx (CD. Cal. Sep. 10, 2012) (awarding \$10,000 enhancement payment); *Guerrero v. R.R. Donnelley & Sons Co.*, No. RIC 10005196 (Riverside Super. Ct. July 16, 2013) (awarding \$10,000 enhancement payment); *Kisliuk v. ADT Security Services, Inc.*, No. CV08-0324 DSF (RZx) (C.D. Cal. Jan. 10, 2011) (awarding \$10,000 enhancement payment); *Morales v. BCBG Maxaria Int'l Holdings, Inc.*, No. JCCP 4582 (Orange County Super. Ct. Jan. 24, 2013) (awarding \$10,000 enhancement payment); and *Barrett v. Doyon Security Services, LLC*, Nos. BS900199, BS900517 (San Bernardino County Super. Ct. Apr. 23, 2010) (awarding \$10,000 enhancement payment).

1 *Coleman v. Estes Express Lines, Inc.*, No. BC429042 (L.A. County Super. Ct. Oct. 3, 2013) (awarding
2 \$10,000 enhancement payment); *Ethridge v. Universal Health Services, Inc.*, No. BC391958 (L.A.
3 County Super. Ct. May 27, 2011) (awarding \$10,000 enhancement payment); *Hickson v. South Coast*
4 *Auto Insurance Marketing, Inc.*, No. BC390395 (L.A. County Super. Ct. Mar. 27, 2012) (awarding
5 \$10,000 enhancement payment); *Hill v. Sunglass Hut Int'l, Inc.*, No. BC422934 (L.A. County Super. Ct.
6 July 2, 2012) (awarding \$10,000 enhancement payments to the named plaintiffs); *Kabamba v. Victoria's*
7 *Secret Stores. LLC*, No. BC368528 (L.A. County Super. Ct. Aug. 19, 2011) (awarding enhancement
8 payments of \$ 10,000 to the named plaintiffs along with additional compensation for their general release
9 of claims); *Magee v. American Residential Services, LLC*, No. BC423798 (L.A. County Super. Ct Apr.
10 21, 2011) (awarding \$15,000 enhancement payment); *Mares v. BFS Retail & Commercial Operations,*
11 *LLC*, No. BC375967 (L.A. County Super. Ct. June 24, 2010) (awarding \$15,000 enhancement payments
12 to the named plaintiffs); *Nevarez v. Trader Joe's Co.*, No. BC373910 (L.A. County Super. Ct. Jan. 29,
13 2010) (awarding \$10,000 enhancement payment); *Ordaz v. Rose Hills Mortuary, LP.*, No. BC386500
14 (L.A. County Super. Ct. Mar. 19, 2010) (awarding 10,000 enhancement payments to the named
15 plaintiffs); *Sheldon v. AHMC Monterey Park Hospital LP*, No. BC440282 (L.A. County Super. Ct. Feb.
16 22, 2013) (awarding \$10,000 enhancement payment); *Silva v. Catholic Moray Services, Inc.*, No.
17 BC408054 (L.A. County Super. Ct. Feb. 8, 2011) (awarding \$10,000 enhancement payments to the
18 named plaintiffs); *Weisbarth v. Banc West Investment Services, Inc.*, No. BC422202 (L.A. County Super.
19 Ct. May 24, 2013) (awarding \$10,000 enhancement payment); *Zamora v. Balboa Life & Casualty LLC*,
20 No. BC360026 (L.A. County Super. Ct. Mar. 7, 2013) (awarding \$25,000 enhancement payments to the
21 named plaintiffs); *Acheson v. Express, LLC*, No. 109CV135335 (Santa Clara County Super. Ct. Sep. 13,
22 2011) (awarding \$10,000 enhancement payment); *Aguilar v. Cingular Wireless. LLC*, No. CV 06-8197
23 DDP (AJWx) (C.D. Cal. Mar. 17, 2011) (awarding \$14,767 enhancement payment); *Bejarano v.*
24 *Amerisave Mortgage Corp.*, No. EDCV 08-00599 SGL (Opx) (C.D. Cal. June 22, 2010) (awarding
25 \$10,000 enhancement payment); *Carbajal v. Sally Beauty Supply LLC*, No. CIVVS 1004307 (San
26 Bernardino Super. Ct. Aug. 6, 2012) (awarding \$10,000 enhancement payments to the named Plaintiffs);
27 *Contreras v. Serco Inc.*, No. 10-cv-04526-CAS-JEMx (CD. Cal. Sep. 10, 2012) (awarding \$10,000
28 enhancement payment); *Guerrero v. R.R. Donnelley & Sons Co.*, No. RIC 10005196 (Riverside Super.
Ct July 16, 2013) (awarding \$10,000 enhancement payment); *Kisliuk v. ADT Security Services, Inc.*, No.

CV08-0324 DSF (RZx) (C.D. Cal. Jan. 10, 2011) (awarding \$10,000 enhancement payment); *Morales v. BCBG Maxaria Int'l Holdings, Inc.*, No. JCCP 4582 (Orange County Super. Ct Jan. 24, 2013) (awarding \$10,000 enhancement payment); and *Barrett v. Doyon Security Services, LLC*, Nos. BS900199, BS900517 (San Bernardino County Super. Ct. Apr. 23, 2010) (awarding \$10,000 enhancement payment).

44. Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Class Representative Service Award once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated Class Representative Service Award.

E. The Court Should Preliminary Approve the Negotiated Class Counsel Award

45. Class Counsel took this matter on a contingency fee basis and invested significant time and expense successfully prosecuting Plaintiff's claims. As discussed *supra*, the estimated average Individual Settlement Share illustrates the demonstrably positive outcome for the Class Members. The Agreement provides for a Class Counsel Award in the amount of one-third of the Total Settlement Amount and litigation costs and expenses not to exceed \$9,000. Agreement at §III(M)(10). Considering the positive outcome for the Settlement Members, and in light of the supporting authority, the proposed Class Counsel award is fair and reasonable. Plaintiff will file a formal motion for the negotiated Class Counsel Award once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated attorneys' fees.

F. The Court Should Provisionally Certify the Settlement Class

46. For the purpose of Settlement, Plaintiff contends, and Defendants do not dispute, that provisional certification of the Settlement Class is appropriate. It is my opinion that provisional certification is appropriate here, and that the Settlement is fair, reasonable, and adequate, and in the best interests of the Class.

47. Generally, the proposed Class consists of all of Defendant's current and former California employees during the Class Period. Defendant's records show that the Class Members consist of approximately 110 individuals, making joinder of all Class Members impracticable. Further, because all Class Members are Defendant's current and former employees, the class is readily ascertainable from Defendant's regular business records, i.e., payroll records.

1 48. The California statutes relating to each of Plaintiff's claims apply with equal force and
2 effect to the entire Settlement Class. Factually, Defendant's policies and practices apply class-wide and
3 Defendant's liability can be determined by facts common to all members of the class. The wage and hour
4 issues are both numerous and substantial, and a class action is the most advantageous method of dealing
5 with the claims of the Settlement Class.

6 49. Plaintiff's wage and hour claims are typical of the proposed Class because they arise from
7 the same factual basis and are based on the same legal theories applicable to the other Class Members.
8 Likewise, Plaintiff's interests are entirely coextensive with the interests of the Settlement Class. Plaintiff
9 alleges that they were injured by the same company-wide practices to which the proposed Class was
10 subject and seeks the same relief. Plaintiff has already demonstrated his ability to advocate for the
11 interests of the Class by initiating this litigation, undertaking class discovery, and evaluating the
12 proposed settlement to assure that it is fair.

13 50. A class action is superior to a multitude of individual lawsuits. Given the size and amount
14 of each individual Settlement Class Member's claim, Class Settlement Members likely have little
15 incentive to litigate their claims on an individual basis because the out-of-pocket expense and personal
16 commitment necessary to litigate each claim outweighs any potential recovery. In sum, class treatment
17 is superior to individual, case-by-case adjudication.

18 **F. Class Counsel's Experience**

19 51. Plaintiff, the Settlement Class Members and the Aggrieved Employees are represented by
20 competent and experienced counsel to pursue their claims. I established the JCL Law Firm, APC
21 ("Firm"), in 2010. The Firm is a boutique plaintiff firm representing aggrieved employees and consumers
22 throughout California in wage and hour class actions, PAGA Actions and complex multi-party product
23 liability matters. The Firm currently consists of myself, Jean-Claude Lapuyade, Esq. (Partner/Owner),
24 Tesla Stone (Paralegal), Leilani Edmunds (Legal Secretary), Amanda De Blouw (Legal Assistant).

25 52. I am qualified to represent the Plaintiff, the State of California and the Aggrieved
26 Employees. I have extensive experience with wage and hour class and representative actions litigation
27 like this matter, and employment matters in general. Additionally, I have extensive complex mass tort
28 litigation experience and complex construction product liability experience. I can, will and have

adequately represented the interests of the Plaintiff, the State of California and the Aggrieved Employees throughout this action.

53. I have represented consumers and employees in California class actions, and complex multi-party product liability actions exclusively for more than 13 years. I have been in practice as a plaintiffs' civil litigation attorney since April 2007.

54. I have significant class counsel and collective action counsel experience. I served as class and/or collective (PAGA) counsel in the following matters:

a. *Jer Vang v. Bridge Property Management*, Alameda County Superior Court, Case No RG19047434 (January 8, 2021 – Hon. Winifred Smith approved a class and PAGA settlement for, *inter alia*, unpaid off the clock work. The JCL Law Firm, APC acted as class counsel for the settlement class and as representative PAGA counsel the State of California and the Aggrieved Employees.)

b. *Johnson v. Volt Management Corp., Inc. et al.*, Los Angeles County Superior Court, Case No. 19STCV16466 (December 11, 2020 – Hon. Amy Hogue approved a PAGA Settlement negotiated on behalf of the State of California and the aggrieved employees by the JCL Law Firm, APC.)

c. *Salazar v. Frontier Auto Sales Inc., dba Frontier Toyota*, Los Angeles Superior Court, Case No. 19STCV20382 (November 24, 2020 – Hon. John P. Doyle appointed the JCL Law Firm, APC as class counsel and approved a class and PAGA settlement for, *inter alia*, missed meal and rest periods.)

d. *Villalobos v. Alterra Group, LLC et al.*, Los Angeles County Superior Court, Case No. 19STCV19448 (November 11, 2020 – Hon. Richard Fruin approved a PAGA Settlement for, *inter alia*, unreimbursed business expenses. The JCL Law Firm, APC acted as counsel for the plaintiff, the State of California and the Aggrieved Employees.)

e. *Stevens et al., v. Bank of England*, San Diego County Superior Court Case No. 37-2019-00018662-CU-OE-CTL (October 16, 2020 – Hon. John Meyer appointed JCL Law Firm as Class Counsel and granted final approval of wage and hour class action for, *inter alia*, off-the-clock work.)

- 1 f. *Frazier v. ASA Carlton, Inc.*, San Diego Superior Court Case No. 37-2019-
2 00036147 (October 9, 2020 Hon. Kenneth Medel appointed the JCL Law Firm as Class
3 Counsel and granted final approval of wage and hour class action for off-the-clock work.)
- 4 g. *Krake et al., v. Central Valley Diner, Inc.*, Placer County Superior Court Case No.
5 SCV0041645 (September 4, 2020 – Hon. Michael Jones appointed JCL Law Firm as class
6 counsel and granted final approval of wage and hour class action for meal period
7 violations.)
- 8 h. *Conner v. Ascendant Marketing, LLC et al.*, San Diego Superior Court Case No.
9 37-2019-00026864-CU-OE-CTL (July 24, 2020 Hon. Joel Wohlfeil granted approval of
10 PAGA Settlement for, among other things, off-the-clock work. JCL Law Firm, APC
11 acted as lead counsel.)
- 12 i. *Guerrero v. Estancia Operations, LLC.*, San Diego Superior Court Case No. 37-
13 2019-00028963 (August 25, 2020 – Hon. Katherine Bacal approved PAGA Settlement
14 for, *inter alia*, missed meal and rest periods. JCL LAW Firm, APC, acted as lead
15 counsel.)
- 16 j. *Moreno v. Dash Lube, et al.*, United States District Court, Southern District of
17 California, Case No. 18cv1922 DMS (AHG) (December 13, 2019 – Granted class
18 certification of Labor Code Section 226 claim and appointed JCL Law Firm, APC, as
19 Class Counsel.)
- 20 k. *Perkins et al., v. Tahiti Enterprises, Inc., et al.*, Orange County Superior Court
21 Case No. 30-2016-00863095 (October 22, 2019 – Hon. Peter Wilson appointed JCL Law
22 Firm, APC, as Class Counsel and granted final approval for an unlawful housing class
23 action settlement arising out of Civil Code Section 1940.1.)
- 24 l. *Hill v. Stemak Holdings, Ltd.*, San Diego Superior Court Case No., 37-2018-
25 00000747 (January 28, 2020 – Hon. Kenneth Medel appointed JCL Law Firm, APC as
26 class counsel and granted final approval of wage and hour class action for unpaid
27 overtime.)
- 28 m. *Shachno et al., v. KT Hotels, LLC, et al.* San Diego Superior Court Case No Case
No. 37-2018-00043601 (May 31, 2019 – Hon, Gregory Pollack appointed JCL Law Firm,

1 APC, as Class Counsel and granted preliminary approval for the wage and hour class
2 action settlement involving nearly 900 current and former employees. Final approval
3 scheduled for October 4, 2019)

4 n. *Almanza v. The Express Group, Inc.*, San Bernardino Superior Court Case No.
5 CIVDS1722542 (April 19, 2019 – Hon. David Cohn appointed the JCL Law Firm, APC,
6 as Class Counsel and granted final approval for a wage and hour class action settlement
7 for *inter alia*, missed meal and rest periods and independent contractor misclassification.)

8 o. *Moschetto v. Pillow Global, Inc. San Diego Superior Court*, Case No. 37-2017-
9 00024031-CU-OE-CTL (April 5, 2019 – Hon. John S. Meyer appointed JCL LAW Firm,
10 APC, as Class Counsel and granted final approval for a wage and hour wage class action
11 settlement involving misclassified house cleaners.)

12 p. *Burke v. Friendship Hotel, LLC*, San Diego County Superior Court Case No. 37-
13 2017-00022517-CU-OE-CTL (March 10, 2019 – final approval granted on for an
14 unlawful housing class action arising under Civil Code Section 1940.2)

15 q. *Terrado et al., v. Accredited Debt Relief, LLC*, San Diego County Superior Court
16 Case No. 37-2018-00014181-CU-OE-CTL (February 8, 2019 – Hon. Gregory W. Pollock
17 appointed JCL Law Firm, APC as Class Counsel and granted final approval for a wage
18 and hour class action settlement for meal and rest period violations);

19 r. *Macaspac v. San Antonio Regional Hospital*, San Bernardino Superior Court Case
20 No. CIVDS1512625, (July 27, 2018 – Hon. Thomas S. Garza appointed JCL Law Firm,
21 APC, as Class Counsel and granted final approval for a wage and hour class action
22 settlement involving claims for on duty meal and rest periods.);

23 s. *Summerlin et al. v. Maplebear, Inc. dba Instacart*, Los Angeles Superior Court
24 Case No. BC603030 (2018 - certified and settled wage and hour class action.)

25 t. *Ortega v. Prime Healthcare*, San Diego Superior Court Case No. 37-2014-
26 00011240-CU-OE-CTL (2018 – Approved PAGA only settlement for on duty meal and
27 rest periods)
28

u. *Engstrom v. Bender-Rosenthal, Inc.* San Diego Superior Court Case No. 37-2016-00012373-CU-OE-CTL (2017 - Certified and settled class action for employee misclassification);

v. *Crawford v. Outlook Amusements, Inc.*, Los Angeles Superior Court Case No. BC617160 (2017 - Certified and settled wage and hour class action.);

w. *Hernandez v. Sunglass Hut Trading, LLC*, San Bernardino Superior Court Case No. CIVDS1505181 (2016 - Certified and settled wage and hour class action);

x. *Burns v. Shalom, LLC*, San Diego Superior Court, Case No., 37-2013-00058356-CU-BT-CTL (2015 - certified and settled class action for unlawful housing practices arising out of Civil Code Section 1940.1);

55. Since 2010, my firm has successfully resolved more than sixty (65) cases and recovered in excess of \$50 million on behalf of the Firm's clients.

56. Since 2010, I have successfully tried two (2) cases to conclusion, each resulting in a favorable verdict for the firm's clients.

57. Finally, I have published appellate experience in *William Blanchette et al., v. The Superior Court of Imperial County, (GHA Enterprises)*, 8 Cal.App.5th 521.

58. Consequently, I was named to the prestigious Thomson Reuters, Super Lawyers, Rising Star in 2015, 2016, 2017 and, again, in 2018. According to Thomson Reuters, the Super Lawyers, Rising Star list recognizes the top 2.5% of eligible attorneys. (see https://www.superlawyers.com/about/selection_process.html.)

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 20th day of December 2021, at San Diego, California

JCL LAW FIRM, APC

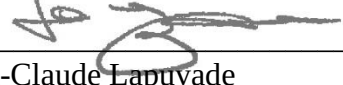
By: 
Jean-Claude Lapuyade
Attorneys for Plaintiff

EXHIBIT 1

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
Jackland K. Hom (State Bar #327243)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619)255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com
jackland@zakaylaw.com

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Eduardo Garcia (State Bar #290572)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
egarcia@jcl-lawfirm.com

SUPERIOR COURT OF CALIFORNIA**COUNTY OF SACRAMENTO**

COURTENAY ARNESON, an individual,
on behalf of herself and on behalf of all
persons similarly situated,

PLAINTIFF,

vs.

BAHN THAI, Inc. (dba Thai Basil Café /
Veg Café & Bar), a California Corporation;
and DOES 1 through 50, Inclusive;
DEFENDANTS.

Case No. 34-2021-00295429

[Action Filed 02/26/2021]

**STIPULATION OF SETTLEMENT OF
CLASS ACTION CLAIMS AND
RELEASE OF CLAIMS**

Judge: Honorable Kevin R. Culhane
Dept.: 37

{3282393.DOCX:}

STIPULATION OF SETTLEMENT OF CLASS ACTION AND RELEASE OF CLAIMS

This Stipulation of Class Action Settlement and Release of Claims is entered into by and between plaintiff COURTENAY ARNESON (hereinafter “Plaintiff”), individually and on behalf of the putative class and the State of California as a private attorney general, and defendant BAHN THAI, Inc., (dba Thai Basil Café / Veg Café & Bar), a California Corporation (hereinafter “Defendant”):

I. DEFINITIONS

- A. “Action” shall mean the putative class action lawsuit designated *Arneson v. Bahn Thai, Inc. (dba Thai Basil Café / Veg Café & Bar)*, Sacramento County Superior Court, Case No. 34-2021-00295429, filed February 26, 2021 (hereinafter “the Action”)
- B. “Aggrieved Employees” shall mean all non-exempt employees who are or previously were employed by Defendant in California during the PAGA Period.
- C. “Agreement” or “Settlement Agreement” means this Stipulation of Settlement of Class Action and Release of Claims.
- D. “Class Counsel” shall mean Jean-Claude Lapuyade, Esq. of JCL Law Firm, APC and Shani Zakay of Zakay Law Group, APLC.
- E. “Class Counsel Award” means the award of fees and expenses that the Court authorizes to be paid to Class Counsel for the services they have rendered to Plaintiff and the Class in the Actions, consisting of attorneys’ fees currently not to exceed one-third of the Total Settlement Amount currently estimated to be \$43,333 out of \$130,000 plus costs and expenses in the amount of \$9,000. Class Counsel’s award for attorneys’ fees will be divided equally between Class Counsel (50% to JCL Law Firm, APC and 50% to Zakay Law Group, APLC).
- F. “Class Data” means information regarding Class Members that Defendant will in good faith compile from its records and provide to the Settlement Administrator. It shall be formatted as a Microsoft Excel spreadsheet and shall include: each Class

1 Member's full name; last known address; Social Security Number; start dates and end
2 dates of employment.

3 G. "Class Members" or the "Class" means all non-exempt employees who are or
4 previously were employed by Defendant in California during the Class Period.

5 H. "Class Period" means the period between February 26, 2017 to September 17, 2021.

6 I. "Class Representative Service Award" means the amount that the Court authorizes to
7 be paid to the Class Representative, in addition to her Individual Settlement Payment
8 and her pro-rata share of the PAGA Settlement, in recognition of her efforts and risks
9 in assisting with the prosecution of the Actions and in exchange for executing a
10 General Release of Defendant.

11 J. "Class Representative" shall mean plaintiff COURTENAY ARNESON.

12 K. "Court" means the Superior Court for the State of California, County of Sacramento
13 currently presiding over the Action.

14 L. "Defendant" shall mean Bahn Thai, Inc. (dba Thai Basil Café / Veg Café & Bar) a
15 California Corporation.

16 M. "Effective Date" means the earliest date, following entry by the Court of an order
17 and judgment finally approving this Settlement, upon which one of the following have
18 occurred: (i) if no objection is filed to the settlement and no objector appears at the
19 hearing on final approval, the date of the Court's entry of the order granting final
20 approval, (ii) if an objection is filed to the settlement and/or an objector appears at the
21 hearing on final approval, then the earlier of the following: (a) the expiration of all
22 potential appeal periods without a filing of a notice of appeal of the final approval
23 order or judgment; (b) final affirmance of the final approval order and judgment by
24 an appellate court as a result of any appeal(s), or (c) final dismissal or denial of all
25 such appeals (including any petition for review, rehearing, certiorari, etc.) such that
26 the final approval order and judgment is no longer subject to further judicial review.

- 1 N. "Funding Date" shall mean sixty-five (65) calendar days after the Effective Date and
2 is the date Defendant transfers the Total Settlement Amount into the QSF in accord
3 with the terms of this Agreement.
- 4 O. "Individual Settlement Payment" means the amount payable from the Net Settlement
5 Amount to each Settlement Class Member and excludes any amounts distributed to
6 Aggrieved Employees pursuant to PAGA.
- 7 P. "Net Settlement Amount" or "NSA" means the Total Settlement Amount, less Class
8 Counsel Award, Class Representative Service Award, PAGA Settlement, and
9 Settlement Administration Costs.
- 10 Q. "Notice Packet" means the Class Notice to be provided to the Class Members by the
11 Settlement Administrator in the form set forth as Exhibit A to this Agreement (other
12 than formatting changes to facilitate printing by the Settlement Administrator).
- 13 R. "PAGA" means the California Labor Code Private Attorneys General Act of 2004,
14 Labor Code § 2698 *et seq.*
- 15 S. "PAGA Payment Ratio" means the respective pay periods during the PAGA Period
16 for each Aggrieved Employee divided by the sum total of the pay periods for all
17 Aggrieved Employees during the PAGA Period.
- 18 T. "PAGA Period" means the period between October 22, 2019 until September 26,
19 2021 (the "PAGA Period").
- 20 U. "PAGA Settlement" shall mean Five Thousand Dollars (\$5,000) to be allocated from
21 the Total Settlement Amount.
- 22 V. "Parties" means Plaintiff and Defendant, collectively, and "Party" shall mean either
23 Plaintiff or Defendant, individually.
- 24 W. "Class Payment Ratio" means the respective Workweeks for each Class Member
25 divided by the sum total Workweeks for all Class Members.
- 26 X. "Plaintiff" shall mean COURTENAY ARNESON.

- 1 Y. “QSF” means the Qualified Settlement Fund established, designated and maintained
2 by the Settlement Administrator to fund the Total Settlement Amount.
- 3 Z. “Released Class Claims” means all class claims alleged in the operative complaint
4 which occurred during the Class Period, and expressly excluding all other claims,
5 including claims for vested benefits, wrongful termination, unemployment insurance,
6 disability, social security, workers’ compensation, and class claims outside of the
7 Class Period.
- 8 AA. “Released PAGA Claims” means all PAGA claims alleged in the operative complaint
9 and Plaintiff’s PAGA notice to the LWDA which occurred during the PAGA Period,
10 and expressly excluding all other claims, including claims vested benefits, unpaid
11 wages, wrongful termination, unemployment insurance, disability, social security,
12 workers’ compensation, and PAGA claims outside the PAGA Period.
- 13 BB. “Released Party” shall mean Defendant.
- 14 CC. “Response Deadline” means the date forty-five (45) days after the Settlement
15 Administrator mails Notice Packets to Class Members and the last date on which
16 Class Members may submit requests for exclusion or objections to the Settlement.
- 17 DD. “Settlement” means the disposition of the Actions pursuant to this Agreement.
- 18 EE. “Settlement Administrator” means ILYM Group Inc., 14771 Plaza Drive, Ste. L,
19 Tustin, CA 92780; Tel: 1-888-250-6810; Fax: 1-888-845-6185. The Settlement
20 Administrator establishes, designates and maintains, as a QSF under Internal Revenue
21 Code section 468B and Treasury Regulation section 1.468B-1, into which the amount
22 of the Total Settlement Amount is deposited for the purpose of resolving the claims
23 of Settlement Class Members. The Settlement Administrator shall maintain the funds
24 until distribution in an account(s) segregated from the assets of Defendant and any
25 person related to Defendant. *All accrued interest shall be paid and distributed to the*
26 *Settlement Class Members as part of their respective Individual Settlement*
27 *Payment.*

1 FF. "Settlement Class Members" or "Settlement Class" means all Class Members who
2 have not submitted a timely and valid request for exclusion as provided in this
3 Agreement.

4 GG. "Total Settlement Amount" means One Hundred Thirty Thousand Dollars
5 (\$130,000.00) that Defendant must pay into the QSF in connection with this
6 Settlement, inclusive of the sum of the Individual Settlement Payments, the Class
7 Representative Service Award, the Class Counsel Award, PAGA Settlement and the
8 Settlement Administration Costs and *exclusive* of the employer's share of payroll tax,
9 if any, triggered by any payment under this Settlement.

10 HH. "Workweeks", for purposes of calculating the distribution of the Net Settlement
11 Amount, means the number of weeks of employment during the Class Period that
12 each Class Member was employed by Defendant in California, excluding weeks
13 during which the Class Member did not perform any work for Defendant.

14 II. "PAGA Pay Periods", for purposes of calculating the distribution of the Aggrieved
15 Employee Payment, as defined herein, means the number of pay periods of
16 employment during the PAGA Period that each Aggrieved Employee worked in
17 California.

18 **II. RECITALS**

19 A. On October 22, 2020, Plaintiff filed a Notice of Violations with the Labor and
20 Workforce Development Agency (LWDA) and served the same on Defendant.

21 B. On February 26, 2020, Plaintiff filed the Class Action lawsuit for:

- 22 1. Unfair Competition in Violation of Bus. and Prof. Code sections 17200 *et seq*;
- 23 2. Failure to pay minimum wages in violation of California Labor Code sections
24 1194, 1197 and 1197.1;
- 25 3. Failure to pay overtime wages in violation of California Labor Code sections
26 510 *et seq*;
- 27

1 4. Failure to provide required meal periods in violation of California Labor Code
2 sections 226.7 and 512 and the applicable IWC wage order;

3 5. Failure to provide required rest periods in violation of California Labor Code
4 sections 226.7 and 512 and the applicable IWC wage order;

5 6. Failure to provide accurate itemized wage statements in violation of California
6 Labor Code section 226;

7 7. Failure to provide wages when due in violation of California Labor Code
8 sections 201, 202 and 203;

9 8. Violation of the Private Attorneys General Act [Labor Code section 2698].

10 9. Failure to reimburse Plaintiff for required expenses in violation of California
11 Labor Code section 2802.

12 C. The Class Representative believes she has meritorious claims based on alleged
13 violations of the California Labor Code, and the Industrial Wage Commission
14 Orders, and that class certification is appropriate because the prerequisites for class
15 certification can be satisfied in the Action, and this action is manageable as a PAGA
16 representative action.

17 D. Defendant denies any liability or wrongdoing of any kind associated with the claims
18 alleged in the Action, disputes any wages, damages and penalties claimed by the
19 Class Representative are owed, and further contends that, for any purpose other than
20 settlement, the Action is not appropriate for class or representative action treatment.
21 Defendant contends, among other things, that at all times they complied with the
22 California Labor Code and the Industrial Wage Commission Orders.

23 E. The Class Representative is represented by Class Counsel. Class Counsel conducted
24 an investigation into the facts relevant to the Action, including conducting an
25 independent investigation as to the allegations, reviewing documents and
26 information exchanged through informal discovery, and reviewing documents and
27 information provided by Defendant pursuant to informal requests for information to
28

1 prepare for mediation. Defendant produced for the purpose of settlement
2 negotiations certain employment data concerning the Settlement Class, which Class
3 Counsel reviewed and analyzed. Based on their own independent investigation and
4 evaluation, Class Counsel are of the opinion that the Settlement with Defendant is
5 fair, reasonable and adequate, and is in the best interest of the Settlement Class in
6 light of all known facts and circumstances, including the risks of significant delay,
7 defenses asserted by Defendant, uncertainties regarding class certification, and
8 numerous potential appellate issues. Although it denies any liability, Defendant is
9 agreeing to this Settlement solely to avoid the inconveniences and cost of further
10 litigation. The Parties and their counsel have agreed to settle the claims on the terms
11 set forth in this Agreement.

12 F. On September 17, 2021, the Parties participated in mediation presided over by Jill
13 R. Sperber, an experienced mediator of wage and hour class actions. The mediation
14 concluded with a settlement after both sides agreed to a Mediator's proposal which
15 was subsequently memorialized in the form of a Memorandum of Understanding
16 ("MOU").

17 G. This Agreement replaces and supersedes the MOU and any other agreements,
18 understandings, or representations between the Parties. This Agreement represents
19 a compromise and settlement of highly disputed claims. Nothing in this Agreement
20 is intended or will be construed as an admission by Defendant that the claims in the
21 Actions of Plaintiff or the Class Members have merit or that Defendant bears any
22 liability to Plaintiff or the Class on those claims or any other claims, or as an
23 admission by Plaintiff that Defendant's defenses in the Actions have merit.

24 H. The Parties believe that the Settlement is fair, reasonable and adequate. The
25 Settlement was arrived at through arm's-length negotiations, taking into account all
26 relevant factors. The Parties recognize the uncertainty, risk, expense and delay
27 attendant to continuing the Action through trial and any appeal. Accordingly, the

Parties desire to fully, finally, and forever settle, compromise and discharge all disputes and claims arising from or relating to the Action.

- I. The Parties agree to certification of the Class for purposes of this Settlement only. If for any reason the settlement does not become effective, Defendant reserves the right to contest certification of any class for any reason and reserves all available defenses to the claims in the Action.

Based on these Recitals that are a part of this Agreement, the Parties agree as follows:

III. TERMS OF AGREEMENT

A. Settlement Consideration and Settlement Payments by Defendant.

1. Settlement Consideration. In full and complete settlement of the Actions, and in exchange for the releases set forth below, Defendant and the Released Parties will pay the sum of the Individual Settlement Payment, the Class Representative Service Award, the Class Counsel Award, PAGA Settlement, and the Settlement Administration Costs, as specified in this Agreement, equal to the Total Settlement Amount of One Hundred Thirty Thousand Dollars (\$130,000.00). The Parties agree that this is a non-reversionary Settlement and that no portion of the Total Settlement Amount shall revert to Defendant. Other than the Defendant's share of employer payroll taxes, Defendant shall not be required to pay more than the Total Settlement Amount, except as provided for hereinbelow.
2. Class Size. At the time of mediation, Defendant estimated that the Settlement Class was comprised of 110 individuals who collectively worked approximately 5,500 Workweeks ("Projected Workweeks") during the Class Period. In regard hereto, Defendant will provide a declaration under penalty of perjury confirming the number of Class Members and Workweeks they worked during the Class Period prior to the filing of the motion for preliminary approval. If the workweek numbers is greater than 105% of the workweek

1 estimate provided herein, the end date of the Release Period and Class Period
2 will be adjusted so that the number of workweeks in the Release Period and
3 Class Period does not exceed 105% of the estimate.

4 3. Settlement Payment. Defendant and the Released Parties, and each of them,
5 are jointly and severally liable for payment of the Total Settlement Amount.
6 Defendant shall pay the Total Settlement Amount to the Settlement
7 Administrator on the Funding Date.

8 4. Defendant's Share of Payroll Taxes. Defendant's share of employer side
9 payroll taxes is in addition to the Total Settlement Amount and shall be paid
10 together with the Total Settlement Amount.

11 B. Release by Settlement Class Members. As of the Funding Date, in exchange for the
12 consideration set forth in this Agreement, Plaintiff and the Settlement Class Members
13 release the Released Parties from the Released Class Claims for the Class Period.

14 C. Release by the Aggrieved Employees. As of the Funding Date, in exchange for the
15 consideration set forth in this Agreement, the Plaintiff, the LWDA and the State of
16 California release the Released Parties from the PAGA Released Claims for the PAGA
17 Period.

18 D. General Release by Plaintiff. As of the Funding Date, for the consideration set forth
19 in this Agreement, Plaintiff waives, releases, acquits and forever discharges the
20 Released Parties from any and all claims, whether known or unknown, which exist or
21 may exist on her behalf as of the date of this Agreement, including but not limited to
22 any and all tort claims, contract claims, wage claims, wrongful termination claims,
23 disability claims, benefit claims, public policy claims, retaliation claims, statutory
24 claims, personal injury claims, emotional distress claims, invasion of privacy claims,
25 defamation claims, fraud claims, quantum meruit claims, and any and all claims
26 arising under any federal, state or other governmental statute, law, regulation or
27 ordinance, including, but not limited to claims for violation of the Fair Labor

Standards Act, the California Labor Code, the Wage Orders of California's Industrial Welfare Commission, other state wage and hour laws, the Americans with Disabilities Act, the Age Discrimination in Employment Act (ADEA), the Employee Retirement Income Security Act, Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, the California Family Rights Act, the Family Medical Leave Act, California's Whistleblower Protection Act, California Business & Professions Code Section 17200 et seq., and any and all claims arising under any federal, state or other governmental statute, law, regulation or ordinance. Plaintiff also waives and relinquishes any and all claims, rights or benefits that she may have under California Civil Code § 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Thus, notwithstanding the provisions of section 1542, and to implement a full and complete release and discharge of the Released Parties, Plaintiff expressly acknowledges this Settlement Agreement is intended to include in its effect, without limitation, all claims Plaintiff does not know or suspect to exist in Plaintiff's favor at the time of signing this Settlement Agreement, and that this Settlement Agreement contemplates the extinguishment of any such claims. Plaintiff warrants that Plaintiff has read this Settlement Agreement, including this waiver of California Civil Code section 1542, and that Plaintiff has consulted with or had the opportunity to consult with counsel of Plaintiff's choosing about this Settlement Agreement and specifically about the waiver of section 1542, and that Plaintiff understands this Settlement Agreement and the section 1542 waiver, and so Plaintiff freely and knowingly enters

1 into this Settlement Agreement. Plaintiff further acknowledges that Plaintiff later may
2 discover facts different from or in addition to those Plaintiff now knows or believes to
3 be true regarding the matters released or described in this Settlement Agreement, and
4 even so Plaintiff agrees that the releases and agreements contained in this Settlement
5 Agreement shall remain effective in all respects notwithstanding any later discovery
6 of any different or additional facts. Plaintiff expressly assumes any and all risk of any
7 mistake in connection with the true facts involved in the matters, disputes, or
8 controversies released or described in this Settlement Agreement or with regard to any
9 facts now unknown to Plaintiff relating thereto.

10 E. Conditions Precedent: This Settlement will become final and effective only upon the
11 occurrence of all of the following events:

- 12 1. The Court enters an order granting preliminary approval of the Settlement;
- 13 2. The Court enters an order granting final approval of the Settlement and a Final
14 Judgment;
- 15 3. If an objector appears at the final approval hearing, the time for appeal of the
16 Final Judgment and Order Granting Final Approval of Class Action
17 Settlement expires; or, if an appeal is timely filed, there is a final resolution of
18 any appeal from the Judgment and Order Granting Final Approval of Class
19 Action Settlement; and
- 20 4. Defendant fully funds the Total Settlement Amount.

21 F. Nullification of Settlement Agreement. In the event that this Settlement Agreement is
22 not preliminarily or finally approved by the Court, fails to become effective, or is
23 reversed, withdrawn or modified by the Court, or in any way prevents or prohibits
24 Defendant from obtaining a complete resolution of the Released Claims, or if
25 Defendant fails to fully fund the Total Settlement Amount:

- 26 1. This Settlement Agreement shall be void *ab initio* and of no force or effect,
27 and shall not be admissible in any judicial, administrative or arbitral

proceeding for any purpose or with respect to any issue, substantive or procedural;

2. The conditional class certification (obtained for any purpose) shall be void *ab initio* and of no force or effect, and shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural; and

3. None of the Parties to this Settlement will be deemed to have waived any claims, objections, defenses or arguments in the Actions, including with respect to the issue of class certification.

4. If Defendant fails to fully fund the Total Settlement Amount, Defendant shall bear the sole responsibility for any cost to issue or reissue any curative notice to the Settlement Class Members and all Settlement Administration Costs incurred to the date of nullification.

G. Certification of the Settlement Class. The Parties stipulate to conditional class certification of the Class for the Class Period for purposes of settlement only. In the event that this Settlement is not approved by the Court, fails to become effective, or is reversed, withdrawn or modified by the Court, or in any way prevents or prohibits Defendant from obtaining a complete resolution of the Released Claims, the conditional class certification (obtained for any purpose) shall be void *ab initio* and of no force or effect, and shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural.

H. Tax Liability. The Parties make no representations as to the tax treatment or legal effect of the payments called for, and Class Members and/or Aggrieved Employees are not relying on any statement or representation by the Parties in this regard. Class Members and/or Aggrieved Employees understand and agree that they will be responsible for the payment of any taxes and penalties assessed on the Individual Settlement Payments and/or Aggrieved Employees' individual shares of the PAGA

1 Settlement described and will be solely responsible for any penalties or other
2 obligations resulting from their personal tax reporting of Individual Settlement
3 Payments and/or Aggrieved Employees' individual shares of the PAGA Settlement.

4 I. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section,
5 the "acknowledging party" and each Party to this Agreement other than the
6 acknowledging party, an "other party") acknowledges and agrees that: (1) no provision
7 of this Agreement, and no written communication or disclosure between or among the
8 Parties or their attorneys and other advisers, is or was intended to be, nor shall any
9 such communication or disclosure constitute or be construed or be relied upon as, tax
10 advice within the meaning of United States Treasury Department circular 230 (31 CFR
11 part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his,
12 her or its own, independent legal and tax counsel for advice (including tax advice) in
13 connection with this Agreement, (b) has not entered into this Agreement based upon
14 the recommendation of any other Party or any attorney or advisor to any other Party,
15 and (c) is not entitled to rely upon any communication or disclosure by any attorney
16 or adviser to any other party to avoid any tax penalty that may be imposed on the
17 acknowledging party, and (3) no attorney or adviser to any other Party has imposed
18 any limitation that protects the confidentiality of any such attorney's or adviser's tax
19 strategies (regardless of whether such limitation is legally binding) upon disclosure by
20 the acknowledging party of the tax treatment or tax structure of any transaction,
21 including any transaction contemplated by this Agreement.

22 J. Preliminary Approval Motion. At the earliest practicable time, Plaintiff shall file with
23 the Court a Motion for Order Granting Preliminary Approval and supporting papers,
24 which shall include this Settlement Agreement. Plaintiff will provide Defendant with
25 a draft of the Motion at least 3 business days prior to the filing of the Motion to give
26 Defendant an opportunity to propose changes or additions to the Motion.

1 K. Settlement Administrator. The Settlement Administrator shall be responsible for:
2 establishing and administering the QSF; calculating, processing and mailing payments
3 to the Class Representative, Class Counsel, LWDA and Class Members; printing and
4 mailing the Notice Packets to the Class Members as directed by the Court; receiving
5 and reporting the objections and requests for exclusion; calculating, deducting and
6 remitting all legally required taxes from Individual Settlement Payments and
7 distributing tax forms for the Wage Portion and Non-Wage Portion of the Individual
8 Settlement Payments and/or Aggrieved Employees' individual shares of the PAGA
9 Settlement; processing and mailing tax payments to the appropriate state and federal
10 taxing authorities; providing declaration(s) as necessary in support of preliminary
11 and/or final approval of this Settlement; and other tasks as the Parties mutually agree
12 or the Court orders the Settlement Administrator to perform. The Settlement
13 Administrator shall keep the Parties timely apprised of the performance of all
14 Settlement Administrator responsibilities by among other things, sending a weekly
15 status report to the Parties' counsel stating the date of the mailing, the of number of
16 Elections Not to Participate in Settlement it receives (including the numbers of valid
17 and deficient), and number of objections received.

18 L. Notice Procedure.

19 1. Class Data. No later than ten (10) business days after the Preliminary
20 Approval Date, Defendant shall provide the Settlement Administrator with the
21 Class Data for purposes of preparing and mailing Notice Packets to the Class
22 Members.

23 2. Notice Packets.

24 a) The Notice Packet shall contain the Notice of Class Action Settlement
25 in a form substantially similar to the form attached as Exhibit A. The
26 Notice of Class Action Settlement shall inform Class Members and
27 Aggrieved Employees that they need not do anything in order to

1 receive an Individual Settlement Payment and/or Aggrieved
2 Employees' individual shares of the PAGA Settlement and to keep the
3 Settlement Administrator apprised of their current mailing address, to
4 which the Individual Settlement Payments and/or Aggrieved
5 Employees' individual shares of the PAGA Settlement will be mailed
6 following the Funding Date. The Notice of Class Action Settlement
7 shall set forth the release to be given by all members of the Class who
8 do not request to be excluded from the Settlement Class and/or
9 Aggrieved Employees' in exchange for an Individual Settlement
10 Payment and/or Aggrieved Employees' individual shares of the PAGA
11 Settlement, the number of Workweeks worked by each Class Member
12 during the Class Period and PAGA Period, if any, and the estimated
13 amount of their Individual Settlement Payment if they do not request
14 to be excluded from the Settlement and each Aggrieved Employee's
15 share of the PAGA Settlement, if any. The Settlement Administrator
16 shall use the Class Data to determine Class Members' Workweeks and
17 PAGA Workweeks. The Notice will also advise the Aggrieved
18 Employees that they will release the Released PAGA Claims and will
19 receive their share of the PAGA Settlement regardless of whether they
20 request to be excluded from the Settlement.

- 21 b) The Notice Packet's mailing envelope shall include the following
22 language: "IMPORTANT LEGAL DOCUMENT- YOU MAY BE
23 ENTITLED TO PARTICIPATE IN A CLASS ACTION
24 SETTLEMENT; A PROMPT REPLY TO CORRECT YOUR
25 ADDRESS IS REQUIRED AS EXPLAINED IN THE ENCLOSED
26 NOTICE."

1 3. Notice by First Class U.S. Mail and Email. Upon receipt of the Class Data,
2 the Settlement Administrator will perform a search based on the National
3 Change of Address Database to update and correct any known or identifiable
4 address changes. No later than fourteen (14) calendar days after receiving the
5 Class Data from Defendant, the Settlement Administrator shall mail and email
6 copies of the Notice Packet to all Class Members via regular First-Class U.S.
7 Mail and electronic mail. The Settlement Administrator shall exercise its best
8 judgment to determine the current mailing address for each Class Member.
9 The address identified by the Settlement Administrator as the current mailing
10 address shall be presumed to be the best mailing address for each Class
11 Member.

12 4. Undeliverable Notices. Any Notice Packets returned to the Settlement
13 Administrator as non-delivered on or before the Response Deadline shall be
14 re-mailed to any forwarding address provided. If no forwarding address is
15 provided, the Settlement Administrator shall promptly attempt to determine a
16 correct address by lawful use of skip-tracing, or other search using the name,
17 address and/or Social Security number of the Class Member involved, and
18 shall then perform a re-mailing, if another mailing address is identified by the
19 Settlement Administrator. In addition, if any Notice Packets, which are
20 addressed to Class Members who are currently employed by Defendant, are
21 returned to the Settlement Administrator as non-delivered and no forwarding
22 address is provided, the Settlement Administrator shall notify Defendant.
23 Defendant will request that the currently employed Class Member provide a
24 corrected address, and transmit to the Administrator any corrected address
25 provided by the Class Member. Class Members who received a re-mailed
26 Notice Packet shall have their Response Deadline extended fifteen (15) days
27 from the original Response Deadline.

1 5. Disputes Regarding Individual Settlement Payments. Class Members will
2 have the opportunity, should they disagree with Defendant's records regarding
3 the start and end dates of employment to provide documentation and/or an
4 explanation to show contrary dates. If there is a dispute, the Settlement
5 Administrator will consult with the Parties to determine whether an
6 adjustment is warranted. The Settlement Administrator shall determine the
7 eligibility for, and the amounts of, any Individual Settlement Payments under
8 the terms of this Agreement. The Settlement Administrator's determination
9 of the eligibility for and amount of any Individual Settlement Payment shall
10 be binding upon the Class Member and the Parties.

11 6. Disputes Regarding Administration of Settlement. Any disputes not resolved
12 by the Settlement Administrator concerning the administration of the
13 Settlement will be resolved by the Court under the laws of the State of
14 California. Before any such involvement of the Court, counsel for the Parties
15 will confer in good faith to resolve the disputes without the necessity of
16 involving the Court.

17 7. Exclusions. The Notice of Class Action Settlement contained in the Notice
18 Packet shall state that Class Members who wish to exclude themselves from
19 the Settlement must submit a written request for exclusion by the Response
20 Deadline. The written request for exclusion must state that the Class Member
21 wishes to exclude himself or herself from the Settlement and (1) must contain
22 the name, address, and the last four digits of the Social Security number of the
23 person requesting exclusion; (2) must be signed by the Class Member; (3)
24 must be postmarked or fax stamped by the Response Deadline and returned to
25 the Settlement Administrator at the specified address or fax telephone number;
26 and (4) contain a typewritten or handwritten notice stating in substance: "I
27 wish to opt out of the settlement of the class action lawsuit entitled *Arneson*

1 *v. Bahn Thai, Inc.*, currently pending in the Superior Court for the County of
2 Sacramento, Case No. 34-2021-00295429 . I understand that by requesting to
3 be excluded from the settlement, I will receive no money from the Settlement
4 described in this Notice.” The request for exclusion will not be valid if it is
5 not timely submitted, if it is not signed by the Class Member, or if it does not
6 contain the name and address and last four digits of the Social Security number
7 of the Class Member. The date of the postmark on the mailing envelope or
8 fax stamp on the request for exclusion shall be the exclusive means used to
9 determine whether the request for exclusion was timely submitted. Any Class
10 Member who requests to be excluded from the Settlement Class will not be
11 entitled to an Individual Settlement Payment and will not be otherwise bound
12 by the terms of the Settlement or have any right to object, appeal or comment
13 thereon. However, any Class Member that submits a timely request for
14 exclusion that is also a member of the Aggrieved Employees will still receive
15 his/her pro rata share of the PAGA Settlement, as specified below, and in
16 consideration, will be bound by the Release by the Aggrieved Employees as
17 set forth herein. Settlement Class Members who fail to submit a valid and
18 timely written request for exclusion on or before the Response Deadline shall
19 be bound by all terms of the Settlement and any final judgment entered in this
20 Action if the Settlement is approved by the Court. No later than fourteen (14)
21 calendar days after the Response Deadline, the Settlement Administrator shall
22 provide counsel for the Parties with a final list of the Class Members who have
23 timely submitted written requests for exclusion. At no time shall any of the
24 Parties or their counsel seek to solicit or otherwise encourage members of the
25 Class to submit requests for exclusion from the Settlement.

- 26 8. Objections. The Notice of Class Action Settlement contained in the Notice
27 Packet shall state that Class Members who wish to object to the Settlement

1 may submit to the Settlement Administrator a written statement of objection
2 (“Notice of Objection”) by the Response Deadline. The postmark date of
3 mailing shall be deemed the exclusive means for determining that a Notice of
4 Objection was served timely. The Notice of Objection must be signed by the
5 Settlement Class Member and state: (1) the case name and number; (2) the
6 name of the Settlement Class Member; (3) the address of the Settlement Class
7 Member; (4) the last four digits of the Settlement Class Member’s Social
8 Security number; (4) the basis for the objection; and (5) if the Settlement Class
9 Member intends to appear at the Final Approval/Settlement Fairness Hearing.
10 Class Members who fail to make objections in writing in the manner specified
11 above may still make their objections orally at the Final Approval/Settlement
12 Fairness Hearing with the Court’s permission. Settlement Class Members will
13 have a right to appear at the Final Approval/Settlement Fairness Hearing to
14 have their objections heard by the Court. At no time shall any of the Parties
15 or their counsel seek to solicit or otherwise encourage Class Members to file
16 or serve written objections to the Settlement or appeal from the Order and
17 Final Judgment. Class Members who submit a written request for exclusion
18 may not object to the Settlement. Class Members may not object to the PAGA
19 Settlement

20 M. Funding and Allocation of the Total Settlement Amount. Defendant is required to pay
21 the Total Settlement Amount on or before the Funding Date, plus any employer’s share
22 of payroll taxes as mandated by law within the time specified herein.

23 1. Individual Settlement Payments. Individual Settlement Payments shall be
24 paid from the Net Settlement Amount and shall be paid pursuant to the
25 formula set forth herein. Using the Class Data, the Settlement Administrator
26 shall add up the total number of Workweeks for all Class Members. The
27 respective Workweeks for each Class Member will be divided by the total

1 Workweeks for all Class Members, resulting in the Payment Ratio for each
2 Class Member. Each Class Member's Payment Ratio will then be multiplied
3 by the Net Settlement Amount to calculate each Class Member's estimated
4 Individual Settlement Payments. Each Individual Settlement Payment will be
5 reduced by any legally mandated employee tax withholdings (e.g., employee
6 payroll taxes, etc.). Individual Settlement Payments for Class Members who
7 submit valid and timely requests for exclusion will be redistributed to
8 Settlement Class Members who do not submit valid and timely requests for
9 exclusion on a pro rata basis based on their respective Payment Ratios.

10 2. Calculation of Individual Payments to the Aggrieved Employees. Using the
11 Class Data, the Settlement Administrator shall add up the total number of
12 PAGA pay periods for all Aggrieved Employees during the PAGA Period.
13 The respective PAGA pay periods for each Aggrieved Employee will be
14 divided by the total PAGA pay periods for all Aggrieved Employees, resulting
15 in the "PAGA Payment Ratio" for each Aggrieved Employee. Each
16 Aggrieved Employee's PAGA Payment Ratio will then be multiplied by the
17 Aggrieved Employee Payment to calculate each Aggrieved Employee's
18 estimated share of the PAGA Settlement.

19 3. Allocation of Individual Settlement Payments. For tax purposes, Individual
20 Settlement Payments shall be allocated and treated as follows: 15% as wages
21 ("Wage Portion"); 85% as penalties and interest ("Non-Wage Portion"). The
22 Wage Portion is subject to wage withholdings and shall be reported on IRS
23 Form W-2. The Non-Wage Portion shall not be subject to wage withholdings
24 and shall be reported on IRS Form 1099.

25 4. Allocation of Aggrieved Employee Payments. For tax purposes, Aggrieved
26 Employee Settlement Payments shall be allocated and treated as 100%
27 penalties and shall be reported on IRS Form 1099.

1 5. No Credit Toward Benefit Plans. The Individual Settlement Payments and
2 individual shares of the PAGA Settlement made to Settlement Class Members
3 and/or Aggrieved Employees under this Settlement Agreement, as well as any
4 other payments made pursuant to this Settlement Agreement, will not be
5 utilized to calculate any additional benefits under any benefit plans to which
6 any Class Members may be eligible, including, but not limited to profit-
7 sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans,
8 sick leave plans, PTO plans, and any other benefit plan. Rather, it is the
9 Parties' intention that this Settlement Agreement will not affect any rights,
10 contributions, or amounts to which any Class Members may be entitled under
11 any benefit plans.

12 6. All monies received by Settlement Class Members under the Settlement which
13 are attributable to wages shall constitute income to such Settlement Class
14 Members solely in the year in which such monies actually are received by the
15 Settlement Class Members. It is the intent of the Parties that Individual
16 Settlement Payments and individual shares of the PAGA Settlement provided
17 for in this Settlement agreement are the sole payments to be made by Defendant
18 to Settlement Class Members and/or Aggrieved Employees in connection with
19 this Settlement Agreement, with the exception of Plaintiff, and that the
20 Settlement Class Members and/or Aggrieved Employees are not entitled to any
21 new or additional compensation or benefits as a result of having received the
22 Individual Settlement Payments and/or their shares of the PAGA Settlement.

23 7. Mailing. Individual Settlement Payments and Aggrieved Employee Payments
24 shall be mailed by regular First-Class U.S. Mail to Settlement Class Members'
25 and/or Aggrieved Employees last known mailing address no later than fifteen
26 (15) calendar days after the Funding Date.

1 8. Expiration. Any checks issued to Settlement Class Members and Aggrieved
2 Employees shall remain valid and negotiable for one hundred and eighty (180)
3 days from the date of their issuance. If a Settlement Class Member and/or
4 Aggrieved Employee does not cash his or her settlement check within 90 days,
5 the Settlement Administrator will send a letter to such persons, advising that
6 the check will expire after the 180th day, and invite that Settlement Class
7 Member and/or Aggrieved Employee to request reissuance in the event the
8 check was destroyed, lost or misplaced. In the event an Individual Settlement
9 Payment and/or Aggrieved Employee's individual share of the PAGA
10 Settlement check has not been cashed within one hundred and eighty (180)
11 days, all funds represented by such uncashed checks, plus any interest accrued
12 thereon, shall be distributed consistent with California Code of Civil
13 Procedure Section 384 as follows: to The Children's Advocacy Institute
14 (CAI), founded at the nonprofit University of San Diego School of Law in
15 1989. Class Counsel ,Defendant's counsel, nor any of the Parties, have any
16 interest, pecuniary or otherwise, in CAI.

17 9. Class Representative Service Award. In addition to the Individual Settlement
18 Payment and her individual share of the PAGA Settlement to be paid to
19 Plaintiff, Plaintiff will apply to the Court for an award of not more than
20 \$7,500, as the Class Representative Service Award. Defendant does not
21 presently intend to oppose a Class Representative Service Award of not more
22 than \$7,500 for Plaintiff. The Settlement Administrator shall pay the Class
23 Representative Service Award, either in the amount stated herein if approved
24 by the Court or some other amount as approved by the Court, to Plaintiff from
25 the Total Settlement Amount no later than ten (10) calendar days after the
26 Funding Date. Any portion of the requested Class Representative Service
27 Award that are not awarded to the Class Representative shall be part of the

1 Net Settlement Amount and shall be distributed to Settlement Class Members
2 as provided in this Agreement. The Settlement Administrator shall issue an
3 IRS Form 1099 — MISC to Plaintiff for her Class Representative Service
4 Award. Plaintiff shall be solely and legally responsible to pay any and all
5 applicable taxes on her Class Representative Service Award and shall hold
6 harmless the Released Parties from any claim or liability for taxes, penalties,
7 or interest arising as a result of the Class Representative Service Award. The
8 Class Representative Service Award shall be in addition to Plaintiff's
9 Individual Settlement Payment as a Settlement Class Member. Approval of
10 this Settlement shall not be conditioned on Court approval of the requested
11 amount of the Class Representative Service Award. In the event that the Court
12 reduces or does not approve the requested Class Representative Service
13 Award, Plaintiff shall not have the right to revoke the Settlement, and it will
14 remain binding.

- 15 10. Class Counsel Award. Defendant understands a motion by Class Counsel for
16 attorneys' fees not to exceed one-third of the Total Settlement Amount
17 currently estimated to be \$43,333 plus costs and expenses supported by
18 declaration not to exceed Nine Thousand Dollars (\$9,000), from the Total
19 Settlement Amount will be filed. Any portion of the requested Class Counsel
20 Award that is not awarded to Class Counsel shall be part of the Net Settlement
21 Amount and shall be distributed to Settlement Class Members as provided in
22 this Agreement. The Settlement Administrator shall allocate and pay the
23 Class Counsel Award to Class Counsel from the Total Settlement Amount no
24 later than five (5) calendar days after the Funding Date. Class Counsel shall
25 be solely and legally responsible to pay all applicable taxes on the payment
26 made pursuant to this paragraph. The Settlement Administrator shall issue an
27 IRS Form 1099 — MISC to Class Counsel for the payments made pursuant to

1 this paragraph. In the event that the Court reduces or does not approve the
2 requested Class Counsel Award, Plaintiff and Class Counsel shall not have
3 the right to revoke the Settlement, or to appeal such order, and the Settlement
4 will remain binding.

5 11. PAGA Settlement. Five Thousand Dollars (\$5,000) shall be allocated from
6 the Total Settlement Amount for settlement of claims for civil penalties under
7 the Private Attorneys General Act of 2004 ("PAGA Settlement"). The
8 Settlement Administrator shall pay seventy-five percent (75%) of the PAGA
9 Settlement (\$3,750) to the California Labor and Workforce Development
10 Agency no later than twenty-five (25) calendar days after the Funding Date
11 (hereinafter "LWDA Payment"). Twenty-five percent (25%) of the PAGA
12 Settlement (\$1,250) will be distributed to the Aggrieved Employees as
13 described in this Agreement (hereinafter "Aggrieved Employee Payment").
14 For purposes of distributing the PAGA Settlement to the Aggrieved
15 Employees, each Aggrieved Employee shall receive their pro-rata share of the
16 Aggrieved Employee Payment using the PAGA Payment Ratio as defined
17 above.

18 12. Settlement Administration Costs. The Settlement Administrator shall be paid
19 for the costs of administration of the Settlement from the Total Settlement
20 Amount. The estimate of the Settlement Administration Costs is \$6,000. The
21 Settlement Administrator shall be paid the Settlement Administration Costs
22 no later than twenty-five (25) calendar days after the Funding Date.

23 N. Final Approval Motion. Class Counsel and Plaintiff shall use best efforts to file with
24 the Court a Motion for Order Granting Final Approval and Entering Judgment, within
25 twenty-eight (28) days following the expiration of the Response Deadline, which
26 motion shall request final approval of the Settlement and a determination of the
27 amounts payable for the Class Representative Service Award, the Class Counsel

Award, the PAGA Settlement, and the Settlement Administration Costs. Plaintiff will provide Defendant with a draft of the Motion at least 3 business days prior to the filing of the Motion to give Defendant an opportunity to propose changes or additions to the Motion

1. Declaration by Settlement Administrator. No later than fourteen (14) days after the Response Deadline, the Settlement Administrator shall submit a declaration in support of Plaintiff's motion for final approval of this Settlement detailing the number of Notice Packets mailed and re-mailed to Class Members, the number of undeliverable Notice Packets, the number of timely requests for exclusion, the number of objections received, the amount of the average Individual Settlement Payment and highest Individual Settlement Payment, the Settlement Administration Costs, and any other information as the Parties mutually agree or the Court orders the Settlement Administrator to provide.
2. Final Approval Order and Judgment. Class Counsel shall present an Order Granting Final Approval of Class Action Settlement to the Court for its approval, and Judgment thereon, at the time Class Counsel files the Motion for Final Approval.

N. Review of Motions for Preliminary and Final Approval. Class Counsel will provide an opportunity for Counsel for Defendant to review the Motions for Preliminary and Final Approval, including the Order Granting Final Approval of Class Action Settlement, and Judgment before filing with the Court. The Parties and their counsel will cooperate with each other and use their best efforts to affect the Court's approval of the Motions for Preliminary and Final Approval of the Settlement, and entry of Judgment.

O. Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts to implement the Settlement.

- 1 P. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Actions,
2 except such proceedings necessary to implement and complete the Settlement, pending
3 the Final Approval/Settlement Fairness Hearing to be conducted by the Court
- 4 Q. Amendment or Modification. This Agreement may be amended or modified only by
5 a written instrument signed by counsel for all Parties or their successors-in-interest.
- 6 R. Entire Agreement. This Agreement and any attached Exhibit constitute the entire
7 Agreement among these Parties, and no oral or written representations, warranties or
8 inducements have been made to any Party concerning this Agreement or its Exhibit
9 other than the representations, warranties and covenants contained and memorialized
10 in this Agreement and its Exhibit.
- 11 S. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and
12 represent they are expressly authorized by the Parties whom they represent to negotiate
13 this Agreement and to take all appropriate Action required or permitted to be taken by
14 such Parties pursuant to this Agreement to effectuate its terms, and to execute any other
15 documents required to effectuate the terms of this Agreement. The persons signing
16 this Agreement on behalf of Defendant represents and warrants that he/she is
17 authorized to sign this Agreement on behalf of Defendant. Plaintiff represents and
18 warrants that she is authorized to sign this Agreement and that she has not assigned
19 any claim, or part of a claim, covered by this Settlement to a third-party.
- 20 T. No Public Comment: The Parties and their counsel agree that they will not issue any
21 press releases, initiate any contact with the press, respond to any press inquiry, or have
22 any communication with the press about the fact, amount or terms of the Settlement
23 Agreement. Class Counsel further agrees not to use the Settlement Agreement or any
24 of its terms for any marketing or promotional purposes. Nothing herein will restrict
25 Class Counsel from including publicly available information regarding this settlement
26 in future judicial submissions regarding Class Counsel's qualifications and experience.
27 Further, Class Counsel will not include, reference or use the Settlement Agreement for

any marketing or promotional purposes, either before or after the Motion for Preliminary Approval is filed.

U. Binding on Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Parties, as previously defined.

V. California Law Governs. All terms of this Agreement and the Exhibit and any disputes shall be governed by and interpreted according to the laws of the State of California.

W. Counterparts. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the Parties to this Agreement shall exchange among themselves copies or originals of the signed counterparts.

X. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this Settlement is a fair, adequate and reasonable settlement of this Action and have arrived at this Settlement after extensive arms-length negotiations, taking into account all relevant factors, present and potential.

Y. Jurisdiction of the Court. The Parties agree that the Court shall retain jurisdiction with respect to the interpretation, implementation and enforcement of the terms of this Agreement and all orders and judgments entered in connection therewith, and the Parties and their counsel submit to the jurisdiction of the Court for purposes of interpreting, implementing and enforcing the settlement and all orders and judgments entered in connection with this Agreement.

Z. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Agreement valid and enforceable.

AA. No Unalleged Claims. Plaintiff and Class Counsel represent that they do not currently intend to pursue any claims against the Released Parties, including, but not limited to, any and all claims relating to or arising from Plaintiff's employment with Defendant,

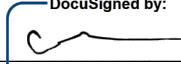
1 regardless of whether Class Counsel is currently aware of any facts or legal theories
2 upon which any claims or causes of action could be brought against Released Parties,
3 including those facts or legal theories alleged in the operative complaint in this Action.
4 The Parties further acknowledge, understand and agree that this representation is
5 essential to the Agreement and that this Agreement would not have been entered into
6 were it not for this representation.

7 BB. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class
8 certification for purposes of this settlement only.

9 CC. No Admissions by the Parties. Plaintiff has claimed and continues to claim that the
10 Released Claims have merit and give rise to liability on the part of Defendant.
11 Defendant claims that the Released Claims have no merit and do not give rise to
12 liability. This Agreement is a compromise of disputed claims. Nothing contained in
13 this Agreement and no documents referred to and no action taken to carry out this
14 Agreement may be construed or used as an admission by or against the Defendant or
15 Plaintiff or Class Counsel as to the merits or lack thereof of the claims asserted. Other
16 than as may be specifically set forth herein, each Party shall be responsible for and
17 shall bear its/his own attorney's fees and costs.

18 IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFF:
19

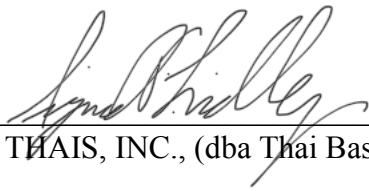
20 DATED: 11/1/2021
21 _____

DocuSigned by:


COURTENAY ARNESON

1 IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANT:

2
3 DATED: 10/29/2021


BAHN THAIS, INC., (dba Thai Basil Café / Veg Café
& Bar)

Sigmund F Lindley

Printed Name

CFO

Title

9
10 IT IS SO AGREED AS TO FORM BY COUNSEL:

11
12 DATED: _____

JCL LAW FIRM, A.P.C.

13 By: _____

14 Attorneys for Plaintiff and the Settlement Class
15 Members

16
17 DATED: _____

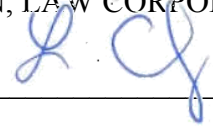
ZAKAY LAW GROUP, APLC

18 By: _____

19 Attorneys for Plaintiff and the Settlement Class
20 Members

21
22 DATED: October 28, 2021

23 LUKAS J. CLARY
24 KATIE A. COLLINS
25 WEINTRAUB TOBIN CHEDIAK COLEMAN &
26 GRODIN, LAW CORPORATION

27 By:  _____

Attorneys for Defendant

IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANT:

DATED: _____

BAHN THAIS, INC., (dba Thai Basil Café / Veg Café
& Bar)

Printed Name

Title

IT IS SO AGREED AS TO FORM BY COUNSEL:

DATED: 11/1/2021

JCL LAW FIRM, A.P.C.

By: _____

DocuSigned by:
Jean-Claude Lapuyade
0EBC25D5B9CD469...

Attorneys for Plaintiff and the Settlement Class
Members

DATED: 11/1/2021

ZAKAY LAW GROUP, APLC

By: _____

DocuSigned by:
[Signature]
4ECDE73A91D4420...

Attorneys for Plaintiff and the Settlement Class
Members

DATED: _____

LUKAS J. CLARY
KATIE A. COLLINS
WEINTRAUB TOBIN CHEDIAK COLEMAN &
GRODIN, LAW CORPORATION

By: _____

Attorneys for Defendant

EXHIBIT A

**NOTICE OF PENDENCY OF CLASS ACTION SETTLEMENT
AND FINAL HEARING DATE**

(Arneson v. Bahn Thai, Inc., Sacramento County Superior Court Case No. 34-2021-00295429)

**YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT ACT. PLEASE
READ THIS NOTICE CAREFULLY.**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing and Receive a Payment	To receive a cash payment from the Settlement, you do not have to do anything. Your estimated Settlement Share is: \$<<[REDACTED]>>. See the explanation below. After final approval by the Court, the payment will be mailed to you at the same address as this notice. If your address has changed, please notify the Settlement Administrator as explained below. In exchange for the settlement payment, you will release claims against the Defendant as detailed below.
Exclude Yourself	If you wish to exclude yourself from the Settlement, you must send a written request for exclusion to the Settlement Administrator as provided below. If you request exclusion, you will receive no money from the Settlement. Instructions are set forth below.
Object	You may write to the Court about why you believe the settlement should not be approved. Directions are provided below.

1. Why did I get this Notice?

A proposed class action settlement (the “Settlement”) of this lawsuit pending in the Superior Court for the State of California, County of Sacramento (the “Court”) has been reached between Plaintiff Courtenay Arneson (“Plaintiff”) and Defendant Bahn Thai Inc., (dba Thai Basil Café / Veg Café & Bar) a California Corporation (“Defendant”). The Court has granted preliminary approval of the Settlement. **You may be entitled to receive money from this Settlement.**

You have received this Class Notice because you have been identified as a member of the Class, which is defined as:

All non-exempt employees who are or previously were employed by Defendant in California during the Class Period.

The “Class Period” is the period of time running from February 26, 2017 to September 17, 2021.

This Class Notice explains the lawsuit, the Settlement, and your legal rights. It is important that you read this Notice carefully as your rights may be affected by the Settlement.

2. What is this class action lawsuit about?

On February 26, 2020, Plaintiff filed a Complaint against Defendant in the Superior Court of the State of California, County of Sacramento. Plaintiff asserted claims that Defendant: (a) Violated California Business and Professions Code § 17200 *et seq.*; (b) Failed to pay minimum wages in violation of California Labor Code §§ 1194, 1197, and 1197.1; (c) Failed to pay overtime wages in violation of California Labor Code §§ 510, *et seq.*; (d) Failed to provide required meal periods in violation of California Labor Code §§ 226.7 & 512, and the applicable IWC Wage Order; (e) Failed to provide required rest periods in violation of California Labor Code §§ 226.7 & 512, and the applicable IWC Wage Order; (f) Failed to provide accurate and complete itemized wage statements in violation of California Labor Code § 226; (g) Failed to provide wages when due in violation of California Labor Code §§ 201, 202, and 203; (h) Violations of the Private Attorney General Act at Labor Code Section 2698, *et seq.*; and (i) Failed to reimburse Plaintiff for required expenses in violation of California Labor code 2802.

Defendant denies and disputes all claims asserted in the Actions. Specifically, Defendant contended (and continues to contend) that the Action could not properly be maintained as a class action; that Defendant properly paid members of the class all wages and overtime that was due; that Defendant provided members of the class with all legally required meal breaks and rest breaks; that Defendant paid any members of the class all wages due them at the time of their terminations; that Defendant provided accurate, itemized wage statements to members of the class; that Defendant did not violate California Business and Professions Code section 17200 *et seq.*; that Defendant did not reimburse Plaintiff for required business expenses; and that Defendant is not liable for any of the penalties claimed or that could be claimed in the Actions.

On September 17, 2021, the Parties participated in an all-day mediation with Jill Sperber, Esq., an experienced mediator of wage and hour class actions. At the conclusion of the full-day mediation, the Parties reached an agreement for settlement. The Court granted preliminary approval of the Settlement on <<INSERT PRELIMINARY APPROVAL DATE>>. At that time, the Court also preliminarily approved the Plaintiff to serve as the Class Representative, and the law firms of JCL Law Firm, APC and Zakay Law Group, APC to serve as Class Counsel.

3. What are the terms of the Settlement?

Gross Settlement Amount. Defendant has agreed to pay an “all in” amount of One Hundred Thirty Thousand Dollars (\$130,000) (the “Gross Settlement Amount”) to fund the settlement. The Gross Settlement Amount includes the payment of all Settlement Shares to Participating Class Members, Class Counsel’s attorneys’ fees and costs, Settlement Administration Expenses, the LWDA Payment, PAGA Shares, and the Class Representative Service Payments to the Plaintiff.

After the Judgment becomes Final, Defendant will pay the Gross Settlement Amount by depositing the money with the Settlement Administrator. “Final” means the date the Judgment is no longer subject to appeal, or if an appeal is filed, the date the appeal process is completed and the Judgment is affirmed.

Amounts to be Paid from the Gross Settlement Amount. The Settlement provides for certain payments to be made from the Gross Settlement Amount, which will be subject to final Court approval, and which will be deducted from the Gross Settlement Amount before settlement payments are made to Class Members, as follows:

- Settlement Administration Expenses. Payment to the Settlement Administrator, estimated not to exceed \$6,000.00 for expenses, including expenses of sending this Notice, processing opt outs, and distributing settlement payments.

- Attorneys' Fees and Costs. Payment to Class Counsel of an award of a Class Counsel Fees Payment of no more than 1/3 of the Gross Settlement Amount (currently \$43,333) and a Class Counsel Litigation Expenses Payment of not more than \$9,000 for all expenses incurred as documented in Class Counsel's billing records, both subject to Court approval. Class Counsel have been prosecuting the Actions on behalf of Plaintiff and the Class on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses.
- Class Representative Service Payment. Class Representative Service Payment of up to Seven Thousand Five Hundred Dollars (\$7,500) to Plaintiff, or such lesser amount as may be approved by the Court, to compensate her for services on behalf of the Class in initiating and prosecuting the Action, and for the risks she undertook.
- PAGA Payment. A payment of \$5,000 relating to Plaintiff's claim under the Private Attorneys General Act ("PAGA"), \$3,750 of which will be paid to the State of California's Labor and Workforce Development Agency ("LWDA") and the remaining \$1,250 will be distributed to PAGA Employees as part of the Net PAGA Amount.
- Calculation of Payments to Participating Class Members. After all the above payments of the court-approved Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, the Class Representative Service Payments, the LWDA Payment, and the Settlement Administration Expenses are deducted from the Gross Settlement Amount, the remaining portion, called the "Net Settlement Amount," shall be distributed to class members who do **not** request exclusion ("Participating Class Members"). The Settlement Share for each Participating Class Member will be calculated by dividing the Net Settlement Amount by the total number of workweeks for all Participating Class Members that occurred during the Class Period and multiplying the result by each individual Participating Class Member's workweeks that occurred during the Class Period. A "workweek" is defined as a normal seven-day week of work during the Class Period in which, according to Defendant's records, a member of the class worked at least one-day during any such workweek.
- Calculation of PAGA Penalties Payments to PAGA Employees. The Net PAGA Amount shall be distributed to PAGA Employees irrespective of whether they exclude themselves or opt-out. The Net PAGA Amount will be divided by the total number of pay periods worked by all PAGA Employees during the PAGA Period, and then taking that number and multiplying it by the number of pay periods worked by each respective PAGA Employee during the PAGA Period. "PAGA Employees" means all non-exempt employees who are or previously were employed by Defendant in California during the PAGA Period. The PAGA Period means the period between October 22, 2019 until September 26, 2021.

If the Settlement is approved by the Court, you will automatically be mailed a check for your Settlement Share to the same address as this Class Notice. You do not have to do anything to receive a payment. If your address has changed, you must contact the Settlement Administrator to inform them of your correct address to insure you receive your payment.

Tax Matters. 15% of each Settlement Share is allocated to wages. Taxes are withheld from this amount, and each Participating Class Member will be issued an Internal Revenue Service Form W-2 for such payment. 85% of each Settlement Share is allocated to interest, penalties and other non-wage payments, and no taxes will be withheld, and each Participating Class Member will be issued an Internal Revenue Service Form 1099 for such payment. In addition, no taxes will be withheld from the PAGA Penalties paid to PAGA Employees, and each PAGA Employee will be issued an Internal Revenue Service Form 1099 for such payment. Neither Class Counsel nor Defendant's counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability. You may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order granting final approval of the Settlement and entering judgment.

4. What Do I Release Under the Settlement?

Released Claims. Upon entry of final judgment and funding in full of the Gross Settlement Amount by Defendant, Plaintiff and the Participating Class Members shall release all Released Class Claims that occurred during the Class Period as to the Released Parties. Released Class Claims means all class claims alleged in the operative complaint which occurred during the Class Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the Class Period. The Released PAGA Claims shall be released as follows. As of the Settlement Effective Date and upon funding in full of the Gross Settlement Amount by Defendant, all Aggrieved Employees shall release all Released PAGA Claims, irrespective of whether they opted-out of the class settlement, and will be bound by this PAGA Release (the "PAGA Release"). "Released PAGA Claims" means all PAGA claims alleged in the operative complaint and Plaintiff's PAGA notice to the LWDA which occurred during the PAGA Period, and expressly excluding all other claims, including claims vested benefits, unpaid wages, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and PAGA claims outside the PAGA Period

This means that, if you do not timely and formally exclude yourself from the settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant about the legal issues resolved by this Settlement. It also means that all of the Court's orders in this Action will apply to you and legally bind you.

5. How much will my payment be?

Defendant's records reflect that you have <<____>> Workweeks worked during the Class Period (February 26, 2017 to September 17, 2021).

Based on this information, your estimated Settlement Share is <<____>>.

If you wish to challenge the information set forth above, then you must submit a written, signed dispute challenging the information along with supporting documents, to the Settlement Administrator at the address provided in this Notice no later than _____ [forty-five (45) days after the Notice or re-mailed Notice].

6. How can I get a payment?

To get money from the settlement, you do not have to do anything. A check for your settlement payment will be mailed automatically to the same address as this Notice. If your address is incorrect or has changed, you must notify the Settlement Administrator. The Settlement Administrator is: _____. (800) _____.

The Court will hold a hearing on _____ to decide whether to finally approve the Settlement. If the Court approves the Settlement and there are no objections or appeals, payments will be mailed within a few months after this hearing. If there are objections or appeals, resolving them can take time, perhaps more than a year. Please be patient. After entry of the Judgment, the Settlement Administrator will provide notice of the final judgment to the Class Members by posting a copy of the Judgment on the administrator's website at www._____.com

7. What if I don't want to be a part of the Settlement?

If you do not wish to participate in the Settlement, you may exclude yourself from the Settlement or "opt out." **If you opt out, you will receive NO money from the Settlement, and you will not be bound by its terms, except as provided as follows.** Irrespective of whether you exclude yourself from the Settlement or "opt out," you will

be bound by the PAGA Release, you will be deemed to have released the Released PAGA Claims, and you will receive a share of the Net PAGA Amount.

To opt out, you must submit to the Settlement Administrator, by First Class Mail, a written, signed and dated request for exclusion postmarked no later than _____. The address for the Settlement Administrator is _____. The request for exclusion must state in substance: "I have read the Class Notice and I wish to opt out of the class action and settlement of the case *Arneson v. Bahn Thai Inc., Case No. 34-2021-00295429*." The request for exclusion must contain your name, address, signature and the last four digits of your Social Security Number for verification purposes. The request for exclusion must be signed by you. No other person may opt out for a member of the Class.

Written requests for exclusion that are postmarked after _____, or are incomplete or unsigned will be rejected, and those Class Members will remain bound by the Settlement and the release described above.

8. How do I tell the Court that I would like to challenge the Settlement?

Any Class Member who has not opted out and believes that the Settlement should not be finally approved by the Court for any reason, may object to the proposed Settlement. Objections may be in writing and state the Class Member's name, current address, telephone number, and describe why you believe the Settlement is unfair and whether you intend to appear at the final approval hearing. All written objections or other correspondence must also state the name and number of the case, which is *Arneson v. Bahn Thai Inc., Case No. 34-2021-00295429*. You may also object without submitting a written objection by appearing at the final approval hearing scheduled as described in Section 9 below.

To object to the Settlement, you cannot opt out. If the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Class Members who do not object. Any Class Member who does not object in the manner provided in this Class Notice shall have waived any objection to the Settlement, whether by appeal or otherwise.

Written objections must be delivered or mailed to the Settlement Administrator no later than _____. The address for the Settlement Administrator is _____.

The addresses for the Parties' counsel are as follows:

Class Counsel:

Jean-Claude Lapuyade, Esq.
JCL Law Firm, APC
5440 Morehouse Drive , Suite
3600San Diego, CA 92121
Tel.: (619) 599-8292
Fax: (619) 599-2891
E-Mail: jlapuyade@jcl-lawfirm.com

Class Counsel:

Shani O. Zakay, Esq.
Zakay Law Group, APLC
5440 Morehouse Drive, Suite
3600San Diego, CA 92121Tel: (619)
599-8292
Fax: (619) 599-8291
Email: shani@zakaylaw.com
[Website: www. zakaylaw.com](http://www.zakaylaw.com)

Counsel for Defendant:

Lukas J. Clary
Katie A. Collins
Weintraub, Tobin, Chediak, Coleman
& Grodin, Law Corporation
400 Capitol Mall, 11th Floor
Sacramento, CA 95814
Tel.: (916) 558-6000
Fax: (916) 446-1611
E-Mail: lclary@weintraub.com
kcollins@weintraub.com

9. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at **00:00 AM/PM on _____**, at the Sacramento County Superior Court, located at 720 Ninth Street Sacramento, CA 95814-1280 before Judge Kevin R. Culhane. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement. If there are objections, the Court will consider them. The Court will listen to people who have made a timely written request to speak at the

hearing or who appear at the hearing to object. This hearing may be rescheduled by the Court without further notice to you. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

10. How do I get more information about the Settlement?

You may call the Settlement Administrator at _____ or write to *Arneson v. Bahn Thai Inc., Case No. 34-2021-00295429*, Settlement Administrator, c/o _____.

This notice summarizes the proposed settlement. More details are in the Settlement Agreement. You may receive a copy of the Settlement Agreement, the Final Judgment or other Settlement documents by writing to JCL Law firm, APC, 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

IMPORTANT:

- You must inform the Settlement Administrator of any change of address to ensure receipt of your settlement payment.
- Settlement checks will be null and void 180 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall pay all funds from such uncashed checks to the Participating Class Members who cashed his or her Settlement Share check using the same workweek formula used for distribution of the Net Settlement Amount. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

EXHIBIT 2