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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES—SPRING STREET COURTHOUSE

NATHAN POOL, individually, and on behalf
of other members of the general public
similarly situated;

Plaintiff,

v.

UTC RESTAURANT VENTURE, LLC, a
California limited liability company; PASEO
RESTAURANT VENTURE, LLC, a
California limited liability company; and
DOES 1 through 100, inclusive,

Defendants.

Case No.: 20STCV07785 (Lead Case)
Consolidated Case No.: 20GDCV00377

Honorable Amy D. Hogue
Department SSC7

CLASS ACTION

**DECLARATION OF EDWIN AIWAZIAN
IN SUPPORT OF PLAINTIFF'S
RENEWED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

[Plaintiff's Renewed Motion for Preliminary
Approval of Class Action Settlement;
Declaration of Proposed Class Representative
(Nathan Pool); Declaration of Proposed
Settlement Administrator (Norman Alcantara);
and [Proposed] Order filed concurrently
herewith]

Date: May 3, 2022
Time: 10:00 am
Department: SSC7

Complaint Filed: February 27, 2020
Trial Date: None Set

DECLARATION OF EDWIN AIWAZIAN

I, Edwin Aiwarzian, hereby declare as follows:

1. I am an attorney licensed to practice law in the State of California. I am a member of Lawyers for Justice, PC, attorneys of record for Plaintiff Nathan Pool ("Plaintiff"). The facts set forth in this declaration are within my personal knowledge or based on information and belief, and if called as a witness, I could and would competently testify thereto.

EDUCATION

2. In May of 2004, I graduated from *Pepperdine University School of Law* with a Juris Doctor degree. I have extensive formal training in dispute resolution and negotiation from the Straus Institute for Dispute Resolution as part of its Masters in Dispute Resolution degree program. In addition, I have previously served as a *pro bono* mediator for the Los Angeles County Superior Court. In October of 2000, I obtained a Litigation Paralegal Certificate from the *UCLA Extension Program*. During the summer of 2000, I studied Legal Writing at *Harvard University*. In April of 1999, I obtained a Bachelor of Arts degree in Communication with a concentration in Natural Sciences from *Pepperdine University*.

JUDICIAL EXTERNSHIPS

3. From approximately September 2002 to approximately December 2002, I served as a Judicial Extern to the Honorable Kim McLane Wardlaw of the *United States Court of Appeals for the Ninth Circuit*. From approximately June 2002 to approximately August 2002, I served as a Judicial Extern to the Honorable Earl Johnson, Jr. of the *California Court of Appeal for the Second Appellate District*.

LITIGATION AND CLASS ACTION EXPERIENCE

4. In December of 2004, I obtained a license to practice law from the California State Bar. From approximately December 2004 to approximately August 2008, I was employed by the law firm of *Girardi & Keese*.

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1 5. At *Girardi & Keese*, my practice focused on class actions and other complex cases
2 involving toxic torts and products liability. In addition, I gained substantial experience on cases
3 involving insurance bad faith, premises liability, and medical negligence. While employed by
4 *Girardi & Keese*, I argued approximately 100 motions, took or defended approximately 150
5 depositions, and prepared dozens of expert witnesses for deposition or trial.

6 6. Since its inception, in or around October of 2008, *Lawyers for Justice, PC* has almost
7 exclusively focused on the prosecution of consumer and employment class actions, involving
8 wage-and-hour claims, race discrimination, unfair business practices or consumer fraud.
9 Currently, we are the attorneys of record in over a dozen employment-related putative class actions
10 in both state and federal courts in the State of California. Our firm has successfully litigated cases
11 involving the executive, administrative, and other overtime exemptions to the State of California
12 and federal overtime compensation requirements. During this relatively short time, in association
13 with other law firms, we have recovered millions of dollars on behalf of thousands of individuals
14 in California.

15 **EXAMPLES OF CLASS ACTION RESULTS**

16 7. What follows are just a few examples of the type of results we have achieved on
17 behalf of our clients:

18 a) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
19 and-hour class and representative action against a major property management company involving
20 allegations of misclassification of various “manager” positions. On September 20, 2010, the court
21 granted final approval of the class and representative action settlement. The Los Angeles County
22 Superior Court Case Number is BC400414.

23 b) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
24 and-hour class action against a national retailer involving allegations of misclassification of the
25 “Assistant Store Manager” position. On October 28, 2010, the court granted final approval of the
26 class action settlement. The Los Angeles County Superior Court Case Number is BC413498.

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1 c) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
2 and-hour class and representative action against a national property management company
3 involving allegations of misclassification of the “Property Manager” position. On May 23, 2012,
4 the court granted final approval of the class and representative action settlement. The Los Angeles
5 County Superior Court Case Number is BC430918.

6 d) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
7 and-hour class action against a national retailer involving allegations of misclassification of the
8 “Store Manager” position. On June 10, 2011, the court granted plaintiffs’ motion for class
9 certification. On August 26, 2013, the court granted final approval of the class action settlement.
10 The Los Angeles County Superior Court Case Number is BC424012.

11 e) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
12 and-hour class and representative action against a bank, involving allegations of misclassification
13 of the “Assistant Branch Manager” position. On August 27, 2013, the court granted final approval
14 of the class and representative action settlement. The Kern County Superior Court Case Number
15 is S-1500-CV-273194-LHB.

16 f) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
17 and-hour class and representative action against a national wholesale distributor of plumbing and
18 builder supplies, involving allegations of misclassification of multiple salaried “manager”
19 positions. On May 22, 2014, the court granted final approval of the class and representative action
20 settlement. The Sacramento County Superior Court Case Number is 34-2012-00136285.

21 g) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
22 and-hour class action involving allegations of misclassification of the “Operations Manager”
23 position. On September 16, 2014, the court granted plaintiffs’ motion for class certification. The
24 Los Angeles County Superior Court Case Number is BC478769.

25 h) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
26 and-hour class and representative action against a national retailer of household items, on behalf
27 of hourly-paid or non-exempt employees. On May 27, 2015, the court granted final approval of
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1 the class and representative action settlement. The San Francisco County Superior Court Case
2 Number is CGC-13-532344.

3 i) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
4 and-hour class action involving allegations of misclassification of the salaried residential
5 “Property Manager” position. On September 17, 2015, the court granted plaintiffs’ motion for
6 class certification. The Los Angeles County Superior Court Case Number is BC474784.

7 j) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
8 and-hour class and representative action against a national retailer of upscale hardware and home
9 furnishings, on behalf of non-exempt employees. On April 28, 2016, the court granted final
10 approval of the class and representative action settlement. The Los Angeles County Superior
11 Court Case Number is JCCP4794.

12 k) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
13 and-hour class and representative action against a national retailer of apparel and fashion
14 accessories, on behalf of non-exempt employees. On August 5, 2016, the court granted final
15 approval of the class and representative action settlement. The Los Angeles County Superior
16 Court Case Number is BC488069.

17 l) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
18 and-hour class action against a national retailer of apparel, accessories, and home products,
19 involving allegations of misclassification of the “Department Manager” position. On August 12,
20 2016, the court granted the plaintiffs’ motion for class certification in part and certified a class.
21 The Alameda County Superior Court Case Number is RG13680477.

22 m) Our firm represented the plaintiffs in a representative action under the
23 Private Attorneys General Act, against a real estate and property management company, on behalf
24 of non-exempt employees. On November 4, 2016, the court granted approval of the settlement.
25 The Orange County Superior Court Case Number is 30-2015-00775439-CU-OE-CXC.

26 n) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
27 and-hour class action against a full-service bank, on behalf of non-exempt employees. On
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1 November 18, 2016, the court granted final approval of the class action settlement. The San
2 Francisco County Superior Court Case Number is CJC-13-004839.

3 o) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
4 and-hour class and representative action against a consumer packaging company, on behalf of non-
5 exempt employees. On March 10, 2017, the court granted final approval of the class and
6 representative action settlement. The Los Angeles County Superior Court Case Number is
7 BC590429.

8 p) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
9 and-hour class and representative action against a manufacturer of food service industry supplies
10 on behalf of non-exempt employees. On April 14, 2017, the court granted final approval of the
11 class and representative action settlement. The Orange County Superior Court Case Number is
12 30-2015-00810013-CU-OE-CXC.

13 q) Our firm represented the plaintiffs in a wage-and-hour class and
14 representative action against a food company on behalf of non-exempt employees. On June 30,
15 2017, the court granted final approval of the class action settlement. The Sacramento County
16 Superior Court Case Number is 34-2015-00175871.

17 r) Our firm represented the plaintiffs in a wage-and-hour class and
18 representative action against a chocolate company on behalf of non-exempt employees. On July
19 19, 2017, the court granted final approval of the class and representative action settlement. The
20 Alameda County Superior Court Case Number is RG15764300.

21 s) Our firm represented the plaintiffs in a wage-and-hour class and
22 representative action against a manufacturer of plastic containers on behalf of non-exempt
23 employees. On October 31, 2017, the court granted final approval of the class and representative
24 action settlement. The Los Angeles County Superior Court Case Number is BC577233.

25 t) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
26 and-hour class and representative action against a bank on behalf of non-exempt employees. On
27 December 11, 2017, the court entered an order granting final approval of class and representative
28 action settlement. The Los Angeles County Superior Court Case Number is BC569646.

1 u) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
2 and-hour class and representative action against a property management company on behalf of
3 hourly-paid and non-exempt employees. On January 4, 2018, the court entered an order granting
4 final approval of the class and representative action settlement. The Los Angeles County Superior
5 Court Case Number is JCCP4819.

6 v) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
7 and-hour class and representative action against a global provider of flexible office space
8 solutions. On February 15, 2018, the court entered an order granting final approval of the class
9 and representative action settlement. The Los Angeles County Superior Court Case Number is
10 BC498401.

11 w) Our firm, in association with co-counsel, represented the plaintiff in a wage-
12 and-hour class action against a container manufacturer, on behalf of non-exempt employees. On
13 October 15, 2018, the court granted the plaintiff's motion for class certification. The Tulare
14 County Superior Court Case Number is VCU264528.

15 x) Our firm represented the plaintiffs in a wage-and-hour class and
16 representative action against a behavioral health service provider on behalf of non-exempt
17 employees. On November 13, 2018, the court granted final approval of the class and
18 representative action settlement. The Alameda County Superior Court Case Number is
19 RG16811450.

20 y) Our firm, in association with co-counsel, represented the plaintiff in a
21 representative action under the Private Attorneys General Act, against a global provider of
22 products and services to the energy industry, on behalf of hourly-paid and non-exempt employees.
23 On November 19, 2018, the Court granted approval of the settlement. The Kern County Superior
24 Court Case Number is S-1500-CV-280215-SDC.

25 z) Our firm represented the plaintiff in a wage-and-hour class action against a
26 parking company on behalf of non-exempt employees. On September 3, 2019, the court granted
27 the plaintiff's motion for class certification and certified a class. The Santa Clara County Superior
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1 Court Case Number is 16CV292208 and the Judicial Council Coordination Proceeding Number is
2 JCCP 4886.

3 aa) Our firm, in association with other counsel, on behalf of the plaintiff and
4 respondent in a PAGA representative action, successfully opposed in the trial court, and briefed
5 and argued an appeal with respect to the employer's motion to compel arbitration, resulting in a
6 notable decision from the California Supreme Court clarifying the law and finding, in part, that
7 employer arbitration agreements are unenforceable where they block a PAGA claim from
8 proceeding, *ZB, N.A. v. Superior Court*, 8 Cal.5th 175 (2019).

9 bb) Our firm represents the plaintiffs in a wage-and-hour class and representative
10 action against a bank on behalf of non-exempt employees. On September 27, 2019, the court
11 granted the plaintiffs' motion for class certification in part and certified a class. The Alameda
12 County Superior Court Case Number is RG15757606 and the Judicial Council Coordination
13 Proceeding Number is JCCP 4921.

14 cc) Our firm represented the plaintiffs in a wage-and-hour class and
15 representative action against a national retailer of apparel and fashion accessories, on behalf of
16 non-exempt employees. On October 9, 2019, the court granted the plaintiffs' motion for class
17 certification in part and certified a class. The Sacramento County Superior Court Case Number is
18 34-2015-00175330-CU-OE-GDS.

19 dd) Our firm represented the plaintiff in a wage-and-hour class and PAGA
20 representative action against a medical equipment supplier on behalf of non-exempt employees.
21 On February 13, 2020, the court granted the plaintiff's motion for class certification and certified
22 a class. The San Bernardino County Superior Court Case Number is CIVDS1505744.

23 ee) Our firm, in association with other counsel, represented the plaintiff in a
24 wage-and-hour class and PAGA representative action against a large national drug testing
25 laboratory on behalf of non-exempt employees. On February 21, 2020, the court granted the
26 plaintiff's motion for class certification and certified a class. The San Diego County Superior
27 Court Case Number is 37-2018-00019611-CU-OE-CTL.

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1 ff) Our firm represented the plaintiffs in a wage-and-hour class and
2 representative action against a national retailer of sportswear, footwear, and camping equipment
3 on behalf of non-exempt employees. On March 16, 2020, the court granted in part the plaintiff's
4 motion for class certification and certified a class. The Riverside County Superior Court Case
5 Number is RICJCCP4930.

6 gg) Our firm represented the plaintiffs in a wage-and-hour class and PAGA
7 representative action against a plastic packaging company on behalf of non-exempt employees.
8 On June 8, 2020, the court granted in part the plaintiffs' motion for class certification and certified
9 a class. The San Bernardino County Superior Court Case Number is CIVDS1507361.

10 hh) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
11 and-hour class action against manufacturer and supplier of power products and services on behalf
12 of non-exempt employees. On July 31, 2020, the court granted in part the plaintiffs' motion for
13 class certification and certified a class. The San Diego County Superior Court Case Number is
14 37-2015-00025968-CU-OE-CTL.

15 PRELIMINARY APPROVAL

16 8. On June 23, 2021, Plaintiff filed a Motion for Preliminary Approval of Class Action
17 Settlement ("Original Motion for Preliminary Approval") and supporting documents seeking
18 approval of the Joint Stipulation of Class Action and PAGA Settlement ("Original Agreement")
19 entered into by and between Plaintiff, on behalf of all others similarly situated and aggrieved
20 employees, and Defendants UTC Restaurant Venture, LLC and Paseo Restaurant Venture, LLC
21 (together, "Defendants") (collectively with Plaintiff, the "Parties").

22 9. On July 7, 2021, the Court issued a Minute Order raising several points of inquiry
23 in connection with the Original Motion for Preliminary Approval and denied the Original Motion
24 for Preliminary Approval without prejudice ("July 7, 2021 Minute Order"). Attached hereto as
25 "EXHIBIT 1" is a true and correct copy of the July 7, 2021 Minute Order.

26 10. Based on the Court's guidance, the Parties met and conferred, negotiated, and
27 executed the First Amended Joint Stipulation of Class Action and PAGA Settlement
28 ("Settlement," "Agreement," or "Settlement Agreement"), a true and correct copy of which is

1 attached hereto as “**EXHIBIT 2.**” The Parties and their counsel have also prepared a revised
2 version of the proposed Notice of Class Action Settlement (“Class Notice”), which is attached as
3 “Exhibit B” to the Settlement Agreement filed concurrently herewith. For the Court’s ease of
4 reference, a redline version of the Settlement Agreement and Class Notice, reflecting how the
5 original versions were revised to prepare the amended versions, is attached hereto as “**EXHIBIT**
6 **3.**”

7 11. Based on information provided by Defendants to the proposed Settlement
8 Administrator in September 2021, there are approximately two hundred twenty-four (224) Class
9 Members and approximately three hundred thirty-five (335) PAGA Members.

10 12. The effectiveness of Edwin Aiwasian, Arby Aiwasian, and Joanna Ghosh of
11 *Lawyers for Justice, PC* (“Class Counsel”) in prosecuting this matter has translated into tangible
12 monetary benefits for the Class Members in the following respects: (1) Class Members recover
13 over a reasonably short period of time as opposed to waiting additional years for the same, or
14 possibly worse, result; (2) a guaranteed result that compares favorably with other similar class
15 action settlements of this type given the strengths and weaknesses of the cases; and (3) significant
16 savings in Class Counsel’s fees and/or costs that would have only increased significantly had the
17 cases progressed through certification, trial, and/or appeals.

18 13. Class Counsel has litigated the matter for over a year, and was actively preparing
19 the matter for class certification and trial. The Parties have engaged in extensive settlement
20 negotiations and participated in a formal, full-day mediation conducted by Paul Grossman, Esq.,
21 a well-respected mediator experienced in mediating complex labor and employment matters. Prior
22 to and during the mediation and settlement discussions, the Parties exchanged class information
23 and engaged in an extensive discussion regarding their evaluations of the cases and various aspects
24 of the cases, including but not limited to, the risks and delays of further litigation, the risks to the
25 Parties of proceeding with class certification and/or representative adjudication, the law relating
26 to off-the-clock theory, meal and rest periods, PAGA representative actions, and wage-and-hour
27 enforcement, as well as the evidence produced and analyzed, and the possibility of appeals, among
28 other things. During all settlement discussions, the Parties conducted their negotiations at arm’s

length in an adversarial position. Arriving at a settlement that was acceptable to all Parties was not easy. Defendants and their counsel felt strongly about their ability to prevail on the merits and at certification, and Plaintiff and Class Counsel believed that they would be able to obtain class certification and prevail at trial. After conducting investigations, formal and informal discovery, and exchange of information, extensive settlement negotiations, and with the aid of the mediator's evaluation, the Parties have agreed that the matter is well-suited for settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs and risks to both sides that would attend further litigation. The Settlement is a fair, reasonable, and adequate resolution of the Class Released Claims of Plaintiff and Settlement Class Members, against the Class Released Parties.

14. The Parties used the pre-mediation time to investigate the veracity, strength, and scope of the claims, and Class Counsel was preparing the actions for class certification and trial. Prior to engaging in mediation, Plaintiff conducted significant investigation and formal and informal discovery regarding the facts of the cases, including and not limited to, the exchange, review, and analysis of a large volume of documents and data obtained from Defendants and other sources. Class Counsel propounded multiple sets of formal written discovery requests onto Defendants and prepared for and took the deposition of Defendants' Person Most Knowledgeable designee which spanned over two (2) days. The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: Plaintiff's employment records, a sampling of Class Members' time and pay data (Defendant produced a randomized sample representing twenty-five percent (25%) of the Class (this was done by alphabetizing the list of Class Members by last name and selecting every fourth individual) for the time period of September 30, 2017 through March 18, 2020, containing, *inter alia*, job positions and locations, clock in and clock out times, hourly rates, regular hours, overtime hours, and the total hours paid), various agreements (including, but not limited to, Employee Arbitration Agreement and Waiver of Jury Trial, Slip-Resistant Shoe Agreement, and Cutting Glove Agreement), acknowledgements (including, but not limited to, Employee Handbook Acknowledgement Forms, Final Paycheck Acknowledgement, Policy Acknowledgement, and Receipt of Employee Handbook and Employment-At-Will Statement), waivers (including, but not limited to, signed Meal Period

1 Waivers), internal memoranda, job descriptions, New Hire Packets, trainings (including, but not
2 limited to, Defendant's Manager Training – Meal and Rest Periods), reports, including, but not
3 limited to Hours Compliance Reports and Employee Schedule Report), Defendants' operations
4 and employment practices and procedures (including, but not limited to Defendants' Employee
5 Handbook and Employee Home Book), and policies (including, but not limited to, Defendants'
6 Time Theft and Eating Policy, Recording Your Time policy, Paycheck Deductions policy, Meal
7 Periods policy, and Rest and Recovery Periods policy), among other information and documents.
8 Class Counsel interviewed Plaintiff to gather facts and to identify potential witnesses. Counsel
9 for the Parties also met and conferred on numerous occasions, e.g., to discuss issues relating to the
10 pleadings, discovery, the production of documents and data prior to the mediation, the Court's
11 rulings on the Original Motion for Preliminary Approval, and how to address the Court's concerns
12 raised in connection with the Original Motion for Preliminary Approval. Class Counsel also
13 drafted pleadings, mediation brief, Plaintiff's Original Motion for Preliminary Approval,
14 settlement papers, and prepared for and attended court proceedings, mediation, and settlement
15 negotiations, among other tasks.

16 15. Class Counsel verified Defendants' representations as to the number of Class
17 Members, number of Class Workweeks, and the average hourly rate of the Class Members by
18 determining the total of non-exempt employees from February 27, 2016 to present who had not
19 signed an arbitration agreement, by taking the total workweeks from February 27, 2016 to present
20 and removing workweeks that were covered by arbitration agreements, and by taking the average
21 hourly rate of all non-exempt employees who worked from February 27, 2016 to present.

22 16. Counsel for the Parties have also invested time researching and investigating the
23 applicable law, which is constantly evolving as it relates to certification, representative PAGA
24 claims, off-the-clock theory, meal and rest periods, wage-and-hour enforcement, Plaintiff's claims
25 and damages, and Defendants' defenses thereto, as well as facts discovered. Based on our analysis,
26 I submit that the result achieved in this litigation is fair, adequate, and reasonable.

27 17. The Settlement provides for a Total Settlement Amount of two hundred seventy-five
28 thousand dollars (\$275,000.00). The Net Settlement Amount is the Total Settlement Amount less

1 the following amounts subject to approval by the Court: Attorneys' Fees and Costs to Class
2 Counsel, Enhancement Payment to Plaintiff, Settlement Administration Costs to the Settlement
3 Administrator, and PAGA Penalties. Assuming that the amounts allocated under the Settlement
4 toward these payments are awarded by the Court, the Net Settlement Amount is currently
5 estimated to be seventy-six thousand two hundred fifty dollars (\$76,250.00). The Total Settlement
6 Amount will be fully distributed in accordance with the terms of the Settlement and there is no
7 reversion to Defendants.

8 18. The Parties have agreed to retain Simpluris, Inc. ("Simpluris" or "Settlement
9 Administrator") to handle the notice and settlement administration. The Parties respectfully
10 request that the Court appoint Simpluris to handle these procedures and serve as the Settlement
11 Administrator. Defendants will provide Simpluris with a list, that Defendants will compile from
12 their records, which will include the full names, last known mailing addresses, last known
13 telephone numbers (if available), and Social Security Numbers of all Class Members and PAGA
14 Members, as well as their dates of employment, total Class Workweeks, total PAGA Workweeks,
15 and such other information as is necessary for the Settlement Administrator to administer the
16 Settlement (collectively referred to as the "Data List"). Simpluris will calculate the estimated *pro*
17 *rata* shares of the Net Settlement Amount that each Class Member may receive under the
18 Settlement ("Individual Settlement Share") and the amount payable to each PAGA Member from
19 the 25% portion of the PAGA Penalties that is allocated to PAGA Members ("Individual PAGA
20 Payment"). Simpluris will also translate, print, and mail Notices in English and Spanish to Class
21 Members; receive letters submitted by Class Members indicating a request to be excluded from
22 the Class Settlement ("Requests for Exclusion"), written objections to the Class Settlement
23 ("Notices of Objection"), and disputes regarding Class Workweeks; provide necessary reports and
24 declarations; calculate, subtract, and transmit necessary taxes and withholdings; prepare and
25 submit informational and other tax filings and documents; issue and transmit all payments
26 provided for by the Settlement, including and not limited to, mailing Individual Settlement
27 Payment to the Settlement Class Members and Individual PAGA Payments to PAGA Members;
28 and perform any other usual and customary duties for administering a class action settlement.

1 Settlement Administration Costs are not to exceed ten thousand dollars (\$10,000.00) and will be
2 paid out of the Total Settlement Amount, subject to approval of the Court.

3 19. Based on investigation and information discovered, Class Counsel believes that
4 there is sufficient evidence to support the allegations made in the lawsuits, including the
5 allegations that Defendants, with respect to Plaintiff and the Class Members, *inter alia*, failed to
6 properly pay overtime and minimum wages and associated premium pay, failed to provide
7 compliant meal and rest periods and to pay associated premium pay, failed to timely pay wages
8 during employment and upon termination of employment, failed to provide compliant wage
9 statements, failed to maintain requisite payroll records, and failed to reimburse necessary business
10 expenses, and thereby engaged in unfair business practices and conduct giving rise to penalties
11 recoverable under the Private Attorneys General Act of 2004 (California Labor Code sections
12 2698, *et seq.*). Plaintiff also asserted that Class Members were expected to perform similar job
13 duties and were subject to the same or similar operations and employment policies, practices, and
14 procedures. Additionally, Plaintiff asserted that Defendants' recordkeeping practices with respect
15 to Plaintiff and the Class Members were substantially the same during the time period at issue. As
16 a result, Plaintiff claims that the Class Members, were uniformly not paid all of the compensation
17 that was owed to them by Defendants since February 27, 2016. Thus, in Class Counsel's view, it
18 is clear that the outcome of this litigation would be determined by Defendants' uniform operations
19 and employment practices, policies, and procedures that Plaintiff alleges applied across their
20 hourly-paid or non-exempt employees in California during the Class Period.

21 20. Class Counsel is aware of the defenses and position of Defendants, but believes that
22 Plaintiff could potentially obtain class certification despite many obstacles. Plaintiff has also taken
23 into account the uncertainty and risk of the outcome of further litigation, and the difficulties and
24 delays inherent in such litigation, including those involved in class certification and/or
25 representative adjudication. Plaintiff further recognizes the burdens of proof necessary to establish
26 liability for the claims asserted in the lawsuits, Defendants' defenses, and the difficulties in
27 establishing entitlement to monetary recovery. Plaintiff has also considered the Parties' settlement
28 discussions, as well as the evaluations of the mediator, who is experienced and well-regarded in

1 complex labor and employment matters.

2 21. Defendants, on the other hand, denied and continue to deny any liability and
3 wrongdoing of any kind associated with the claims alleged in the lawsuits, and further deny that
4 the lawsuits are appropriate for class treatment or representative adjudication for any purpose other
5 than this Settlement. Defendants believe that they would ultimately succeed in the matter. Both
6 sides have also had the opportunity to interview witnesses and review documents and information
7 relating to Plaintiff's and Class Members' employment with Defendants, and Defendants'
8 operations and employment policies, practices, and procedures. The Parties also reviewed and
9 analyzed a large volume of documents and data, including but not limited to a sampling of Class
10 Members' time and pay information, to determine the potential value and strength of the claims.
11 The available information enabled Class Counsel to estimate the potential claims of the Class and
12 prepare damages/valuation models. Accordingly, the Parties have conducted adequate
13 investigation and discovery to be sufficiently informed of the nature and extent of the Class
14 Members' claims, and to enable both sides to fully evaluate the Settlement for its fairness,
15 adequacy, and reasonableness. The Parties have agreed that the matter is well-suited for settlement
16 given the legal issues relating to Plaintiff's principal claims, as well as the costs and risks to both
17 sides that would attend further litigation. The Settlement takes into account the strengths and
18 weaknesses of each side's position and the uncertainty of how the cases might have concluded at
19 certification, trial, and/or appeals.

20 22. The Settlement Agreement provides for Class Counsel to apply for attorneys' fees
21 in an amount of up to thirty-five percent (35%) of the Total Settlement Amount
22 (i.e., \$96,250.00) and expenses and costs in an amount not to exceed thirty-five thousand dollars
23 (\$35,000.00), which will be paid out of the Total Settlement Amount, subject to approval by the
24 Court. It should be noted that Class Counsel has borne all of the risks and costs of litigation and
25 will not receive any compensation until recovery is obtained.

26 23. The Settlement Agreement provides for payment of up to seven thousand five
27 hundred dollars (\$7,500.00) to Plaintiff as an Enhancement Payment, to be paid out of the Total
28 Settlement Amount subject to approval by the Court. Plaintiff spent considerable time and effort

1 to produce relevant documents and past employment records and to provide the facts and evidence
2 necessary to attempt to prove the allegations. Plaintiff was available whenever Class Counsel
3 needed him and actively tried to obtain information that would benefit the Class. Accordingly, it
4 is appropriate and just for Plaintiff to receive an Enhancement Payment, in addition to his
5 Individual Settlement Payment and Individual PAGA Payment, for his services on behalf of the
6 Class.

7 **USE OF AN EXPERT**

8 24. Lawyers for Justice, PC engaged Robert A. Parris, Esq. as a consulting expert during
9 mediation. Mr. Parris is a leading class action attorney, specifically on certification of a class,
10 damages, and evaluation of class claims. Mr. Parris works as a mediator and expert consultant on
11 a wide range of litigated matters, including complex wage-and-hour cases. He was a partner with
12 Parris Law firm for twenty-three (23) years, where he participated in hundreds of class action
13 mediations resulting in settlements totaling over \$500 million dollars, and since 2015, is of counsel
14 for Parris Law firm and manages his own firm, Robert A. Parris, P.C. During his time as partner
15 for the Parris Law firm, the firm certified numerous wage-and-hour class actions and was
16 appointed class counsel in multiple cases in California and federal courts. His attendance and
17 participation in the mediation as an expert allowed him to immediately consider and provide
18 persuasive, strategic, and authoritative input on issues relating to certification and valuation, and
19 having an expert at mediation provided Plaintiffs a strategic advantage in the negotiation process.
20 The Curriculum Vitae and Selected Class Action Experience of Robert A. Parris is attached hereto
21 as “**EXHIBIT 4.**”

22 **LITIGATION COSTS**

23 25. To date, the litigation costs incurred by Class Counsel are approximately
24 \$33,525.68. This matter involves two separate cases and has required private mediation, multiple
25 days of deposition, extensive settlement negotiations and expert costs, and court proceedings.
26 Additional evidence as to the costs incurred by Class Counsel will be provided at the time of filing
27 Plaintiff’s motion for final approval of the Settlement, wherein Class Counsel will move the Court
28 for an award of Attorneys’ Fees and Costs.

ESTIMATE OF THE VALUE OF THE CLAIMS

26. Plaintiff's action alleges that Defendants have violated the California Labor Code by engaging in a uniform policy and systematic scheme of wage abuse against Plaintiff and the putative class members, including, *inter alia*, failing to properly compensate overtime and minimum wages, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages and associated waiting-time penalties, failing to provide compliant wage statements, and failing to reimburse necessary business expenses, and thereby engaged in unfair business practices under the California Business and Professions Code and owe civil penalties recoverable under the Private Attorneys General Act, California Labor Code section 2698, *et seq.* ("PAGA").

27. Having evaluated hundreds of wage-and-hour class action cases, I am experienced and qualified to evaluate the claims of the putative class members and Defendants' defenses.

28. Based on data provided by Defendant prior to mediation, the total number of class members during the period from February 27, 2016 to October 14, 2020 ("relevant time period") was estimated to be five hundred twenty-two (522) individuals and their total workweeks was estimated to be a total of fifteen thousand five hundred fifty-six (15,556) and the average hourly rate of pay was thirteen dollars and forty-nine cents (\$13.49).

29. Both sides had the opportunity to interview witnesses, conducted informal discovery and investigations into the facts of the case, and informally exchanged information and class-wide data.

A. Failure to Pay Overtime and Minimum Wages

30. Plaintiff alleged Defendants failed to pay overtime and minimum wages. Plaintiff contended that that Defendants' uniform policies, practices, and procedures required putative class members to perform work during meal periods and before clocking-in and after clocking-out. For example, despite requiring putative class members to perform pre-shift duties such as preparing sections and tables, and post-shift duties such as counting and entering tips into the computer system and waiting for manager signatures, Defendants implemented a policy and practice which prohibited employees from clocking in prior to their scheduled shift starting times, and required

1 them to clock out by their scheduled end times. Plaintiff furthered contended that due to
2 Defendants' practice and policy of requiring their employees to wear uniforms, putative class
3 members were readily recognizable to customers and were expected to greet and assist customers
4 at all times without ever regarding them as an inconvenience or interruption. Plaintiff also
5 contended that Defendants exerted class-wide pressure on putative class members to reduce the
6 amount of recorded overtime, requiring them to complete unreasonable workloads within
7 scheduled hours only, obtain pre-approval prior to working overtime or in excess of scheduled
8 work hours, and subjecting those who recorded overtime without preapproval to discipline.

9 31. California Labor Code section 510 provides that when an employee works more than
10 eight (8) hours in any workday, more than forty (40) hours in any workweek and/or more than six
11 (6) days in a workweek, the employer must pay the employee at least one and one-half times the
12 employee's regular rate of pay for all overtime hours worked. The employer must pay the
13 employee no less than twice his or her regular rate of pay for hours worked in excess of twelve
14 (12) hours in one day or in excess of eight (8) hours on the seventh consecutive day of work.
15 California Labor Code section 1198 and the applicable Industrial Welfare Commission ("IWC")
16 Wage Order(s) provide that it is unlawful to employ persons without compensating them at a rate
17 of pay either time-and-one-half or two-times that person's regular rate of pay, depending on the
18 number of hours worked by the person on a daily or weekly basis.

19 32. California Labor Code section 1197 provides that it is unlawful to pay employees at
20 a rate less than the minimum wage. California Labor Code sections 1194, 1194.2, 1197, and
21 1197.1 provide that an employee may seek to recover unlawfully unpaid wages by court action, as
22 well as liquidated damages in an amount equal to the wages unlawfully not paid and interest
23 thereon. California Labor Code section 1197.1 provides for civil penalties, which, arguably, may
24 only be recovered by the Labor Commissioner during a one-year statute of limitations period.

25 33. Defendants contended, *inter alia*, that their overtime policies and practices comply
26 with the law, and that they paid putative class members over the California minimum wage for all
27 hours worked. Defendants contended that they correctly calculated and paid putative class
28 members' regular rate for purposes of paying overtime. Defendants also produced wage

1 statements reflecting overtime compensation paid to many of the putative class members
2 (including, and not limited to, Plaintiff). Defendants further contended that all employees were
3 required to record all time worked and were given the opportunity to make any necessary timecard
4 revisions or changes, and that Defendants were not aware that any work had been performed off-
5 the-clock. Defendants also argued that individual liability issues predominate, including: (a)
6 whether each employee worked off-the-clock; (b) whether Defendants knew or should have known
7 about each employee's off-the-clock work; (c) whether each employee worked overtime; (d)
8 whether Defendants knew or should have known that each putative class member performed
9 overtime work. Defendants also contended that the putative class members held different job titles
10 and had different job duties and that these circumstances would raise highly individualized
11 questions of fact and would pose challenges to certification and the merits of the claims for
12 overtime and minimum wages.

13 34. Class Counsel considered information obtained through investigations and from
14 Plaintiff and other putative class members, as well as class data provided by Defendants, and
15 created damages/valuation models prior to the mediation. Based thereon, assuming that it could
16 be proven that Defendants failed to pay one (1) hour of overtime wages every workweek during
17 the relevant time period, the potential value of this claim was estimated to be \$67,874.84 (6,707
18 workweeks x 0.5 hours of overtime wages x overtime hourly rate of \$20.24, which is based on the
19 average hourly rate of \$13.49). Assuming that it could be proven that Defendants failed to pay
20 one (1) hour of minimum wages every workweek during the relevant time period, the potential
21 value of this claim was estimated to be \$271,432.29 (6,707 workweeks x 3 hours of unpaid
22 minimum wages x average hourly rate of \$13.49).

23 35. However, this assumes an exposure based on a class having been certified and
24 Plaintiff having proven all elements of the overtime and minimum wage claims, despite risks
25 associated with obtaining and maintaining certification, risks to establishing liability, and
26 significant additional costs that would have to be incurred in order to certify a class and establish
27 liability. Plaintiff also faced the risk of the Court finding that individualized issues predominate,
28 such that class treatment is not suitable. While Class Counsel disagreed with Defendants'

arguments and factual contentions, Class Counsel recognized the circumstances and realities of the case, applicable case law and regulations, the costs and expenses of further litigation and certification, and risks to recovery, and applied appropriate discounts for them. With respect to the overtime claim, at this juncture, a discount of 50% was applied to account for the risks associated with obtaining and maintaining certification (bringing the value of the claim closer to \$33,937.42), a discount of 50% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of the claim closer to \$16,968.71), and a discount of 60% was applied to account for the risks associated with proving the extent of damages and obtaining an award thereof (bringing the value of the claim closer to \$6,787.48). Also, with respect to the minimum wage claim, at this juncture, a discount of 50% was applied to account for the risks associated with obtaining and maintaining certification (bringing the value of the claim closer to \$135,716.15), a discount of 40% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of the claim closer to \$81,429.69), and a discount of 50% was applied to account for the risks associated with proving the extent of damages and obtaining an award thereof (bringing the value of the claim closer to \$40,714.85).

B. Failure to Provide Compliant Meal Periods and Associated Premiums

36. Plaintiff's theory of liability was also based on Defendants' failure to provide timely, full, and/or uninterrupted meal periods. Plaintiff contended, *inter alia*, that Defendants' policies, practices, and procedures required employees to perform job duties during their meal periods and prevented them from regularly receiving compliant meal periods. For example, Plaintiff contended that despite Defendants requiring employees to perform work tasks such as assisting customers and maintaining their sections during meal periods, Defendants' Aloha timekeeping system would not allow putative class members to clock in prior to thirty (30) minutes. Plaintiff further contended that Defendants failed to pay meal premiums under every circumstance they were due for missed, short, late and/or interrupted meal periods.

37. Under California law, an employer must provide an employee with uninterrupted meal periods of not less than thirty (30) minutes before the employee works more than five (5)

1 hours, except that if the total work period per day of the employee is no more than six (6) hours,
2 the meal period may be waived by mutual consent of both the employer and employee. Cal. Lab.
3 Code § 512(a). A second meal period of not less than thirty (30) minutes is required if an employee
4 works more than ten (10) hours per day, except that if the total hours worked is no more than
5 twelve (12) hours, the second meal period may be waived by mutual consent of the employer and
6 employee only if the first meal period was not waived. *Id.* An “on-duty” meal period may be
7 agreed to only if “the nature of the work prevents an employee from being relieved of all duty and
8 when by written agreement between the parties an on-the-job paid meal period is agreed to.” IWC
9 Wage Orders 1 through 15, § 11; IWC Wage Order 16, § 10. An employer must pay each
10 employee to whom it fails to “provide” a meal period one hour of wages at his or her regular rate
11 of pay “for each work day that the meal or rest period is not provided.” Cal. Lab. Code § 226.7(b).

12 38. Defendants contended that they had practices, policies, and procedures to provide
13 meal periods every workday to its employees that fully complied with California law. To the
14 extent that putative class members failed to take their meal periods or took a short or late meal
15 period, Defendants contended that they did so voluntarily and that all applicable meal periods were
16 still provided to them. Thus, Defendants argued that they did not act unlawfully to deprive putative
17 class members of meal periods. Defendants further argued that they implemented meal period
18 waivers. Defendants also contended that there were multiple individual issues that would pose
19 challenges to certification, including and not limited to, (a) whether any meal periods were non-
20 compliant, and (b) why they were non-compliant. Defendants also contended that the putative
21 class members held different job titles and had different job duties, and that as a result, there was
22 variation to the circumstances that could allegedly cause the employees to be deprived of the
23 opportunity to take legally-compliant, duty-free meal periods, and this variation in circumstances
24 raised highly individualized questions of fact.

25 39. Class Counsel considered information obtained through investigations and from
26 Plaintiff and other putative class members, as well as class data provided by Defendants, and
27 created damages/valuation models prior to the mediation. Based thereon, assuming that it could
28 be proven that one (1) meal period premium is due for every workweek during the relevant time

1 period, the potential value of this claim was estimated to be \$ \$180,954.86 (6,707 workweeks x 2
2 meal period premium x average hourly rate of \$13.49).

3 40. Class Counsel also considered the risk of further litigating the case, including the
4 significant additional costs that will be incurred by both sides if the case does not settle, as
5 litigating a class action through class certification, trial, and/or appeals is very expensive.
6 Moreover, litigating meal period claims is inherently difficult as an employer's records, as is the
7 case here, do not usually indicate when a meal period is interrupted. While Class Counsel
8 disagreed with Defendants' arguments and factual contentions, Class Counsel recognized the
9 circumstances and realities of the case, applicable case law and regulations, costs and expenses of
10 further litigation and certification, and risks to recovery, and applied appropriate discounts for
11 them. At this juncture, a discount of 50% was applied to account for the risks associated with
12 obtaining and maintaining certification (bringing the value of the claim closer to \$90,477.43), a
13 discount of 40% was applied to account for the risks associated with succeeding on the merits and
14 establishing liability (bringing the value of the claim closer to \$54,286.46), and a discount of 50%
15 was applied to account for the risks associated with proving the extent of damages and obtaining
16 an award thereof (bringing the value of the claim closer to \$27,143.23).

17 **C. Failure to Provide Compliant Rest Periods and Associated Premiums**

18 41. Plaintiff's theory of liability was also based on Defendants' failure to provide their
19 employees with timely, full, and/or uninterrupted rest periods. Plaintiff contended that
20 Defendants' employment policies, practices, and procedures required employees to perform job
21 duties during their rest periods and prevented them from regularly receiving compliant rest
22 periods. For example, Plaintiff contended that Defendants failed to relinquish all control over the
23 putative class members by requiring them to remain readily available to assist customers and
24 answer questions. Plaintiff further contended that Plaintiff and other putative class members were
25 expected to remain at the ready to work to assist with rushes and were almost always interrupted
26 shortly into their breaks.

27 42. California law requires an employer to provide rest periods to all employees at the
28 rate of ten (10) minutes every four hours of work or major fraction thereof. Cal. Lab. Code § 226.7.

1 When an employer fails to provide a compliant rest period, the employer is required to either (a)
2 provide another rest period or (b) pay one additional hour of pay at the regular rate of pay “for
3 each work day that the meal or rest period is not provided.” *Augustus v. ABM Security Services,*
4 *Inc.* (2016) 2 Cal.5th 257, 271-272; Cal. Lab. Code § 226.7(b). However, employees are exempt
5 from the rest breaks law, if their duties and responsibilities qualify for one or more of the
6 exemptions under California or federal law. See Cal. Lab. Code § 226.7(e); see e.g., 49 CFR
7 § 395.

8 43. Defendants contended that they had methods, policies, and procedures to provide all
9 applicable rest periods every workday to putative class members that fully complied with the law.
10 Defendants argued that the reasons why a putative class member failed to receive a compliant rest
11 period raised individual issues that could not be certified.

12 44. Class Counsel considered information obtained through investigations and from
13 Plaintiff and other putative class members, as well as class data provided by Defendants, and
14 created damages/valuation models prior to the mediation. Based thereon, assuming that it could
15 be proven that one (1) rest period premium is due for every workweek during the relevant time
16 period, the potential value of this claim was estimated to be \$271,432.29 (6,707 workweeks x 3
17 rest period premiums x average hourly rate of \$13.49).

18 45. Class Counsel also considered the risk of further litigating the case, as well as
19 significant additional costs that will be incurred by both sides if the case does not settle, as
20 litigating a class action through class certification, trial, and/or appeals is very expensive.
21 Moreover, litigating rest period claims is inherently difficult as an employer’s records, as is the
22 case here, do not usually indicate when a rest period is short, late, interrupted or missed entirely.
23 While Class Counsel disagreed with Defendants’ arguments and factual contentions, Class
24 Counsel recognized the circumstances and realities of the case, applicable case law and
25 regulations, the costs and expenses associate with further litigation and certification, and risks to
26 recovery, and applied appropriate discounts for them. At this juncture, a discount of 50% was
27 applied to account for the risks associated with obtaining and maintaining certification (bringing
28 the value of the claim closer to \$135,716.15), a discount of 60% was applied to account for the

1 risks associated with succeeding on the merits and establishing liability (bringing the value of the
2 claim closer to \$54,286.46), and a discount of 50% was applied to account for the risks associated
3 with proving the extent of damages and obtaining an award thereof (bringing the value of the claim
4 closer to \$27,143.23).

5 **D. Waiting-Time Penalties for Failure to Timely Provide Wages Upon Termination**

6 46. California Labor Code sections 201 and 202 provide that if an employer discharges
7 an employee, the wages earned and unpaid at the time of discharge are due and payable
8 immediately. If an employee quits his or her employment, his or her wages shall become due and
9 payable not later than seventy-two (72) hours of quitting, unless the employee has given seventy-
10 two (72) hours of notice of his or her intention to quit, in which cases the employee is entitled to
11 his or her wages at the time of quitting.

12 47. California Labor Code section 203 provides that if an employer fails to pay an
13 employee all wages due at termination or within seventy-two (72) hours of resignation, in
14 accordance with sections 201 and 202, then that employee's wages shall continue as a penalty
15 until paid for a period of up to thirty (30) days from the date they were due. California Labor Code
16 section 203 further provides that the statute of limitations to recover the penalty is the same as the
17 statute of limitations for recovery of the unpaid wages from which the penalties arise, i.e. three
18 years.

19 48. Plaintiff alleged that Defendants intentionally and willfully failed to pay Plaintiff
20 and the other putative class members all wages due to them upon termination, within the time
21 period permissible under California law. For example, Plaintiff alleged that putative class
22 members are entitled to unpaid wages arising from, *inter alia*, off-the-clock work, as well as meal
23 and rest period premiums, thereby triggering waiting-time penalties under California Labor Code
24 section 203.

25 49. Based on information and data provided by Defendants, it was estimated that
26 approximately five hundred twenty-two (522) putative class members had been terminated during
27 the three-year statute of limitations (i.e., from February 26, 2017). Assuming that these individuals
28 were not timely paid all wages due to them upon termination, the potential value of waiting-time

1 penalties claim was estimated to be \$874,152.00 collectively (270 individuals x [30 days x hourly
2 rate of \$13.49 x 8 hours]), or approximately \$3,237.60 per individual. However, this presumes
3 that Plaintiff would prevail on the underlying California Labor Code claims, which is necessary
4 to show that Defendants failed to timely pay wages that were due to the putative class members
5 upon termination.

6 50. Defendants were adamant that no waiting-time penalties should be awarded.
7 Defendants pointed out that waiting-time penalties are derivative of each and every other
8 underlying alleged California Labor Code violations and contended that they paid the terminated
9 employees all wages due and owing. Moreover, Defendants emphasized that, under California
10 Labor Code section 203, employers are only obligated to pay waiting-time penalties if they
11 “willfully” fail to pay wages due and owing at the time of termination or resignation. As Title 8,
12 California Code of Regulations, section 13520 states,

13 A willful failure to pay wages within the meaning of Labor Code
14 Section 203 occurs when an employer intentionally fails to pay wages
15 to an employee when those wages are due. However, a good faith
16 dispute that any wages are due will preclude imposition of waiting
17 time penalties under Section 203.

18 A “good faith dispute” that any wages are due occurs when an
19 employer presents a defense, based in law or fact, which, if successful,
20 would preclude any recovery on the part of the

21 employee. The fact that a defense is ultimately unsuccessful will not
22 preclude a finding that a good faith dispute did exist. Defenses
23 presented which, under all the circumstances, are unsupported by any
24 evidence, are unreasonable, or are presented in bad faith, will preclude
25 a finding of a “good faith dispute.”

26 51. Accordingly, to assess the likely recovery of waiting-time penalties, Class Counsel
27 also took into consideration the chances of prevailing on each of the underlying causes of action,
28 as well as the additional hurdles of prevailing on the claim for waiting-time penalties, including
the inherent difficulty in proving the “willful” prong of section 203, applicable case law, costs and
expenses associated with further litigation and certification, the circumstances and realities of the
case, and risks to recovery, and applied appropriate discounts for them. At this juncture, a discount
of 50% was applied to account for the risks associated with obtaining and maintaining certification
(bringing the value of the claim closer to \$437,076.00), a discount of 60% was applied to account
for the risks associated with succeeding on the merits and establishing liability (bringing the value

of the claim closer to \$174,830.40), and a discount of 50% was applied to account for the risks associated with proving the extent of damages and obtaining an award thereof (bringing the value of the claim closer to \$87,415.20).

E. Wage Statement Violations

52. Plaintiff also alleged that Defendants violated California Labor Code section 226(a) which states that an employer must provide an accurate and itemized wage statement twice a month or each time wages are paid, whichever is the more frequent. Failure to do so entitles employees to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). See Cal. Lab. Code § 226(e). Arguably, actual damages may be sought, under a three-year statute of limitations, or, statutory penalties may be sought, under a one-year statute of limitations.

53. Based on data provided by Defendants, it was estimated that approximately four hundred thirty-five (246) putative class members worked during the one-year statutory limitations period (i.e., from January 29, 2019), and that these putative class members worked a total of three thousand three hundred fifty-seven (3,357) pay periods. Assuming that an injurious wage statement could be proven for each of these putative class members for each of these pay periods, the potential value of this claim was calculated to be \$323,400.00 ([246 initial violations x \$50 initial violation penalty] + [(3,357-246) subsequent violations x \$100 subsequent violation penalty]).

54. Defendants contended that Plaintiff and putative class members suffered no actual injury from the alleged wage statement violations. Defendants also contended that this alleged violation is entirely derivative of the foregoing allegations. In other words, Plaintiff would have to prove, for example, that off-the-clock work occurred, that overtime was worked, that all hours of work had not been properly recorded and compensated, and/or that non-compliant meal and rest periods occurred and that Defendants did not pay premiums, etc., to demonstrate that the wage statements were inaccurate. Defendants further contended, *inter alia*, that if off-the-clock and/or overtime work occurred and was not reflected in the wage statements, it was because the work

1 was hidden from Defendants. Defendants also contended that no actual injury could be shown.
2 When assessing the value of this claim, Class Counsel considered these factors, the derivative
3 nature of this alleged violation, the chances of prevailing on each of the underlying causes of
4 action, applicable case law and regulations, costs and expenses associated with further litigation
5 and certification, realities of the case, and risks to recovery, and applied appropriate discounts for
6 them. At this juncture, a discount of 50% was applied to account for the risks associated with
7 obtaining and maintaining certification (bringing the value of the claim closer to \$161,700.00), a
8 discount of 60% was applied to account for the risks associated with succeeding on the merits and
9 establishing liability (bringing the value of the claim closer to \$64,680.00), and a discount of 60%
10 was applied to account for the risks associated with proving the extent of damages and obtaining
11 an award thereof (bringing the value of the claim closer to \$25,872.00).

12 **F. Unreimbursed Business Expenses**

13 55. Plaintiff contended that Defendants failed to reimburse Plaintiff and other putative
14 class members for necessary business expenses, including but not limited to, costs associated with
15 use of personal cell phones, mileage, and travel expenses to carry out their job duties.

16 56. California Labor Code section 2802 requires an employer to indemnify its
17 employees for all necessary expenditures made by the employee in direct consequence of the
18 discharge of his or her duties, or of his or her obedience to the directions of the employer.

19 57. Defendants contended that they have a policy and practice of reimbursing employees
20 for necessary business-related expenses. Defendants also contended that, with respect to the
21 alleged expenses for which Plaintiff and other putative class members never requested
22 reimbursement from Defendants, Defendants did not know and had no reason to know that the
23 alleged business-related expenses were incurred. Defendants further contended that the reason for
24 why a putative class member undertook certain expenses, while not others, and failed to receive
25 reimbursement for certain expenses while not others, would raise individual issues that could not
26 be certified.

27 58. Defendants also contended that the California Labor Code only requires
28 reimbursement of “necessary” expenses—as opposed to any expense that is incurred in the course

1 of performing work—and argued that distinguishing a necessary expense from an unnecessary one
2 would require individualized inquiry. See, Cal. Lab. Code § 2802; *Gattuso v. Harte-Hanks*
3 *Shoppers, Inc.* (2007) 42 Cal.4th 554. Furthermore, whether or not an expense was necessary,
4 would depend, in part, on the reasonableness of the employee’s choice, and whether or not an
5 expense was incurred, would have to be established by way of extensive individual factual inquiry
6 and/or statistical evidence. *Cochran v. Schwan’s Home Services, Inc.* (2014) 228 Cal.App.4th
7 1137.

8 59. If Plaintiff proved that Defendants willfully failed to reimburse necessary business-
9 related expenses to putative class members in the amount of nine dollars (\$9) each per workweek
10 during the relevant time period, the potential value of this claim would be \$60,363.00 (6,707 total
11 workweeks x \$9 business expenses). Class Counsel also took into consideration that, not only
12 would it have to be established that expenses were incurred, but also that the nature of the expenses
13 were such that Defendants were required to reimburse them. While Class Counsel disagreed with
14 Defendants’ arguments and factual contentions, Class Counsel considered Defendants’ arguments,
15 applicable case law and regulations, the costs and expenses associated with further litigation and
16 certification, the circumstances and realities of the case, and risks to recovery, and applied
17 appropriate discounts for them. At this juncture, a discount of 50% was applied to account for the
18 risks associated with obtaining and maintaining certification (bringing the value of the claim closer
19 to \$30,181.50), a discount of 50% was applied to account for the risks associated with succeeding
20 on the merits and establishing liability (bringing the value of the claim closer to \$15,090.75), and
21 a discount of 40% was applied to account for the risks associated with proving the extent of
22 damages and obtaining an award thereof (bringing the value of the claim closer to \$9,054.45).

23 **G. Unfair Business Practices**

24 60. Plaintiff’s sole cause of action is for Defendants’ alleged violation of the California’s
25 Unfair Competition Law, Business and Professions sections 17200, *et seq.* (“UCL”) which
26 prohibits any “unlawful, unfair or fraudulent business practices.” A violation of the UCL may be
27 predicated on the violation of any law.
28

1 61. Arguably, California Business and Professions Code section 17208 extends the
2 statute of limitations on Plaintiff's other allegations, which qualify as unfair business practices, to
3 four (4) years. However, claims brought under the UCL are equitable actions for injunctive or
4 restitutionary relief, and a court may take into consideration equitable defenses when fashioning
5 equitable remedies. Restitution under the UCL is limited to returning to Plaintiff and putative
6 class members monies unlawfully withheld, such as unpaid wages or unpaid meal or rest period
7 premiums, or restitutionary disgorgement.

8 62. Plaintiff contended that each of Defendants' alleged violations of the California
9 Labor Code constitute business practices that are either unlawful (i.e., is forbidden by law) and/or
10 unfair (i.e., harm to victim outweighs any benefit). In order to prevail on the UCL cause of action,
11 Plaintiff would have to prove that Defendants violated the predicate provisions of law, and that
12 the violations constitute unlawful and/or unfair business acts and practices in violation of
13 California Business and Professions Code sections 17200, *et seq.* Plaintiff would have to prove
14 that Defendants' conduct throughout the time period at issue has been unfair, unlawful, harmful,
15 and injurious to Plaintiff and putative class members. With respect to the UCL's standing
16 requirement, Plaintiff would also have to prove that they suffered an economic injury as a result
17 of Defendants' conduct.

18 63. As discussed above, Defendants vigorously challenged the likelihood of Plaintiff's
19 success in establishing that any of provisions of the California Labor Code, on which the UCL
20 claim is predicated, were violated and that such violations were injurious. Throughout this
21 litigation, Defendants also relentlessly challenged Plaintiff's standing and adequacy to assert class
22 claims and contended there were individualized issues that would pose challenges to certification.
23 When assessing the likelihood of prevailing on this cause of action, Class Counsel considered all
24 of the above, as well as Defendants' factual contentions and legal arguments, the chances of
25 prevailing on the other causes of action, costs and expenses associated with further litigation and
26 certification, and risks to recovery, and applied appropriate discounts for settlement purposes.

27 ///

28 ///

H. PAGA Penalties

64. Under the PAGA, civil penalties to be assessed and collected by the state labor agency for a violation of the California Labor Code, may, as an alternative, be recovered by an aggrieved employee plaintiff. If the California Labor Code already specifies and provides a civil penalty for the violation of a provision of the California Labor Code, said civil penalty is recoverable by the aggrieved employee plaintiff. Additionally, the PAGA statute establishes a civil penalty that is recoverable by an aggrieved employee plaintiff, for violation of provisions of the California Labor Code for which the California Labor Code does not specifically provide for a civil penalty, as follows: one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation. Cal. Lab. Code § 2699(f). Pursuant to California Labor Code section 2699(i), seventy-five percent (75%) of the penalties recovered must be allocated to the State of California, with the remaining twenty-five percent (25%) allocated to the aggrieved employees. The statute of limitations period applicable to such penalties is one year prior to the filing of the complaint. Cal. Code Civ. Proc. § 340.

65. Defendants contended that violations of multiple provisions of the California Labor Code would not give rise to cumulative penalties, and at best, would only trigger an initial violation penalty and a subsequent violation penalty once per pay period, if at all.

66. Defendants contended that an important feature of the PAGA statute is that, when determining whether or not to assess a penalty, the court exercises the same discretion that the LWDA has and may reduce the penalties to be assessed against the employer pursuant to section 2699(e)(1)-(2). As such, Defendants contended that, with respect to a PAGA claim, the Court was unlikely to assess cumulative penalties for the maximum number of possible, separate California Labor Code violations, because it would be unjust, arbitrary, oppressive, and/or confiscatory, especially where certain conduct may be regulated by multiple provisions of the California Labor Code that are interrelated and work in tandem.

67. Defendants also maintained and continue to maintain that they had legally-compliant employment policies and practices throughout the statutory period. Defendants denied and

1 continue to deny that they ever violated any provision of the California Labor Code and argued,
2 that, even if, *arguendo*, such violations occurred, it will not be treated as having engaged in
3 subsequent violations giving rise to heightened penalties. In other words, Defendants argued that
4 heightened civil penalties for subsequent violations would not be assessed unless it could be shown
5 that Defendants had notice that it was violating the law, e.g. because it had been cited by a labor
6 agency or adjudged by a court to have done so. See, e.g., *Amaral v. Cintas Corp. No. 2* (2008)
7 163 Cal.4th 1157, 1209. Defendants argued that they would be able to show a lack of willfulness
8 in the violations, such that the alleged California Labor Code violations would not be considered
9 “willful.” Defendants contended that, at best, even if a violation giving rise to a penalty was shown
10 for each pay period, only the lower civil penalty associated with initial violations would apply.

11 68. Importantly, to prevail on the PAGA claim, Defendants contended that some courts
12 have required Plaintiff to show at the outset that they have suffered injury, in order to establish
13 standing, and that Plaintiff would also have to prove all requisite elements to prove violations of
14 the underlying California Labor Code provisions, in order to show that Defendants’ conduct gave
15 rise to penalties. The unpaid wage and meal and rest period allegations are fundamental to this
16 action; however, for the reasons discussed above, there were substantial challenges to showing
17 liability and exposure for these claims. Defendants argued that Plaintiff would not be able to
18 establish violations of the underlying California Labor Code provisions and the fundamental
19 allegations regarding unpaid wages and meal and rest periods. Defendants also contended that
20 multiple individualized issues vitiated the manageability of representative adjudication of the
21 PAGA claim.

22 69. Defendants would also likely seek bifurcation of discovery and/or trial of the PAGA
23 claim – many courts have taken such an approach.

24 70. Defendants also maintained that, in addition to their strong arguments against the
25 underlying claims, taking the current unsettled state of law, it would be unjust to award the
26 maximum potential PAGA penalties. There was a dearth of law and guidance regarding trials
27 and/or assessment of penalties under the PAGA statute, and there is no clearly-established
28 methodology for the valuation and/or assessment of PAGA penalties.

1 71. Defendants also contended that before a PAGA claim could be tried, under existing
2 law, the court of law would have to be satisfied that the adjudication of the PAGA claim, based
3 on a theory of uniform wage and hour practices relating to a large group of aggrieved employees,
4 is sufficiently “manageable” so as not to interfere with Defendants’ right to due process.
5 Defendants asserted that the putative class members worked different positions, and that their job
6 roles, job duties, work locations, and work hours varied. Defendants contended that there was
7 variation as to the circumstances that could allegedly cause the employees to work off-the-clock,
8 or to be deprived of the opportunity to take legally-compliant, duty-free meal and/or rest periods.
9 Defendants further contended that these issues presented challenges to Plaintiff ability to show
10 that a PAGA claim could be efficiently and manageably adjudicated without abridging
11 Defendants’ due process rights.

12 72. Defendants pointed to case law that held that, given the derivative nature of a PAGA
13 claim, it would stand or fall based on the claims from which it derives, and the success of showing,
14 *inter alia*, off-the-clock work, failure to properly pay wages, failure to reimburse for expenses,
15 etc. Defendants also pointed to case law demonstrating that courts have attributed little separate
16 value to PAGA claims, for example, allowing them to be resolved for \$0 where the other
17 underlying California Labor Code claims are being resolved. See, e.g. *Matter of Nordstrom*
18 *Commission Cases* (2010) 186 Cal.App.4th 576, 588-590 (No abuse of discretion by the trial court
19 in approving the allocation of \$0 toward PAGA penalties, where PAGA claim is resolved as a part
20 of an overall resolution of the underlying California Labor Code violations); *Franco v. Ruiz Food*
21 *Prods, Inc.* (E.D. Cal. Nov. 27, 2012) No. 1:10-cv-02354-SKO, 2012 WL 5941801, at *14
22 (approving allocation of \$10,000, out of the settlement of \$2.5 million, toward the settlement of
23 the PAGA claim); *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) No.1:10-CV-0324-AWI-
24 SKO, 2012 WL 5364575, at *3 (approving the allocation of \$10,000, out of the settlement of \$3.7
25 million, toward the settlement of the PAGA claim); *Chu v. Wells Fargo Investments, LLC* (N.D.
26 Cal. Feb. 16, 2011) No. C 05-4526 MHP, C 0647924 MHP, 2011 WL 672645, at *1 (approving
27 the allocation of \$10,000, out of the settlement of \$6.9 million, toward the settlement of the PAGA
28 claim); *Jack v. Hartford Ins. Co.* (S.D. Cal. Oct. 13, 2011) No. 3:09-cv-1683—MMA (JMA), 2011

1 WL 4899942, at *18 (approving the allocation of \$3,000, out of the settlement of \$1.2 million,
2 toward the settlement of the PAGA claim); *Schiller v. David's Bridal, Inc.* (E.D. Cal. June 11,
3 2012) 2012 WL 2117001, at *14 (approving the allocation of \$10,000, out of the settlement of
4 \$518,245, toward settlement of the PAGA claim).

5 73. Assuming that a court would be satisfied that the PAGA claim was susceptible to
6 being efficiently tried and adjudicated on a representative basis, and assuming that it could be
7 shown that civil penalties in the amount of one thousand seven hundred fifty (\$1,600) are owed
8 for each of the two-hundred forty-six (246) aggrieved employees who were estimated to have
9 worked during the one-year statutory period (i.e., from January 29, 2019), the PAGA penalties at
10 issue, which the Court could determine whether or not to assess and whether or not to reduce, were
11 estimated to be approximately \$393,600.00 (246 individuals x \$1,600 civil penalties).

12 74. As Class Counsel recognized the realities of Defendants' arguments, evidence and
13 information obtained through investigations as well as from Defendants, the circumstances and
14 realities of the case, the current state of the law, the costs of continued litigation, and the risks to
15 recovery, and applied appropriate discounts for them. At this juncture, a discount of 40% was
16 applied to account for the risks associated with establishing manageability and possible bifurcation
17 of discovery and/or trial (bringing the value of this claim closer to \$236,160.00), a discount of
18 50% was applied to account for the risks associated with succeeding on the merits and establishing
19 liability (bringing the value of the claim closer to \$118,080.00), and a discount of 60% was applied
20 to account for the risks associated with proving the extent of penalties that are warranted and
21 possible discretionary reduction of penalties by the Court (bringing the value of the claim closer
22 to \$47,232.00).

23 **I. Summary**

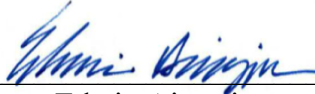
24 75. The foregoing discussion confirms that the amount of the Settlement is adequate in
25 light of the merits of this case, Plaintiff's allegations and causes of action, the evidence at issue
26 with respect to those allegations and causes of action, and legal and factual arguments and
27 circumstances which pose challenges to monetary recovery. The conclusion to be drawn from the
28 foregoing analysis is that neither class certification, liability, nor the ability to adjudicate and/or

1 recover monetary relief on a class-wide basis is clear-cut, which is why the Parties elected to settle
2 this matter. Class Counsel recognized the circumstances and realities of the case, applicable case
3 law and regulations, the costs and expenses of further litigation and certification, and risks to
4 recovery and applied appropriate discounts as discussed above. This Settlement involves highly
5 disputed claims and, like most other settlements, is the product of compromise.

6 76. Class Counsel submits that the Settlement is fair, reasonable, and adequate, and is
7 in the best interest of the Class. Class Counsel further submits that the Settlement is within an
8 acceptable range of recovery for this type of litigation given the strengths and weaknesses of the
9 cases, the inherent costs and risks of further litigation, and the costs and risks associated with class
10 certification, representative adjudication, trial, and/or appeals.

11 I declare under penalty of perjury under the laws of the State of California that the
12 foregoing is true and correct.

13 Executed on this 13th day of January 2022, at Glendale, California.

14 

15 Edwin Aiwarzian
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EXHIBIT 1

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Spring Street Courthouse, Department 7

20STCV07785

NATHAN POOL vs UTC RESTAURANT VENTURE, LLC

July 7, 2021

3:56 PM

Judge: Honorable Amy D. Hogue
Judicial Assistant: A. Morales
Courtroom Assistant: D. McKinney

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Court Order Re Motion for Preliminary Approval of Settlement

The Court issues an order with respect to the motion for preliminary approval of settlement filed on 06/23/2021.

The Order Taking Hearing Date of Calendar is signed and filed this date.

On the Court's own motion, the Hearing on Motion for Preliminary Approval of Settlement scheduled for 09/15/2021 is advanced to this date and vacated .

Non-Appearance Case Review Re Filing Renewed Motion for Preliminary Approval of Settlement is scheduled for 08/12/2021 at 10:00 AM in Department 7 at Spring Street Courthouse.

The clerk is to give notice. Clerk's Certificate of Service By Electronic Service is attached.

SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES		Reserved for Clerk's File Stamp FILED Superior Court of California County of Los Angeles 07/07/2021 Sherri R. Carter, Executive Officer / Clerk of Court By: <u>A. Morales</u> Deputy
COURTHOUSE ADDRESS: Spring Street Courthouse 312 North Spring Street, Los Angeles, CA 90012		
PLAINTIFF: Nathan Pool et al		
DEFENDANT: UTC Restaurant Venture, LLC et al		
CERTIFICATE OF ELECTRONIC SERVICE CODE OF CIVIL PROCEDURE 1010.6		CASE NUMBER 20STCV07785

I, the below named Executive Officer/Clerk of Court of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served one copy of the Minute Order and Order entered herein, on 07/07/2021, upon each party or counsel of record in the above entitled action, by electronically serving the document(s) on Case Anywhere at securecaseanywhere.com on 07/07/2021 from my place of business, Spring Street Courthouse 312 North Spring Street, Los Angeles, CA 90012 in accordance with standard court practices.

Sherri R. Carter, Executive Officer / Clerk of Court

Dated: 07/07/2021

By: A. Morales

Deputy Clerk

JUL 07 2021

Herri R. L...
Alfredo Morales
ALFREDO MORALES
deputy

Pool v. UTC Restaurant 20STCV07785 Hearing Date: September 15, 2021
ORDER TAKING HEARING DATE OFF CALENDAR

The Court has reviewed the motion for preliminary approval. The Court takes the motion off calendar because there are numerous deficiencies, many of which are relate to items plainly required under the Court's online checklist for preliminary approval of class actions. The Court takes this motion off calendar without prejudice to the filing of a renewed motion that addresses all of the following concerns.

Dunk/Kullar Analysis

1. As noted on the Court's online checklist, a *Dunk/Kullar* analysis is critical to the Court's ability to grant approval. The motion (pp. 10-11) and the Aiwasian declaration (¶ 12) merely provides a list of documents reviewed and discovery propounded by Plaintiff's Counsel with no analysis as to the information gained that was relevant to the Settlement. The Court cannot ascertain whether, for example, counsel obtained basic time and pay data information for the class obtained: number of work weeks, average hourly wage, etc. Was this information obtained through sampling, if so, what was the method of sampling? Was the sample statistically significant? What information impacted Plaintiff's Counsel's analysis on liability and damages? A detailed explanation must be provided.¹
2. What did Plaintiff's Counsel do to verify Defendants' representations as to class size, work weeks and average hourly rate? Please explain in detail.
3. The motion must include an analysis of the legal and factual basis for each claim. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133 (*Kullar*); *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409.) As noted above, this is a key requirement that the motion fails to satisfy.
4. The motion must also provide enough information to allow the court to make an independent determination that the consideration being received for the release of class members' claims is fair and reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation. (*Kullar, supra*, 168 Cal.App.4th at p. 129.) This means that the moving party must calculate the maximum recovery of each claim asserted in the operative complaint, analyze the defenses asserted by Defendant, and address any other relevant factors justifying the amount accepted in settlement.

¹ The motion at footnote 35 claims that Plaintiff's Counsel interviewed "other Class Members" citing paragraph 12 of the Aiwasian declaration. Paragraph 12 makes no mention of interviews of "other Class members."

5. The motion should present the high, average and low amounts of class payments need to be provided, including with an explanation of how they were calculated.

Settlement Agreement

6. Class Counsel must provide a declaration with evidence of costs to date and a description and estimate amount of future costs. These estimates must be presented in the t Class Notice. Here, the amount mentioned (\$35,000) appears to be excessive and is entirely unsupported. (¶11). The Court is particularly concerned that, with the projected deductions for fees and costs, the class will receive only 27.7% of the Total Settlement Amount (\$76,250 divided by \$275,000).
7. The statement in the motion (at 4:26-27) that “settlement administration costs...are currently estimated not to exceed ten thousand dollars” is also entirely supported Further, the statement is ambiguous. Are administration costs capped or not? The Settlement (¶13) provides that if costs are greater than \$10,000, they will be taken from the Total Settlement Amount. This amounts to a blank check that directly reduces the amounts paid to class members.
8. The Court cannot approve a provision agreeing that a request for exclusion shall be presumptively invalid if it does not contain all of the information requested in ¶7.ff. Opt outs should be permitted under any circumstances allowing the Settlement Administrator to ascertain the identity of the class member and that the class member wants to opt-out. Timeliness is still required (60 days). Please also provide that requests for exclusion may be faxed or emailed to the Settlement Administrator, in addition to mail.
9. Delete all language in the Settlement Agreement (including ¶7.x) and Class Notice indicating that class members may be heard at final approval only if they have complied with all objection procedures. The Court will hear from any class member who attends the final approval hearing and asks to speak regarding his or her objection. The Court will not require objectors to file written objections or notices of appearance. Although it is permissible to require that written objections be submitted within 60 days after the mailing of Class Notice, the Court will not approve a requirement that written objections will not be presumptively invalidated if the objections do not comply with all requirements (other than timeliness). Modify the Agreement and Class Notice accordingly. Further, add, in the Settlement Agreement and Class Notice that written objections may also be made by fax or email, in addition to mail.
10. Under ¶10, the parties have agreed to defer distributions to the class for up to 45 days after the Effective Date. This is far too long. Further, the agreement should

expressly provide that attorneys' fees/costs and enhancement award are not to be paid before the class is paid.

11. Per ¶17, delivery of Data List will not take place for up to 21 days. This is far too long.
12. Provide evidence proving the Plaintiff's PAGA claim is supported by a letter to the LWDA and that Plaintiff's counsel has submitted the proposed settlement agreement to the LWDA.

Class Notice

13. The proposed Class Notice needs to be completely rewritten so that it is in plain English, shorten and simplified.² As presented, it is too difficult for a lay person to read and understand it.
14. Immediately after the "You Are Notified That" preamble, add boxes summarizing class member's options (do nothing, request exclusion, object) and the deadlines for making requests for exclusion and written objections as appropriate. The last box should contain the date, time and location of the Final Approval Hearing. Also include pertinent section references in the boxes.

15. After the boxes, provide:

According to Defendant's records, you have been identified as a member of the Class, and therefore are receiving this Notice. Based on Defendant's records, and the Parties' current assumptions, **your Individual Share is estimated to be \$_____ and your Individual PAGA Payment is estimated to be \$_____.** The actual amount you may receive may be different and will depend on a number of factors.

Your options are further explained in this Notice. To exclude yourself from, or object to, the settlement you must take action by certain deadlines. If you want to the settlement as proposed, you don't need to do anything to obtain your share of the settlement. Defendant will not retaliate against you for any actions you take with respect to the settlement

16. Provide that the revised Settlement Agreement, motion for attorneys' fees/costs, motion for enhancement award, and final judgment will be included on a website (either the Settlement Administrator or Plaintiff's Counsel) and from Plaintiff's Counsel.

² Please note there is a discrepancy in the class definition stated in the Class Notice versus the definition in the Settlement Agreement at paragraph 7.c. Please also shorten and simplify the "You Are Notified That" preamble and include the correct definition in the preamble.

17. Will Class Notice be given only in English? If so, please justify/explain.

Preliminary Approval Order

18. Revise the Proposed Order in accordance with the above paragraphs of this Order. Further, do not attach any exhibits to the Proposed Order.

JUL 07 2021


AMY D. HOGUE

EXHIBIT 2

1 **FIRST AMENDED JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT**

2 This First Amended Joint Stipulation of Class Action and PAGA Settlement (“Agreement” or
3 “Settlement Agreement”) is made and entered into by and between Plaintiff Nathan Pool (“Plaintiff” or
4 “Class Representative”), on behalf of all others similarly situated and aggrieved employees, and
5 Defendants UTC Restaurant Venture, LLC and Paseo Restaurant Venture, LLC (together, “Defendants”)
6 (collectively with Plaintiff, the “Parties”), pursuant to section 43 of the Joint Stipulation of Class Action
7 and PAGA Settlement entered into by the Parties on or around April 12, 2021.

8 The Parties agree to supplant the Joint Stipulation of Class Action and PAGA Settlement entered
9 into by the Parties on or around April 12, 2021, with this First Amended Joint Stipulation of Class
10 Action and PAGA Settlement. This Settlement Agreement shall be binding on Plaintiff, Settlement Class
11 Members (as defined herein), and PAGA Members (as defined herein) and on Defendants, subject to the
12 terms and conditions hereof and the approval of the Court.

13 **RECITALS**

14 1. Procedural History. On January 29, 2020, Nathan Pool provided written notice to the Labor
15 and Workforce Development Agency (“LWDA”) and Defendants alleging Defendants violated specific
16 provisions of the California Labor Code (“LWDA Letter”), a true and correct copy of which is attached
17 hereto as “**Exhibit A.**”. On February 27, 2020, Nathan Pool filed a Class Action Complaint for Damages
18 (“Class Complaint”) against Defendants in the Superior Court of California for the County of Los Angeles,
19 Case No. 20STCV07785 (“Class Action”), alleging ten (10) causes of action for violation of California
20 Labor Code and California Business & Professions Code §§ 17200, *et seq.* on behalf of all current and
21 former hourly-paid or non-exempt employees who worked for Defendants within the State of California
22 at any time since February 27, 2016 for failure to pay overtime wages, failure to provide meal periods and
23 premium payments in lieu thereof, failure to provide rest periods and premium payments in lieu thereof,
24 failure to pay minimum wages, failure to timely pay wages upon termination, failure to timely pay wages
25 during employment, failure to provide compliant wage statements, failure to maintain complete and
26 accurate payroll records, and failure to reimburse necessary business expenses. On April 3, 2020, Plaintiff
27 filed a Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code §
28 2698, Et Seq. (“PAGA Complaint”) against Defendants in the Superior Court of California of Los

1 Angeles, Case No. 20GDCV00377 (“PAGA Action”), alleging a single cause of action against Defendants
2 for violation of the Private Attorneys General Act, California Labor Code section 2698, *et seq.* (“PAGA”).
3 On August 10, 2020, Plaintiff filed an Amendment to Complaint to add Great Maple LLC as a defendant
4 in the Class Action. On August 25, 2020, pursuant to stipulation by the Parties, the Court issued an Order
5 consolidating the Class Action and PAGA Action (the “Actions”) and designating the Class Action as the
6 lead case.

7 2. Defendants deny all material allegations set forth in the Actions and have asserted
8 numerous affirmative defenses. Notwithstanding, in the interest of avoiding further litigation,
9 Defendants desire to fully and finally settle the Actions.

10 3. Class Counsel in the Actions diligently investigated the proposed Class Members’ claims
11 against Defendants, including any and all applicable defenses and the applicable law. The investigation
12 included, *inter alia*, the exchange of information, data, and documents, and review of numerous
13 corporate policies and practices.

14 4. On October 20, 2020, the Parties participated in mediation with Paul Grossman, Esq. (the
15 “Mediator”), a respected mediator of complex wage and hour actions, and with the assistance of the
16 Mediator and his evaluations, the Parties reached the settlement that is memorialized herein. The
17 settlement discussions were conducted at arm’s-length, and the settlement is the result of an informed
18 and detailed analysis of Defendants’ potential liability and exposure in relation to the costs and risks
19 associated with continued litigation. Based on the documents produced, as well as Class Counsel’s own
20 independent investigation and evaluation, Class Counsel believes that the settlement with Defendants
21 for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and
22 adequate and is in the best interest of the Class Members in light of all known facts and circumstances,
23 including the risk of significant delay and uncertainty associated with litigation and various defenses
24 asserted by Defendants.

25 5. Defendants represent that no non-exempt employees worked for Great Maple LLC, and
26 therefore, Plaintiff has agreed to dismiss Great Maple LLC as a defendant in the Class Action.

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6. The Parties expressly acknowledge that this Settlement Agreement is entered into solely for the purpose of compromising significantly disputed claims and that nothing herein is an admission of liability or wrongdoing by Defendants. If for any reason the Settlement Agreement is not approved, it will be of no force or effect, and the Parties shall be returned to their original respective positions.

DEFINITIONS

7. The following definitions are applicable to this Settlement Agreement. Definitions contained elsewhere in this Settlement Agreement will also be effective:

a. “Attorneys’ Fees and Costs” means attorneys’ fees approved by the Court for Class Counsel’s litigation and resolution of the Actions, and all actual costs incurred and to be incurred by Class Counsel in the Actions, as set forth in Paragraph 11 below.

b. “Class Counsel” or “Plaintiff’s Counsel” mean Edwin Aiwazian, Arby Aiwazian, and Joanna Ghosh of Lawyers *for* Justice, PC, who will seek to be appointed counsel for the Class.

c. “Class Member(s)” or “Class” mean Plaintiff and all current and former hourly-paid, non-exempt employees who worked for Defendants in the State of California at any time during the period from February 27, 2016 through October 20, 2020, who did not sign arbitration agreements.

d. “Class Period” means the time period from February 27, 2016 through October 20, 2020.

e. “Class Released Claims” means any and all claims and damages arising from any of the facts alleged in Plaintiff’s Class Complaint during the period from February 27, 2016 through Preliminary Approval, including Defendants’ alleged failure to pay minimum wages, failure to pay overtime wages, failure to provide meal and rest periods, failure to issue accurate itemized wage statements, and violation of California Business and Professions Code sections 17200, *et seq.*, for, *inter alia*, failure to pay overtime and minimum wages, provide meal and rest periods and associated premium payments, timely pay wages during employment and upon termination, provide compliant wage statements, maintain complete and accurate payroll records, and reimburse necessary business-related expenses. The Class Released Claims exclude any claims for penalties under the PAGA.

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1 f. "Class Released Parties" means Defendants, and all their present and former
2 parent companies, subsidiaries, divisions, related or affiliated companies, shareholders, officers,
3 directors, employees, agents, attorneys, insurers, successors and assigns.

4 g. "Class Representative" or "Plaintiff" mean Nathan Pool.

5 h. "Class Settlement" means the settlement and resolution of Class Released Claims.

6 i. "Class Workweeks" means the number of weeks each Class Member worked for
7 Defendants as an hourly-paid, non-exempt employee during the Class Period, which will be calculated
8 by determining the number of days between the start and end dates of employment during the Class
9 Period, divided by seven (7). Each Class Member will be credited with at least one (1) Class Workweek.
10 The Class Workweeks through October 14, 2020 are estimated to be approximately 6,683.

11 j. "Court" means the Superior Court of the State of California for the County of Los
12 Angeles.

13 k. "Data List" means a complete list of all Class Members and PAGA Members that
14 Defendants will diligently and in good faith compile from their records and provide to the Settlement
15 Administrator. The Data List will be formatted in a readable Microsoft Office Excel spreadsheet and
16 will include the full names, last known mailing addresses, last known telephone numbers (if available),
17 and Social Security Numbers of all Class Members and PAGA Members, as well as their dates of
18 employment, total Class Workweeks, total PAGA Workweeks, and such other information as is
19 necessary for the Settlement Administrator to administer this Settlement Agreement.

20 l. "Defendants" means UTC Restaurant Venture, LLC and Paseo Restaurant Venture,
21 LLC.

22 m. "Defendants' Counsel" means James P. Carter and Heather B. Dillion of Jackson
23 Lewis P.C.

24 n. "Effective Date" means the latter of: (a) if any timely objections are filed and not
25 subsequently withdrawn, the 60th day after the Court enters an order granting final approval of this
26 Settlement Agreement; (b) if any timely appeals are filed, the date of the resolution (or withdrawal) of
27 any such appeal in a way that does not alter the terms of the Settlement Agreement; or (c) if no timely
28 objections are filed, or if all objections are withdrawn, the date upon which the Court enters an order

1 granting final approval of this Settlement Agreement.

2 o. “Enhancement Payment” means the amount to be paid to Plaintiff Nathan Pool in
3 recognition of his effort and work in prosecuting the Actions and in exchange for a general release, as
4 set forth in Paragraph 12 below.

5 p. “Final Approval” means the determination by the Court that the settlement is fair,
6 reasonable, and adequate, and entry of the Final Approval Order and Judgment based thereon.

7 q. “Final Approval Hearing” means the hearing at which the Court will consider and
8 determine whether the settlement should be granted Final Approval.

9 r. “Individual PAGA Payment” means the amount payable to each PAGA Member
10 from the 25% portion of the PAGA Penalties that is allocated to PAGA Members, as provided in
11 Paragraph 15(c).

12 s. “Individual Settlement Payment” means the net payment of each Settlement Class
13 Member’s Individual Settlement Share, after reduction for the employee’s share of taxes and
14 withholdings with respect to the wages portion of the Individual Settlement Share, as provided in
15 Paragraph 26.

16 t. “Individual Settlement Share” means the *pro rata* share of the Net Settlement
17 Amount that a Class Member may be eligible to receive under the Settlement Agreement, to be
18 calculated in accordance with Paragraph 15.

19 u. “LWDA Payment” means the amount that the Parties have agreed to pay to the
20 California Labor and Workforce Development Agency (“LWDA”) as set forth in Paragraph 14.

21 v. “Net Settlement Amount” means the portion of the Total Settlement Amount that
22 is available for distribution to Settlement Class Members, which is the Total Settlement Amount less the
23 Court-approved Enhancement Payment, Settlement Administration Costs, PAGA Penalties, and
24 Attorneys’ Fees and Costs.

25 w. “Notice” means the revised Notice of Class Action and PAGA Settlement,
26 substantially in the form attached as “**Exhibit B.**”

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1 x. “Notice of Objection” means a Class Member’s timely written objection to the
2 Class Settlement, which should contain: (a) the case name and number of the Class Action; (b) the
3 objector’s full name, signature, address, and telephone number, and the last four digits of his or her
4 Social Security number; (c) a written statement of all grounds for the objection accompanied by any
5 legal support for such objection; and (d) copies of any papers, briefs, or other documents upon which
6 the objection is based. Notwithstanding the above, the Settlement Administrator will accept any timely
7 Notice of Objection received on or before the Response Deadline if the Settlement Administrator can
8 identify the Class Member and that the Class Member clearly wishes to object to the Class Settlement.

9 y. “PAGA Member(s)” means Plaintiff and all current and former hourly-paid, non-
10 exempt employees who worked for Defendant Paseo Restaurant Venture, LLC in California at any time
11 during the period from January 29, 2019 through October 20, 2020.

12 z. “PAGA Period” means the period between January 29, 2019 through October 20,
13 2020.

14 aa. “PAGA Release” or “PAGA Released Claims” means the release by all PAGA
15 Members for all claims for PAGA that arise out of or relate to the factual allegations pled in the LWDA
16 Letter and PAGA Complaint, from January 29, 2019 through Preliminary Approval, including: failure to
17 pay minimum and overtime wages, failure to provide compliant meal periods and associated premium
18 pay, failure to provide compliant rest periods and associated premium pay, failure to provide compliant
19 wage statements, failure to timely pay wages upon termination of employment, failure to timely pay
20 wages during employment, failure to maintain requisite payroll records, and unreimbursed business
21 expenses. In light of the binding nature of a PAGA judgment on non-party employees pursuant to *Arias*
22 *v. Superior Ct. (Dairy)*, 46 Cal. 4th 969 (2009), PAGA Members who exclude themselves from the Class
23 Settlement shall still receive an Individual PAGA Payment as calculated by the Settlement Administrator.

24 bb. “PAGA Released Parties” means Defendant Paseo Restaurant Venture, LLC, and
25 all its present and former parent companies, subsidiaries, divisions, related or affiliated companies,
26 shareholders, officers, directors, employees, agents, attorneys, insurers, successor and assigns.

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1 cc. "PAGA Workweeks" means the number of weeks each PAGA Member worked
2 for Defendant Paseo Restaurant Venture, LLC as an hourly-paid, non-exempt employee during the
3 PAGA Period, which will be calculated determining the number of days between the start and end dates
4 of employment during the PAGA Period, divided by seven (7). Each PAGA Member will be credited
5 with at least one (1) PAGA Workweek.

6 dd. "Parties" means Plaintiff and Defendants, collectively, and "Party" means either
7 Plaintiff or any of Defendants.

8 ee. "Preliminary Approval" means entry of the Court order granting preliminary
9 approval of the Settlement Agreement.

10 ff. "Request for Exclusion" means a timely letter submitted by a Class Member
11 indicating a request to be excluded from the Class Settlement. The Request for Exclusion should: (a)
12 contain the case name and number of the Class Action; (b) be signed by the Class Member; (c) contain
13 the full name, address, telephone number, and the last four digits of the Social Security Number of the
14 Class Member requesting exclusion; (d) clearly state that the Class Member does not wish to be included
15 in the Class Settlement; and (e) be returned by mail, facsimile, or email to the Settlement Administrator
16 at the specified address, postmarked or fax-stamped on or before the Response Deadline.
17 Notwithstanding the above, the Settlement Administrator will accept any timely Request for Exclusion
18 received on or before the Response Deadline if the Settlement Administrator can identify the Class
19 Member and that the Class Member clearly does not wish to be included in the Class Settlement. The
20 date of the postmark or fax-stamp on the return mailing envelope, facsimile, or email on the submission
21 will be the exclusive means to determine whether a Request for Exclusion has been timely submitted.
22 A Class Member who does not request exclusion from the Class Settlement will be deemed a Settlement
23 Class Member and will be bound by all terms of the Settlement Agreement, if the settlement is granted
24 Final Approval by the Court. Any Class Member who timely requests to be excluded from the Class
25 Settlement will no longer be a Settlement Class Member and will not have any right to object, appeal,
26 or comment on the Class Settlement. Any Class Member who is also a PAGA Member and opts out of
27 the Class Settlement will remain a PAGA Member, will receive an Individual PAGA Payment, and will
28 be bound by the PAGA Release.

1 gg. “Response Deadline” means the deadline by which Class Members must submit a
2 Request for Exclusion, objection, and/or dispute of the Class Workweeks credited to them, which shall
3 be the date that is sixty (60) calendar days from the initial mailing of the Notice by the Settlement
4 Administrator, unless the 60th day falls on a Sunday or Federal holiday, in which case the Response
5 Deadline will be extended to the next day on which the U.S. Postal Service is open. The Response
6 Deadline may also be extended by express agreement between Class Counsel and Defendants’ Counsel.
7 Under no circumstances, however, will the Settlement Administrator have the authority to extend the
8 Response Deadline. In the event that a Notice is re-mailed to a Class Member, the Response Deadline
9 for that Class Member shall be the extended by fifteen (15) calendar days.

10 hh. “Settlement Administration Costs” means the costs payable from the Total
11 Settlement Amount, subject to Court approval, to the Settlement Administrator for administering this
12 settlement, as set forth in Paragraph 13 below.

13 ii. “Settlement Administrator” means Simpluris, Inc., or any other third-party class
14 action settlement administrator agreed to by the Parties and approved by the Court for purposes of
15 administering this settlement. The Parties each represent that they do not have any financial interest in
16 the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that
17 could create a conflict of interest.

18 jj. “Settlement Class Members” means all Class Members who do not submit a timely
19 Request for Exclusion.

20 kk. “Total Settlement Amount” means the amount of two hundred seventy-five
21 thousand dollars (\$275,000.00) to be paid by Defendants in full resolution of all Class Released Claims
22 and PAGA Released Claims in the Actions, which includes all Attorneys’ Fees and Costs, Enhancement
23 Payment, LWDA Payment, Net Settlement Amount to be paid to the Settlement Class Members,
24 Individual PAGA Payments to be paid to PAGA Members, and Settlement Administration Costs. The
25 employer’s share of taxes on the wages portion of Individual Settlement Shares will be paid separately
26 and in addition to the Total Settlement Amount.

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1 **CLASS CERTIFICATION**

2 8. For the purposes of this settlement only, the Parties stipulate to the certification of the
3 following Class: all current and former hourly-paid, non-exempt employees who worked for Defendants
4 at any time during the Class Period, who did not sign arbitration agreements.

5 9. The Parties agree that certification for the purpose of settlement is not an admission that
6 certification is proper under Section 382 of the California Code of Civil Procedure. Should, for whatever
7 reason, the Court not grant Final Approval, the Parties' stipulation to class certification as part of the
8 settlement shall become null and void *ab initio* and shall have no bearing on, and shall not be admissible
9 in connection with, the issue of whether or not certification would be inappropriate in a non-settlement
10 context.

11 **TERMS OF AGREEMENT**

12 NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements set
13 forth herein, the Parties agree, subject to the Court's approval, as follows:

14 10. Funding of the Total Settlement Amount. Within fifteen (15) calendar days after the
15 Effective Date, the Settlement Administrator will provide the Parties with an accounting of the amounts
16 to be paid by Defendants pursuant to the terms of the Settlement Agreement. Within twenty-five (25)
17 calendar days of the Effective Date, Defendants will make a one-time deposit of the Total Settlement
18 Amount into a settlement account to be established by the Settlement Administrator. Within five (5)
19 calendar days of the funding of the Total Settlement Amount, the Settlement Administrator will issue
20 Individual Settlement Payments to Settlement Class Members and Individual PAGA Payments to PAGA
21 Members. Within seven (7) calendar days of the funding of Total Settlement Amount, the Settlement
22 Administrator will issue payments due under the settlement and approved by the Court, as follows: (a)
23 LWDA Payment to the Labor and Workforce Development Agency; (b) Enhancement Payment to
24 Plaintiff; and (c) Attorneys' Fees and Costs to Class Counsel. The Settlement Administrator will also
25 issue a payment to itself for Court-approved services performed in connection with the settlement. In
26 no way shall the Attorneys' Fees and Costs and Enhancement Payment be paid before Settlement Class
27 Members and PAGA Members are issued payment under the Settlement.

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11. Attorneys' Fees and Costs. Class Counsel will request and Defendants will not oppose attorneys' fees of up to thirty-five percent (35%) of the Total Settlement Amount (i.e., up to ninety-six thousand two hundred fifty dollars (\$96,250.00)) and reimbursement of actual costs and expenses associated with Class Counsel's litigation and settlement of the Actions, in an amount not to exceed thirty-five thousand dollars (\$35,000.00), both of which will be paid from the Total Settlement Amount subject to Court approval. These amounts will cover any and all work performed and any and all costs incurred by Class Counsel in connection with the litigation of the Actions, including without limitation all work performed and costs incurred to date, and all work to be performed and all costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. Class Counsel shall be solely and legally responsible for correctly characterizing this compensation for tax purposes and for paying any taxes on the amounts received. With respect to the Attorneys' Fees and Costs to Class Counsel, the Settlement Administrator may purchase an annuity to utilize United States Treasuries and bonds or other attorney fee deferral vehicles, for Class Counsel. Any additional expenses for the purchase of an annuity by the Settlement Administrator shall be paid separately by Class Counsel and shall not be included within the Settlement Administration Costs. Any portion of the Attorneys' Fees and Costs not awarded to Class Counsel shall be a part of the Net Settlement Amount for the benefit of Settlement Class Members.

12. Enhancement Payment. In recognition of his efforts and work in prosecuting the Actions, Defendants agree not to oppose or impede any application or motion for Enhancement Payment in an amount up to seven thousand five hundred dollars (\$7,500.00) to Plaintiff Nathan Pool. The Enhancement Payment, which will be paid from the Total Settlement Amount, subject to Court approval, will be in addition to his Individual Settlement Payment and Individual PAGA Payment that are to be paid pursuant to the settlement. The Settlement Administrator will issue an IRS Form 1099 to Plaintiff for the Enhancement Payment, and Plaintiff shall be solely and legally responsible for correctly characterizing this compensation for tax purposes and for paying any taxes on the amounts received. Plaintiff agrees to indemnify and hold Defendants harmless from any claim or liability for taxes, penalties, or interest arising as a result of the Enhancement Payment. Should the Court approve the Enhancement Payment

1 to Plaintiff in an amount that is less than that set forth above, the difference between the lesser amount
2 approved by the Court and the amount allocated toward the Enhancement Payment will be part of the
3 Net Settlement Amount for the benefit of Settlement Class Members.

4 13. Settlement Administration Costs. The Settlement Administrator will be paid for the
5 reasonable costs of administration of the Settlement and distribution of payments under the settlement,
6 not to exceed Ten Thousand Dollars (\$10,000.00). A true and correct copy of the estimated quote
7 provided by the Settlement Administrator for purposes of administration of the settlement is attached
8 hereto as “**Exhibit C**”. These costs, which will be paid from the Total Settlement Amount, subject to
9 Court approval, will include, *inter alia*, translating the Notice in Spanish, printing, distributing, and
10 tracking Notices and other documents for this settlement, calculating and distributing payments due under
11 the settlement, issuing of 1099 and W-2 IRS Forms and all required tax reporting, filings, withholdings,
12 and remittances, providing necessary reports and declarations, and other duties and responsibilities set
13 forth herein to process this settlement, and as requested by the Parties. Any portion of the estimated,
14 designated, and/or awarded Settlement Administration Costs which are not in fact required to fulfill
15 payment to the Settlement Administrator to undertake the requirement settlement administration duties
16 will become part of the Net Settlement Amount.

17 14. PAGA Penalties. Subject to approval by the Court, the Parties agree that the amount of
18 fifty thousand dollars (\$50,000.00) from the Total Settlement Amount will be allocated toward penalties
19 under the Private Attorneys General Act, California Labor Code Section 2698, *et seq.* (“PAGA
20 Penalties”), of which seventy-five percent (75%), or \$37,500.00, will be paid to the LWDA (i.e., the
21 LWDA Payment) and twenty-five percent (25%) or, \$12,500.00, will be distributed to PAGA Members
22 (“Employee PAGA Amount”) on a *pro rata* basis, based on PAGA Workweeks.

23 15. Individual Settlement Share and Individual PAGA Payment Calculations. Class Members
24 shall not be required to submit a claim in order to receive a share of the Net Settlement Amount, and no
25 portion of the Total Settlement Amount shall revert to Defendants. Individual Settlement Shares will be
26 calculated and apportioned from the Net Settlement Amount based on each Class Member’s Class
27 Workweeks and Individual PAGA Payments will be calculated and apportioned from the Employee
28 PAGA Amount based on each PAGA Member’s PAGA Workweeks, as follows:

1 a. After Preliminary Approval of the Settlement, the Settlement Administrator will
2 divide the Net Settlement Amount by the Class Workweeks of all Class Members to yield the “Estimated
3 Workweek Value,” and multiply each Class Member’s individual Class Workweeks by the Estimated
4 Workweek Value to yield his or her estimated Individual Settlement Share that he or she may be eligible
5 to receive under the Settlement.

6 b. After Final Approval of the Settlement, the Settlement Administrator will divide
7 the final Net Settlement Amount by the Class Workweeks of all Settlement Class Member to yield the
8 “Final Workweek Value,” and multiply each Settlement Class Member’s individual Class Workweeks
9 by the Final Workweek Value to yield his or her Individual Settlement Share.

10 c. To determine the Individual PAGA Payment for each PAGA Member, the
11 Settlement Administrator will divide the Employee PAGA Amount, i.e., \$12,500, by the total of all
12 PAGA Members’ PAGA Workweeks resulting in the PAGA Workweek Value and then multiplying the
13 PAGA Workweek Value by each PAGA Member’s individual PAGA Workweeks.

14 16. Settlement Awards Do Not Trigger Additional Benefits. All payments made under the
15 settlement shall be deemed to be paid to the payee solely in the year in which such payments actually
16 are issued to the payee. It is expressly understood and agreed that payments made under this settlement
17 shall not in any way entitle Plaintiff or any Settlement Class Member and/or PAGA Member to additional
18 compensation or benefits under any new or additional compensation or benefits, or any bonus, contest
19 or other compensation or benefit plan or agreement in place during the Class Period, nor will it entitle
20 any Settlement Class Member and/or PAGA Member to any increased retirement, 401K benefits or
21 matching benefits, or deferred compensation benefits (notwithstanding any contrary language or
22 agreement in any benefit or compensation plan document that might have been in effect during the Class
23 Period).

24 17. Delivery of the Data List. Within fifteen (15) calendar days of Preliminary Approval,
25 Defendants will provide the Data List to the Settlement Administrator.

26 18. Notice by First-Class U.S. Mail.

27 a. Within fourteen (14) calendar days after receiving the Data List from Defendants,
28 the Settlement Administrator will perform a search based on the National Change of Address Database

1 or any other similar services available, such as provided by Experian, for information to update and
2 correct for any known or identifiable address changes, and will mail a Notice in English and Spanish (in
3 the form attached as “**Exhibit B**” to this Settlement Agreement) to all Class Members and PAGA
4 Members via First-Class U.S. Mail, using the most current, known mailing addresses identified by the
5 Settlement Administrator.

6 b. With respect to Notices that are returned as undeliverable on or before the
7 Response Deadline, the Settlement Administrator will search for an alternate address by way of skip-
8 trace and re-mail the Notice within five (5) calendar days.

9 19. Dispute Regarding Class Workweeks. Class Members will have an opportunity to dispute
10 the number of Class Workweeks to which they have been credited, as reflected in their respective
11 Notices. In order to dispute Class Workweeks, Class Members must submit a written letter to the
12 Settlement Administrator that: (a) contains the case name and number of the Class Action, (b) is signed
13 by the Class Member, (c) contains the full name, address, telephone number, and the last four digits of
14 the Social Security Number of the disputing Class Member, (d) clearly states that the Class Member
15 disputes the number of Class Workweeks credited to him or her and what he or she contends is the
16 correct number to be credited to him or her, (e) includes information and/or attaches documentation
17 demonstrating that the number of Class Workweeks that he or she contends should be credited to him
18 or her are correct, and (f) is returned by mail, facsimile, or email to the Settlement Administrator at the
19 specified address, postmarked or fax-stamped on or before the Response Deadline. The date of the
20 postmark or fax-stamp on the return mailing envelope, facsimile, or email on the submission will be the
21 exclusive means to determine whether a dispute has been timely submitted. Absent evidence rebutting
22 the accuracy of Defendants’ records and data as they pertain to the number of Class Workweeks to be
23 credited to a disputing Class Member, Defendants’ records will be presumed correct and determinative
24 of the dispute. However, if a Class Member produces information and/or documents to the contrary,
25 the Settlement Administrator will evaluate the materials submitted by the Class Member and the
26 Settlement Administrator will resolve and determine the number of eligible Class Workweeks that the
27 disputing Class Member should be credited with under the settlement. The Settlement Administrator’s
28 decision on such disputes will be final and non-appealable.

1 20. Settlement Checks. The Settlement Administrator will be responsible for undertaking
2 appropriate deductions, required tax reporting, and issuing the Individual Settlement Payments to the
3 Settlement Class Members and Individual PAGA Payments to PAGA Members in accordance with this
4 Settlement Agreement. To the extent that a Settlement Class Member is also a PAGA Member, the
5 Settlement Administrator will issue both Individual Settlement Payments and Individual PAGA
6 Payments by way of a single check. Settlement checks will be valid and negotiable for one hundred and
7 eighty (180) calendar days from the date the checks are issued, and thereafter, shall be cancelled. All
8 funds associated with such cancelled checks will be transmitted to the State Controller's Office
9 Unclaimed Property Division in the names of the Settlement Class Members and/or PAGA Members
10 whose checks are cancelled. The Settlement Administrator shall undertake amended and/or supplemental
11 tax filings and reporting, required under applicable local, state, and federal tax laws, that are necessitated
12 due to the cancellation of any settlement checks.

13 21. Procedure for Requesting Exclusion from the Settlement. Any Class Member wishing to
14 be excluded from the Class Settlement must submit a written Request for Exclusion to the Settlement
15 Administrator, by mail, facsimile, or email, no later than the Response Deadline. The date of the
16 postmark or fax-stamp on the return mailing envelope, facsimile, or email will be the exclusive means
17 to determine whether a Request for Exclusion has been timely submitted. The Settlement Administrator
18 will certify jointly to Class Counsel and Defendants' Counsel the Requests for Exclusion that were
19 timely submitted, and also identify the individuals who have submitted a timely Request for Exclusion
20 in a declaration that is to be filed with the Court in advance of the Final Approval Hearing. Any Class
21 Member who submits a Request for Exclusion is prohibited from making any objection to the Class
22 Settlement. Any Class Member who timely requests to be excluded from the Class Settlement will not
23 be a Settlement Class Member and will not have any right to object, appeal, or comment on the Class
24 Settlement; however, if the Class Member is also a PAGA Member, he or she will still receive an
25 Individual PAGA Payment, and will be bound by the PAGA Released Claims.

26 22. Settlement Terms Bind All Class Members Who Do Not Request Exclusion. Any Class
27 Member who does not affirmatively request exclusion from the Class Settlement by submitting a timely
28 Request for Exclusion will be bound by all of the terms of the Settlement Agreement, including and not

1 limited to those pertaining to the Class Released Claims, as well as any judgment that may be entered
2 by the Court if it grants Final Approval to the settlement.

3 23. Procedures for Objecting to the Settlement. To object to the Class Settlement, Class
4 Members who have not opted out of the Class Settlement (i.e., Settlement Class Members) must submit
5 a timely Notice of Objection to the Settlement Administrator, by mail, facsimile, or email, on or before
6 the Response Deadline. The Notice of Objection should be signed by the Settlement Class Member and
7 contain all information required by this Settlement Agreement. The date of postmark or fax-stamp on
8 the return mailing envelope, facsimile, or email will be deemed the exclusive means for determining
9 that the Notice of Objection is timely. At no time will any of the Parties or their counsel seek to solicit
10 or otherwise encourage Settlement Class Members to object to the Class Settlement or appeal from the
11 Final Approval Order and Judgment. Settlement Class Members may also present their objection at the
12 Final Approval Hearing regardless of whether they have submitted a Notice of Objection.

13 24. Reports by the Settlement Administrator Regarding Settlement Administration. The
14 Settlement Administrator will provide Defendants' Counsel and Class Counsel a weekly report which
15 certifies: (a) the number of Class Members who have submitted a dispute of Class Workweeks; (b) the
16 number of Class Members who have submitted timely Requests for Exclusion or timely Notices of
17 Objection; and (c) the number of undeliverable and re-mailed Notices. Additionally, the Settlement
18 Administrator will provide to counsel for both Parties any updated reports regarding the administration
19 of the Settlement Agreement as needed or requested, and immediately notify the Parties when it receives
20 a request from an individual or any other entity regarding inclusion in the settlement.

21 25. Certification of Completion. Upon completion of administration of the settlement, the
22 Settlement Administrator will provide a written declaration under oath to certify such completion to the
23 Court and counsel for all Parties.

24 26. Treatment of Individual Settlement Payments and Individual PAGA Payments. Each
25 Individual Settlement Share will be allocated as follows: one-third (1/3) wages and two-thirds (2/3)
26 penalties, interest, and non-wage damages. The portion allocated to wages will be reported on an IRS
27 Form W-2 and the portions allocated to interest and penalties will be reported on an IRS Form-1099 by
28 the Settlement Administrator. The Settlement Administrator will withhold the employee's share of taxes

1 and withholdings with respect to the wages portion of the Individual Settlement Shares, and issue checks
2 to Settlement Class Members for their Individual Settlement Payments (i.e., payment of their Individual
3 Settlement Share net of these taxes and withholdings). The employer's share of taxes and contributions
4 on the wages portion of Individual Settlement Shares will be paid separately and in addition to the Total
5 Settlement Amount. Any payment for an Individual PAGA Payment will be allocated as 100% penalties,
6 will not be subject to taxes or withholdings, and will be reported on an IRS Form-1099, if necessary.

7 27. Administration of Taxes by the Settlement Administrator. The Settlement Administrator
8 will be responsible for issuing to Plaintiff, Settlement Class Members, PAGA Members, and Class
9 Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid pursuant to
10 this Settlement Agreement. The Settlement Administrator will also be responsible for forwarding all
11 payroll taxes, contributions, and withholdings to the appropriate government authorities.

12 28. Tax Liability. Plaintiff, Class Counsel, Defendants, and Defendants' Counsel do not
13 intend anything contained in this Settlement Agreement to constitute advice regarding taxes or
14 taxability, nor shall anything in this Settlement Agreement be relied on as such. Plaintiff and Settlement
15 Class Members understand and agree that Plaintiff and Settlement Class Members will be solely
16 responsible for correctly characterizing any compensation received under the settlement on his/her
17 personal income tax returns and paying any and all taxes due for any and all amounts paid to them under
18 the settlement.

19 29. Circular 230 Disclaimer. EACH PARTY TO THIS SETTLEMENT AGREEMENT (FOR
20 PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS
21 SETTLEMENT AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER
22 PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS SETTLEMENT
23 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR
24 AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS
25 INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE
26 OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF
27 UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS
28 AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS,

1 HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING
2 TAX ADVICE) IN CONNECTION WITH THIS SETTLEMENT AGREEMENT, (B) HAS NOT
3 ENTERED INTO THIS SETTLEMENT AGREEMENT BASED UPON THE RECOMMENDATION
4 OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND
5 (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
6 ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY
7 BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISOR TO
8 ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE
9 CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISOR'S TAX STRATEGIES
10 (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON
11 DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX
12 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED
13 BY THIS SETTLEMENT AGREEMENT.

14 30. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant
15 that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,
16 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause
17 of action or right herein released and discharged.

18 31. Release of Claims by Settlement Class Members. Upon the Effective Date and full
19 funding of the Total Settlement Amount, Plaintiff and all Class Members who do not submit a timely
20 Request for Exclusion (i.e., Settlement Class Members) will be deemed to have fully, finally and forever
21 released, settled, compromised, relinquished, and discharged the Class Released Parties of all Class
22 Released Claims he or she may have or had.

23 32. PAGA Release by PAGA Members. Upon the Effective Date and full funding of the
24 Total Settlement Amount, Plaintiff and all PAGA Members will be deemed to have fully, finally and
25 forever released, settled, compromised, relinquished, and discharged the PAGA Released Parties of all
26 PAGA Released Claims he or she may have or had during the PAGA Period.

27 33. General Release of Claims by Plaintiff. In addition, upon the Effective Date and full
28 funding of the Total Settlement Amount, Plaintiff will be deemed to have fully released and discharged

1 the Released Parties of and from all claims arising from his employment with Defendants, separation of
2 employment from Defendants, and any acts that have or could have been asserted in any legal action or
3 proceeding against Defendants, whether known or unknown, arising under any federal, state, or local law,
4 or statute, including, *inter alia*, those arising under the California Labor Code, Fair Labor Standards Act,
5 Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, Employee Retirement Income
6 Security Act, National Labor Relations Act, California Corporations Code, California Business and
7 Professions Code, California Fair Employment and Housing Act, California Constitution (all as amended),
8 and law of contract and tort, as well as for discrimination, harassment, retaliation, wrongful termination,
9 lost wages, benefits, other employment compensation, emotional distress, medical expenses, other
10 economic and non-economic damages, attorney fees, and costs, arising on or before the date on which the
11 Settlement is executed. With respect to those claims released by Plaintiff in an individual capacity,
12 Plaintiff acknowledges and waives any and all rights and benefits available under California Civil Code
13 Section 1542, which provides:

14 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR
15 OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR
16 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.

17 Plaintiff understands and agrees that claims or facts in addition to or different from those which are now
18 known or believed by him to exist may hereafter be discovered. It is Plaintiff's intention to settle fully
19 and release all claims he now has against the Class Released Parties, whether known or unknown,
20 suspected or unsuspected. The Enhancement Payment will be paid to Plaintiff specifically in exchange
21 for the general release of the Class Released Parties from all claims, including those specified in this
22 paragraph and a covenant not to sue the Class Released Parties. Notwithstanding the above, the general
23 release by Plaintiff shall not extend to claims for workers' compensation benefits, claims for
24 unemployment benefits, or other claims that may not be released by law.

25 34. Duties of the Parties with Respect to Obtaining Preliminary Approval of the Settlement.

26 Upon execution of this Settlement Agreement, Plaintiff shall promptly obtain a hearing date for
27 Plaintiff's Motion for Preliminary Approval of the Settlement, which Plaintiff and Class Counsel will
28 be responsible for drafting, and submit this Settlement Agreement to the Court in support of said motion.

Class Counsel will provide Defendants' Counsel a draft of the Preliminary Approval Motion before the filing deadline. Defendants agree not to oppose the Motion for Preliminary Approval of the Settlement consistent with this Settlement Agreement. Said motion shall apply to the Court for the entry of an order ("Preliminary Approval Order"), which shall be mutually agreed upon by the Parties, seeking the following:

- a. Conditionally certifying the Class for settlement purposes only;
- b. Granting Preliminary Approval of the Settlement;
- c. Preliminarily appointing Plaintiff as representative of the Class;
- d. Preliminarily appointing Plaintiff's Counsel as counsel for the Class;
- e. Approving, as to form and content, the mutually-agreed upon and proposed Notice and directing its mailing to the Class Members and PAGA Members by first class mail;
- f. Approving the manner and method for Class Members to request exclusion from the Class Settlement as contained herein and within the Notice; and
- g. Scheduling a Final Approval Hearing at which the Court will determine whether the Settlement should be finally approved as fair, reasonable and adequate.

35. Duties of the Parties with Respect to Obtaining Final Approval of the Settlement. After the Response Deadline, and with the Court's permission, a Final Approval Hearing will be conducted to determine whether Final Approval of the Settlement should be granted, along with the amounts properly payable for (a) Individual Settlement Payments; (b) Individual PAGA Members; (c) LWDA Payment; (d) Attorneys' Fees and Costs; (e) Enhancement Payment; and (f) Settlement Administration Costs. The Final Approval Hearing will not be held earlier than thirty (30) calendar days after the Response Deadline. Plaintiff and Class Counsel will be responsible for drafting the motion seeking Final Approval of the Settlement. Class Counsel will provide Defendants' Counsel a draft of the Final Approval Motion before the filing deadline. By way of said motion, Plaintiff will apply for the entry of the mutually-agreed upon proposed order and judgment ("Final Approval Order and Judgment"), which will provide for, in substantial part, the following:

- a. Approval of the Settlement as fair, reasonable, and adequate, and directing consummation of its terms and provisions;

b. Certification of the settlement Class;
c. Approval of the application for Attorneys' Fees and Costs to Class Counsel;
d. Approval of the application for Enhancement Payment to Plaintiff;
e. Directing Defendants to fund all amounts due under the Settlement Agreement and ordered by the Court; and
f. Entering judgment in the Actions barring and enjoining all Settlement Class Members from prosecuting the Class Released Claims against any of the Class Released Parties and PAGA Members from prosecuting the PAGA Released Claims against the PAGA Released Parties, while maintaining continuing jurisdiction, in conformity with California Rules of Court 3.769 and the Settlement Agreement.

36. Termination or Revocation of Settlement.

a. If five percent (5%) or more of the Class Members submit timely and valid Requests for Exclusion, Defendants may elect to rescind the Settlement Agreement. Defendants must exercise this right of rescission in writing that is provided to Class Counsel within twenty-one (21) calendar days of the Response Deadline. If Defendants exercise this option, Defendants shall pay any costs of settlement administration owed to the Settlement Administrator incurred up to that date.

b. If the Court finds the Total Settlement Amount to be insufficient to warrant Preliminary Approval or Final Approval of the Settlement, Defendants may, at their election, rescind the Settlement Agreement and all actions taken in furtherance of it will thereby be null and void.

37. Effects of Termination of the Settlement. Termination of the Settlement Agreement shall have the following effects:

a. The Settlement Agreement shall be void and shall have no force or effect, and no Party shall be bound by any of its terms;

b. In the event the Settlement Agreement is terminated, Defendants shall have no obligation to make any payments to any Party, Class Member or attorney, except that the terminating Party shall pay the Settlement Administrator for services rendered up to the date the Settlement Administrator is notified that the settlement has been terminated;

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1 c. The Preliminary Approval Order, Final Approval Order and Judgment, including
2 any order certifying the Class, shall be vacated;

3 d. The Settlement Agreement and all negotiations, statements and proceedings
4 relating thereto shall be without prejudice to the rights of any of the Parties, all of whom shall be restored
5 to their respective positions in the Actions prior to the execution of the Settlement Agreement;

6 e. Neither this Settlement Agreement, nor any ancillary documents, actions,
7 statements or filings in furtherance of the Settlement (including all matters associated with the mediation)
8 shall be admissible or offered into evidence in the Actions or any other action for any purpose whatsoever;
9 and

10 f. Any documents generated to bring the settlement into effect, will be null and void,
11 and any order or judgment entered by the Court in furtherance of this Settlement Agreement will
12 likewise be treated as void from the beginning.

13 38. Escalator Clause. Defendants represent that, for the period of February 27, 2016 to
14 October 14, 2020, there were approximately 6,683 Class Workweeks. If it is determined that the total
15 number of Class Workweeks is actually ten percent (10%) more than 6,683 during the Class Period, then,
16 the Total Settlement Amount will be increased on a *pro rata* basis.

17 39. Continued Jurisdiction. After entry of judgment pursuant to the Settlement, the Court
18 will have continuing jurisdiction pursuant to Rule 3.769 of the California Rules of Court and Section
19 664.6 of the California Code of Civil Procedure, for purposes of addressing: (a) the interpretation and
20 enforcement of the terms of the settlement, (b) settlement administration matters, and (c) such post-
21 judgment matters as may be appropriate under court rules or as set forth in this Settlement Agreement.

22 40. Exhibits Incorporated by Reference. The terms of this Settlement Agreement include the
23 terms set forth in any attached exhibits, which are incorporated by this reference as though fully set
24 forth herein. Any exhibits to this Settlement Agreement are an integral part of the settlement.

25 41. Entire Agreement. This Settlement Agreement and any attached exhibits constitute the
26 entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements
27 may be deemed binding on the Parties. The Parties expressly recognize California Civil Code § 1625
28 and California Code of Civil Procedure § 1856(a), which provide that a written agreement is to be

1 construed according to its terms and may not be varied or contradicted by extrinsic evidence, and the
2 Parties agree that no such extrinsic oral or written representations or terms will modify, vary or
3 contradict the terms of this Settlement Agreement.

4 42. Interim Stay of Proceedings. The Parties agree to hold in abeyance all proceedings in the
5 Actions (including with respect to California Code of Civil Procedure section 583.310), except such
6 proceedings necessary to implement and complete the Settlement Agreement, pending the Final
7 Approval Hearing to be conducted by the Court.

8 43. Waiver and Amendment. The Parties may not waive, amend, or modify any provision of
9 this Settlement Agreement except by written agreement signed by counsel for all Parties, and subject to
10 any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement
11 will not constitute a waiver of any other provision.

12 44. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and
13 represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement
14 Agreement and to take all appropriate actions required or permitted to be taken by such Parties pursuant
15 to this Settlement Agreement to effectuate its terms and to execute any other documents required to
16 effectuate the terms of this Settlement Agreement. The Parties warrant that they understand and have
17 full authority to enter into this Settlement Agreement, and further intend that this Settlement Agreement
18 will be fully enforceable and binding on all parties, and agree that it will be admissible and subject to
19 disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality
20 provisions that otherwise might apply under state or federal law.

21 45. Signatories. It is agreed that because the members of the Class are so numerous, it is
22 impossible or impractical to have each Settlement Class Member execute this Settlement Agreement.
23 The Notice will advise all Class Members of the binding nature of the release as to the Settlement Class
24 Members, and the release shall have the same force and effect as if this Settlement Agreement were
25 executed by each Settlement Class Member.

26 46. Binding on Successors and Assigns. This Settlement Agreement will be binding upon,
27 and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

28 ///

1 47. California Law Governs. All terms of this Settlement Agreement and attached exhibits
2 hereto will be governed by and interpreted according to the laws of the State of California.

3 48. Execution and Counterparts. This Settlement Agreement is subject only to the execution
4 of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All
5 executed counterparts and each of them, including facsimile, electronic, and scanned copies of the
6 signature page, will be deemed to be one and the same instrument.

7 49. Acknowledgment that the Settlement is Fair and Reasonable. The Parties believe this
8 Settlement Agreement is a fair, adequate, and reasonable settlement of the Actions and have arrived at
9 this settlement after arm's-length negotiations and in the context of adversarial litigation, taking into
10 account all relevant factors, present and potential. The Parties further acknowledge that they are each
11 represented by competent counsel and that they have had an opportunity to consult with their counsel
12 regarding the fairness and reasonableness of this Settlement Agreement. In addition, the Mediator may
13 execute a declaration supporting the Settlement and the reasonableness of the Settlement and the Court
14 may, in its discretion, contact the Mediator to discuss the Settlement and whether or not the Settlement
15 is objectively fair and reasonable.

16 50. Invalidity of Any Provision. Before declaring any provision of this Settlement
17 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent
18 possible consistent with applicable precedents so as to define all provisions of this Settlement
19 Agreement valid and enforceable.

20 51. Plaintiff's Waiver of Right to Be Excluded. Plaintiff agrees to sign this Settlement
21 Agreement and, by signing this Settlement Agreement, is hereby bound by the terms herein.

22 52. Non-Admission of Liability. The Parties enter into this Settlement Agreement to resolve
23 the dispute that has arisen between them and to avoid the burden, expense and risk of continued
24 litigation. In entering into this Settlement Agreement, Defendants do not admit, and specifically deny,
25 that they have violated any state, federal, or local law; violated any regulations or guidelines
26 promulgated pursuant to any statute or any other applicable laws, regulations or legal requirements;
27 breached any contract; violated or breached any duty; engaged in any misrepresentation or deception;
28 or engaged in any other unlawful conduct with respect to their employees. Neither this Settlement

1 Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, shall be
2 construed as an admission or concession by Defendants of any such violations or failures to comply with
3 any applicable law. Except as necessary in a proceeding to enforce the terms of this Settlement
4 Agreement, this Settlement Agreement and its terms and provisions shall not be offered or received as
5 evidence in any action or proceeding to establish any liability or admission on the part of Defendants or
6 to establish the existence of any condition constituting a violation of, or a non-compliance with state,
7 federal, local or other applicable law.

8 53. Captions. The captions and paragraph numbers in this Settlement Agreement are inserted
9 for the reader's convenience, and in no way define, limit, construe or describe the scope or intent of the
10 provisions of this Settlement Agreement.

11 54. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and
12 conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed
13 more strictly against one party than another merely by virtue of the fact that it may have been prepared
14 by counsel for one of the Parties, it being recognized that, because of the arms-length negotiations
15 between the Parties, all Parties have contributed equally to the preparation of this Settlement Agreement.

16 55. Representation by Counsel. The Parties acknowledge that they have been represented by
17 counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and that
18 this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed in
19 full.

20 56. Limitation on Publicity. Plaintiff and Class Counsel will not make any public disclosure
21 of the settlement or discuss the settlement or this Settlement Agreement with anyone other than those
22 necessary to effectuate the filing of the Motion for Preliminary Approval, until after the Motion for
23 Preliminary Approval is filed. Class Counsel further agrees not to use the settlement of the Actions or
24 any of its terms for any marketing or promotional purposes. Nothing herein will restrict Class Counsel
25 from including publicly available information regarding this settlement in future judicial submissions
26 regarding Class Counsel's qualifications and experience. Furthermore, Plaintiff and Class Counsel will
27 undertake any and all disclosures required to be made to the LWDA in conformity with PAGA.

28 ///

1 57. All Terms Subject to Final Court Approval. All amounts and procedures described in
2 this Settlement Agreement herein will be subject to final Court approval.

3 58. Notices. All notices, demands, and other communications to be provided concerning this
4 Settlement Agreement shall be in writing and delivered by overnight mail at the addresses set for below,
5 or such other addresses as either Party may designate in writing from time to time:

6 To Plaintiff and Class Counsel:
7 Edwin Aiwanian, Esq.
8 **LAWYERS for JUSTICE, PC**
9 410 West Arden Avenue, Suite 203
 Glendale, California 91203

To Defendants:
 James P. Carter, Esq.
 Heather P. Dillion, Esq.
 JACKSON LEWIS P.C.
 200 Spectrum Center Drive, Suite 500
 Irvine, California 92618

10 59. Final Judgment. The Parties shall provide the Settlement Administrator with a copy of
11 the Final Judgment once it is entered by the Court, and the Settlement Administrator shall post the Final
12 Judgment on its website within three (3) business days of receipt. No individualized notice to the Class
13 will be required.

14 60. Cooperation and Execution of Necessary Documents. All Parties and their counsel will
15 cooperate with each other in good faith and use their best efforts to implement the settlement, including
16 and not limited to, executing all documents to the extent reasonably necessary to effectuate the terms of
17 this Settlement Agreement. If the Parties are unable to reach agreement on the form or content of any
18 document needed to implement the Settlement Agreement, or on any supplemental provisions that may
19 become necessary to effectuate the terms of this Settlement Agreement, the Parties may seek the
20 assistance of the Mediator and then the Court to resolve such disagreement.

21 61. Integration Clause. This Settlement Agreement contains the entire agreement between
22 the Parties relating to the settlement and transaction contemplated hereby, and all prior or
23 contemporaneous agreements, understandings, representations, and statements, whether oral or written
24 and whether by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be
25 waived except in writing.

26 **IN WITNESS WHEREOF,** the Parties hereto knowingly and voluntarily executed this First
27 Amended Joint Stipulation of Class Action and PAGA Settlement between Plaintiff and Defendants:

28 **IT IS SO AGREED.**

PLAINTIFF NATHAN POOL

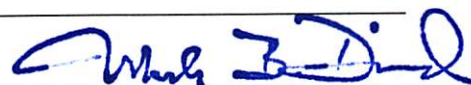
Electronically Signed: 2021-09-14 22:21:27 UTC - 172.56.12.507
AssuredSigner:  9d143d11-45a5-48b9-a136-8d620155d079

Dated: 09/14/2021, 2021

Nathan Pool, Plaintiff

DEFENDANT UTC RESTAURANT VENTURE, LLC

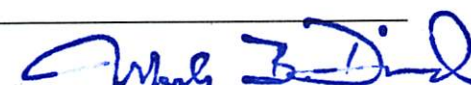
Dated: 11-2, 2021

Full Name: 

Title: managing member
On behalf of UTC Restaurant Venture, LLC

DEFENDANT PASEO RESTAURANT VENTURE, LLC

Dated: 11-2, 2021

Full Name: 

Title: managing member
On behalf of Paseo Restaurant Venture, LLC

APPROVED AS TO FORM

LAWYERS for JUSTICE, PC

Dated: 9/14/2021, 2021


Edwin Aiwanian

Attorneys for Plaintiff Nathan Pool and Proposed Class Counsel

JACKSON LEWIS P.C.

Dated: November 2, 2021


James P. Carter

Heather P. Dillion

Attorneys for Defendants UTC Restaurant Venture, LLC
and Paseo Restaurant Venture, LLC

Exhibit A

January 29, 2020

BY ONLINE SUBMISSION

California Labor & Workforce Development Agency
PAGAfilings@dir.ca.gov

Re: UTC RESTAURANT VENTURE, LLC; PASEO RESTAURANT VENTURE, LLC

Dear Representative:

We have been retained to represent Nathan Pool against UTC Restaurant Venture, LLC, and Paseo Restaurant Venture, LLC (including any and all affiliates, subsidiaries, parents, directors, officers, and employees) (collectively referred to as "UTC") for violations of California wage-and-hour laws. Mr. Pool seeks penalties for violations of the California Labor Code, which are recoverable under California Labor Code section 2698, et seq., the Labor Code Private Attorneys General Act of 2004 ("PAGA") and all other remedies available under PAGA.

Mr. Pool seeks these remedies on behalf of the State of California and "aggrieved employees," as defined herein. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

UTC employed Mr. Pool as an hourly-paid, non-exempt employee from approximately October 1, 2018 to approximately March 5, 2019, in the State of California.

The "aggrieved employees" that Mr. Pool may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees who worked for any of the above-referenced entities within the State of California.

Based on the following facts and theories, UTC has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and IWC Wage Orders including *inter alia*, Wage Order 5-2001.

UTC required aggrieved employees to perform work before their scheduled shifts, after their scheduled shifts, during off-the-clock meal breaks, and/or during rest breaks and failed to compensate aggrieved employees for this time. Such work included, but was not limited to, preparing and maintaining their sections/tables, preparing for their shifts, distributing and logging employee tips, answering work related questions from managers, and helping customers.

California Labor Code sections 510 and 1198 require employers to pay time-and-a-half or double time overtime wages, and make it unlawful to work employees for hours longer than eight hours

in one day and/or over forty hours in one week without paying the premium overtime rates at one-and-one-half times or double the regular rate of pay, including additional remuneration. During the relevant time period, Mr. Pool and other aggrieved employees worked in excess of 8 hours in a day and 40 hours in a week. Therefore, Mr. Pool and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each meal or rest period that is not provided. During the relevant time period, UTC required Mr. Pool and other aggrieved employees to work during meal and rest periods and failed to compensate them properly for non-compliant meal and rest periods including, *inter alia*, short, late, interrupted, and missed meal and rest periods.

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. During the relevant time period, UTC failed to pay Mr. Pool and other aggrieved employees all wages due to them within any time period specified by California Labor Code sections 201 and 202, including earned and unpaid minimum, overtime, and premium wages as discussed above.

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, UTC failed to pay Mr. Pool and other aggrieved employees all wages due to them within any time period specified by California Labor Code section 204, including earned and unpaid minimum, overtime, and premium wages as discussed above.

California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, UTC did not provide Mr. Pool and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from UTC were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include the total hours worked by Mr. Pool and other aggrieved employees, including time spent working off-the-clock and during meal and rest periods as discussed above.

California Labor Code sections 551 and 552 require that every person employed in any occupation of labor is entitled to one day's rest in a seven-day workweek, that no employer of labor shall cause

his employees to work more than six days in a workweek, and that an employer shall pay a civil penalty in the amounts of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation. During the relevant time period, Mr. Pool and the aggrieved employees were required to regularly and/or consistently work in excess of six (6) days in a workweek. During the relevant time period, Mr. Pool and the aggrieved employees were required to work in excess of thirty (30) hours in a week and/or six (6) hours in any one (1) day thereof, during workweeks in which they were required to work in excess of six (6) days. During the relevant time period, Mr. Pool and the aggrieved employees were required to work in excess of six (6) days in a workweek without accumulating or being provided the opportunity to take at least one (1) day of rest, and when Mr. Pool and the aggrieved employees accumulated days of rest, they were not actually provided the opportunity to take the equivalent of one (1) day's rest in seven (7) during each calendar month.

California Labor Code sections 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years. During the relevant time period, UTC failed to keep accurate and complete payroll records showing the actual hours worked daily and the wages earned by Mr. Pool and other aggrieved employees, including earned and unpaid minimum, overtime, and premium wages as discussed above.

California Labor Code sections 1194, 1197, and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, UTC did not provide Mr. Pool and other aggrieved employees with the minimum wages to which they were entitled for work performed "off-the-clock."

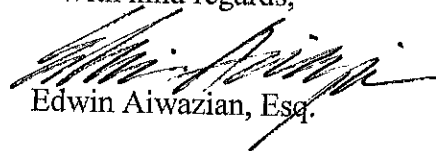
California Labor Code section 1198 provides that "The employment of any employee ... under conditions of labor prohibited by the [Industrial Wage Orders] is unlawful." The applicable Industrial Wage Orders, including *inter alia*, Wage Order 5-2001, require that for each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay. Further, if an employee is required to report for work a second time in any one workday and is furnished less than two (2) hours of work on the second reporting, said employee shall be paid for two (2) hours at the employee's regular rate of pay. During the relevant time period, UTC failed to pay Mr. Pool and other aggrieved employees half the usual or scheduled day's work in an amount no less than two (2) hours nor more than four (4) hours at the employee's regular rate of pay for workdays in which Mr. Pool and the other aggrieved employees reported to work and were furnished less than half the usual or scheduled day's work. During the relevant time period, UTC failed to pay Mr. Pool and other aggrieved employees for two (2) hours at the employee's regular rate of pay on days in which Mr. Pool and the other aggrieved employees were required to report for work a second time in one workday and were furnished less than two (2) hours of work upon the second reporting.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During the relevant time period, Mr. Pool and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by UTC. These costs include, but are not limited to, the use of a personal cell phone for work related purposes, and the purchasing and maintaining of clothing and shoes in compliance with the dress code.

Therefore, on behalf of all aggrieved employees, Mr. Pool seeks all applicable penalties arising out of the above-referenced wage, hour, and payroll practices, or which could be assessed and collected by the Labor and Workforce Development Agency, for violation of the California Labor Code pursuant to PAGA.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

With kind regards,



Edwin Aiwarzian, Esq.

Cc: (By U.S. Certified Mail / Return Receipt Requested)

UTC Restaurant Venture, LLC
Paseo Restaurant Venture, LLC
c/o Leonid M. Zilberman
WILSON TURNER KOSMO LLP
Attorney
402 West Broadway, Suite 1600
San Diego, CA 92101

(By U.S. Mail – Under Separate Cover with Filing Fee Enclosed)

Department of Industrial Relations Accounting Unit
455 Golden Gate Avenue, 10th Floor
San Francisco, California 94102

Exhibit B

NOTICE OF CLASS ACTION AND PAGA SETTLEMENT

Pool v. UTC Restaurant Venture, LLC, et al.
Superior Court of California for the County of Los Angeles, Case No. 20STCV07785

PLEASE READ THIS NOTICE CAREFULLY.

You have received this Notice because Defendants' records indicate that you may be eligible to take part in the class action settlement reached in the above-referenced case.

You do not need to take any action to receive a settlement payment.

This Notice is designed to advise you of your rights and options with respect to the settlement, and how you can request to be excluded from the settlement, object to the class settlement, and/or dispute the number of Class Workweeks that you are credited with, if you so choose.

YOU ARE NOTIFIED THAT: A class and representative action settlement has been reached between Plaintiff Nathan Pool ("Plaintiff") and Defendants UTC Restaurant Venture, LLC and Paseo Restaurant Venture, LLC ("Defendants") (collectively referred to as the "Parties") in the cases entitled *Pool v. UTC Restaurant Venture, LLC, et al.*, Los Angeles County Superior Court, Case No. 20STCV07785 ("Class Action") and *Pool v. UTC Restaurant Venture, LLC, et al.*, Los Angeles County Superior Court, Case No. 20GDCV00377 ("PAGA Action"), which may affect your legal rights if you are part of the Class, as a current or former hourly-paid, non-exempt employee who worked for Defendants in the State of California at any time during the Class Period, who did not sign arbitration agreements.

I. WHAT ARE YOUR RIGHTS AND OPTIONS AS A CLASS MEMBER?

A. Participate in the Settlement

If you want to participate in the Settlement and receive money from the Class Settlement, you do not have to do anything. You will automatically be included in the Settlement and issued your Individual Settlement Payment and, if eligible, your Individual PAGA Payment, unless you decide to exclude yourself from the Class Settlement, in which case you will not receive an Individual Settlement Payment.

Unless you elect to exclude yourself from the Class Settlement, you will be bound by all terms of the Settlement, as well as any judgment that may be entered by the Court based thereon, and will release of all claims described in Section IV.D below. As a Class Member, you will not be separately responsible for the payment of attorney's fees or litigation costs and expenses, unless you retain your own counsel, in which event you will be responsible for your own attorney's fees and expenses.

B. Request Exclusion from the Class Settlement

If you do not wish to participate in the Class Settlement, you must seek exclusion from the Class Settlement by submitting a written letter ("Request for Exclusion") to the Settlement Administrator.

A Request for Exclusion should: (a) contain the case name and number of the Class Action (*Pool v. UTC Restaurant Venture, LLC, et al.*, Case No. 20STCV07785); (b) be signed by you; (c) contain your full name, address, telephone number, and last four digits of your Social Security Number; (d) clearly state that you do not wish to be included in the Class Settlement; and (e) be returned to the Settlement Administrator by mail, fax, or email, postmarked or fax-stamped **on or before [Response Deadline]**, at the following mailing address, email address, or facsimile number:

[Settlement Administrator]

[Mailing Address]

[Email Address]

[Facsimile Number]

If you submit a timely Request for Exclusion, you will not be entitled to receive any payment from the Class Settlement, you will not be bound by the Class Settlement (and the Released Class Claims described in Section IV.D below), and you will not have any right to object to, appeal, or comment on the Class Settlement.

C. Object to the Class Settlement

You can object to the terms of the Class Settlement as long as you have not submitted a Request for Exclusion, by submitting a written objection (“Notice of Objection”) to the Settlement Administrator or presenting your objection at the Final Approval Hearing.

A Notice of Objection should: (a) contain the case name and number of the Class Action (*Pool v. UTC Restaurant Venture, LLC, et al.*, Case No. 20STCV07785); (b) contain your full name, signature, address, and telephone number; (c) contain a written statement of all grounds for the objection accompanied by any legal support for such objection; (d) contain copies of any papers, briefs, or other documents upon which the objection is based; and (e) be mailed, faxed, or emailed to the Settlement Administrator at the mailing address, email address, or facsimile number listed in Section I.B above, postmarked **on or before [Response Deadline]**.

D. Final Approval Hearing

The Court will hold a Final Approval Hearing in Department SSC7 of the Los Angeles County Superior Court, located at Spring Street Courthouse, 312 N. Spring Street, Los Angeles, California 90012, on **[date]**, at **[time]**, to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court also will be asked to approve and award Attorneys’ Fees and Costs to Class Counsel, Enhancement Payment to Plaintiff, and Settlement Administration Costs to the Settlement Administrator.

The hearing may be continued without further notice to Class Members. It is not necessary for you to appear at the Final Approval Hearing, although you may appear remotely if you wish to.

According to Defendants’ records, you have been identified as a member of the Class, and therefore are receiving this Notice. Based on Defendants’ records, and the Parties’ current assumptions, **your Individual Share is estimated to be \$ [redacted] and your Individual PAGA Payment is estimated to be \$ [redacted]**. The actual amount you may receive may be different and will depend on a number of factors.

Your options are further explained in this Notice. To exclude yourself from, or object to, the settlement you must take action by certain deadlines. If you want to join the settlement as proposed, you don’t need to do anything to obtain your share of the settlement. Defendants will not retaliate against you for any actions you take with respect to the settlement.

II. IMPORTANT DEFINITIONS

“**Class**” means Plaintiff and all current and former hourly-paid, non-exempt employees who worked for Defendants in the State of California at any time during the Class Period, who did not sign arbitration agreements.

“**Class Member**” means a member of the Class.

“**Class Period**” means the time period from February 27, 2016 through October 20, 2020.

“**Class Settlement**” means the settlement and resolution of the Class Released Claims (as defined in section III.D).

“**PAGA Member(s)**” means Plaintiff and all current and former hourly-paid, non-exempt employees who worked for Defendant Paseo Restaurant Venture, LLC in California at any time during the PAGA Period.

“**PAGA Period**” means the time period between January 29, 2019 through October 20, 2020.

III. BACKGROUND OF THE LAWSUIT

On February 27, 2020, Nathan Pool started the Class Action by filing the Class Action Complaint for Damages (“Class Complaint”) in the Los Angeles County Superior Court, Case No. 20STCV07785. On April 3, 2020, Plaintiff filed a

Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. (“PAGA Complaint”) against Defendants in the Superior Court of California of Los Angeles, Case No. 20GDCV00377 and commenced an action under the Private Attorneys General Act, California Labor Code section 2698, *et seq.* (“PAGA”) (i.e., the PAGA Action). Plaintiff claims that Defendants failed to properly pay minimum and overtime wages, provide compliant meal and rest breaks and associated premiums, timely pay wages during employment and upon termination of employment and associated waiting-time penalties, provide accurate wage statements, keep requisite payroll records, and reimburse business expenses, and thereby engaged in unfair business practices and conduct that gives rise to penalties under PAGA. Plaintiff seeks, among other things, recovery of unpaid wages and meal and rest period premiums, restitution, penalties, interest, and attorneys’ fees and costs.

Defendants deny all of the allegations in the Class Action and PAGA Action (together, “Actions”) or that they violated any law.

The Parties participated in a full-day mediation session (a process where parties try to resolve their dispute with a third-party neutral mediator) with a respected class action mediator, and as a result, the Parties reached a settlement. The Parties have since entered into the First Amended Joint Stipulation of Class Action and PAGA Settlement (“Settlement” or “Settlement Agreement”).

On [date of Preliminary Approval], the Court entered an order preliminarily approving the Settlement. The Court has appointed Simpluris, Inc. as the administrator of the Settlement (“Settlement Administrator”), Plaintiff Nathan Pool as representative of the Class (“Class Representative”), and the following Plaintiff’s attorneys as counsel for the Class (“Class Counsel”):

Edwin Aiwarzian
Arby Aiwarzian
Joanna Ghosh
Lawyers for Justice, Professional Corporation
410 West Arden Avenue, Suite 203
Glendale, California 91203
Telephone: (818) 265-1020 / Fax: (818) 265-1021

The Settlement represents a compromise and settlement of highly disputed claims. Nothing in the Settlement is intended or will be taken as an admission by Defendants that the claims in the Actions have merit or that Defendants owe anything to Plaintiff or to Class Members and/or PAGA Members. Plaintiff and Defendants, and their respective counsel, have concluded and agree that, in light of the risks and uncertainties to each side of continued lawsuit, the Settlement is fair, reasonable, and adequate, and is in the best interests of Class Members, PAGA Members, and the State of California. The Court has made no ruling on the merits of the Class Members’ claims and has determined only that a class action is the best option to manage the Class for settlement purposes is appropriate under California law.

IV. SUMMARY OF THE PROPOSED SETTLEMENT

A. Settlement Formula

The total gross settlement amount is two hundred seventy-five thousand dollars (\$275,000.00) (the “Total Settlement Amount”). The portion of the Total Settlement Amount that is available for payment to Class Members is referred to as the “Net Settlement Amount.” The Net Settlement Amount will be the Total Settlement Amount less the following payments which are subject to approval by the Court: (1) Attorneys’ Fees and Costs, consisting of attorneys’ fees in an amount not to exceed 35% of the Total Settlement Amount (i.e., \$96,250.00) and reimbursement of litigation costs and expenses in an amount not to exceed thirty-five thousand dollars (\$35,000.00) to Class Counsel; (2) Enhancement Payment in an amount not to exceed seven thousand five hundred dollars (\$7,500.00) to Plaintiff for his services in the Actions; (3) allocation for penalties under the PAGA (“PAGA Penalties”) in the amount of fifty thousand dollars (\$50,000.00); and (4) Settlement Administration Costs in an amount not to exceed ten thousand dollars (\$10,000.00) to the Settlement Administrator. Note: the California Labor and Workforce Development Agency (“LWDA”) will be paid 75% of the PAGA Penalties, or thirty-seven thousand five hundred dollars (\$37,500.00), and the remaining 25% of the PAGA Penalties (i.e., twelve thousand five hundred dollars (\$12,500.00)) will be distributed to PAGA Members (“Employee PAGA Amount”).

Each Class Member is eligible to receive payment under the Settlement of his or her *pro rata* share of the Net Settlement Amount (“Individual Settlement Share”), to be determined as follows:

- Individual Settlement Shares are based on the number of weeks that each Class Member was credited to have worked for Defendants as an hourly-paid, non-exempt employee during the Class Period (“Class Workweeks”), which will be calculated by determining the number of days between the start and end dates of employment during the Class Period, divided by seven (7).
- The Settlement Administrator has divided the Net Settlement Amount by the Class Workweeks of all Class Members to yield the “Estimated Workweek Value,” and multiplied each Class Member’s individual Class Workweeks by the Estimated Workweek Value to yield his or her estimated Individual Settlement Share that he or she may be eligible to receive under the Class Settlement (which is listed in Section III.C below). Class Members who do not submit a valid and timely Request for Exclusion (“Settlement Class Members”) will be issued payment of their final Individual Settlement Share.

Each PAGA Members will receive payment under the Settlement of his or her pro rata share of the Employee PAGA Amount (i.e., 25% of the PAGA Penalties) (“Individual PAGA Payment”), to be determined as follows:

- Individual PAGA Payments are based on the number of weeks that each PAGA Member was credited to have worked for Defendant Paseo Restaurant Venture, LLC as an hourly-paid, non-exempt employee during the PAGA Period (“PAGA Workweeks”), which will be calculated by determining the number of days between the start and end dates of employment during the PAGA Period, divided by seven (7).
- The Settlement Administrator has divided the Employee PAGA Amount, i.e., \$12,500, by the PAGA Workweeks of all PAGA Members to yield the “PAGA Workweek Value,” and multiplied each PAGA Member’s individual PAGA Workweeks by the PAGA Workweek Value to yield his or her estimated Individual PAGA Payment that he or she may be eligible to receive under the Settlement (which is listed in Section III.C below). Class Members who do not submit a valid and timely Request for Exclusion (“Settlement Class Members”) will be issued payment of their final Individual Settlement Share.

Each Individual Settlement Share will be allocated as one-third (1/3) wages which will be reported on an IRS Form W2 and two-thirds (2/3) penalties, interest, and non-wage damages which will be reported on an IRS Form 1099 (if applicable). Each Individual Settlement Share will be subject to reduction for the employee’s share of taxes and withholdings with respect to the wages portion of Individual Settlement Shares, resulting in a net payment to the Settlement Class Member (“Individual Settlement Payment”).

If the Court grants final approval of the Settlement, Individual Settlement Payments will be mailed to Settlement Class Members at the address that is on file with the Settlement Administrator. To the extent that a Settlement Class Member is also a PAGA Member, the Settlement Administrator will issue both the Individual Settlement Payment and Individual PAGA Payment by way of a single check. **If the address to which this Notice was mailed is not correct, or if you move after you receive this Notice, you must provide your correct mailing address to the Settlement Administrator as soon as possible to ensure you receive any payment that you may be entitled to under the Settlement.**

B. Your Workweeks Based on Defendants’ Records

According to Defendants’ records:

From February 27, 2016 to October 20, 2020, you worked for Defendant as an hourly-paid, non-exempt employee in California for [REDACTED] Class Workweeks.

From January 29, 2019 to October 20, 2020, you worked for Defendant as an hourly-paid, non-exempt employee in California for [REDACTED] PAGA Workweeks.

If you wish to dispute the Class Workweeks credited to you, you must submit your dispute by way of written letter that is sent to the Settlement Administrator. The written letter must: (a) contain the case name and number of the Lawsuit (*Pool v. UTC Restaurant Venture, LLC, et al.*, Case No. 20STCV07785); (b) be signed by you; (c) contain your full name, address, telephone number, and the last four digits of your Social Security Number; (d) clearly state that you dispute the number of Class Workweeks credited to you and what you contend is the correct number to be credited to you; (e) include information and/or attach documentation demonstrating that the number of Class Workweeks that you contend should be credited to you is correct; and (f) be returned by mail to the Settlement Administrator at the address specified in Section IV.B below, postmarked **no later than [the Response Deadline]**.

C. Your Estimated Individual Settlement Share and Individual PAGA Payment

As explained above, your estimated Individual Settlement Share is based on the number of Class Workweeks credited to you.

Under the terms of the Settlement, your Individual Settlement Share is estimated to be \$ [REDACTED]. The Individual Settlement Share is subject to reduction for the employee's share of taxes and withholding with respect to the wages portion of the Individual Settlement Share and will only be distributed if the Court approves the Settlement and after the Settlement goes into effect.

As explained above, your estimated Individual PAGA Payment is based on the number of PAGA Workweeks credited to you.

Under the terms of the Settlement, your Individual PAGA Payment is estimated to be \$ [REDACTED].

The settlement approval process may take multiple months. Your Individual Settlement Share and Individual PAGA Payment reflected in this Notice are only estimates. Your actual Individual Settlement Payment and Individual PAGA Payment may be higher or lower.

D. Release of Claims

Upon the Effective Date and full funding of the Total Settlement Amount, Plaintiff and all Class Members who do not submit a valid and timely Request for Exclusion (i.e., Settlement Class Members) will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Class Released Parties of all Class Released Claims he or she may have or had.

“Class Released Claims” any and all claims, demands, rights, liabilities and damages arising from any of the facts alleged in Plaintiff’s Class Complaint during the period from February 27, 2016 through Preliminary Approval, including Defendants’ alleged failure to pay minimum wages, failure to pay overtime wages, failure to provide meal and rest periods, failure to issue accurate itemized wage statements, and violation of California Business and Professions Code sections 17200, et seq., for, inter alia, failure to pay overtime and minimum wages, provide meal and rest periods and associated premium payments, timely pay wages during employment and upon termination, provide compliant wage statements, maintain complete and accurate payroll records, and reimburse necessary business-related expenses. The Class Released Claims exclude any claims for penalties under the PAGA

“Class Released Parties” means Defendants, and all their present and former parent companies, subsidiaries, divisions, related or affiliated companies, shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns.

Upon the Effective Date and full funding of the Total Settlement Amount, Plaintiff and all PAGA Members will be deemed to have fully, finally and forever released, settled, compromised, relinquished, and discharged the PAGA Released Parties of all PAGA Released Claims he or she may have or had during the PAGA Period.

“PAGA Released Claims” or “PAGA Release” means the release by all PAGA Members for all claims for PAGA that arise out of or relate to the factual allegations pled in the LWDA Letter and PAGA Complaint, from January 29, 2019 through Preliminary Approval, including: failure to pay minimum and overtime wages, failure to provide compliant meal periods and associated premium pay, failure to provide compliant rest periods and associated premium pay, failure to provide compliant wage statements, failure to timely pay wages upon termination of employment, failure to timely pay wages during employment, failure to maintain requisite payroll records, and unreimbursed business expenses. In light of the binding nature of a PAGA judgment on non-party employees pursuant to *Arias v. Superior Ct. (Dairy)*, 46 Cal. 4th 969 (2009), PAGA Members who exclude themselves from the Class Settlement shall still receive an Individual PAGA Payment as calculated by the Settlement Administrator.

“PAGA Released Parties” means Defendant Paseo Restaurant Venture, LLC, and all its present and former parent companies, subsidiaries, divisions, related or affiliated companies, shareholders, officers, directors, employees, agents, attorneys, insurers, successor and assigns.

///

E. Attorneys' Fees and Costs to Class Counsel

Class Counsel will seek attorneys' fees in an amount of up to thirty-five percent (35%) of the Total Settlement Amount (i.e., an amount of up to \$96,250.00) and reimbursement of litigation costs and expenses in an amount of up to thirty-five thousand dollars (\$35,000.00) (collectively, "Attorneys' Fees and Costs"), subject to approval by the Court. All Attorneys' Fees and Costs awarded by the Court will be paid from the Total Settlement Amount. Class Counsel has been prosecuting the Actions on behalf of Plaintiff and Class Members on a contingency fee basis (that is, without being paid any money to date) and has been paying all costs and expenses of the Actions. As of this date, Class Counsel has incurred \$33,525.68 in litigation costs and expenses.

F. Enhancement Payment to Plaintiff

Plaintiff will seek the amount of seven thousand five hundred dollars and no cents (\$7,500.00) to him ("Enhancement Payment"), in recognition of his services in connection with the Actions. The Enhancement Payment will be paid from the Total Settlement Amount, subject to approval by the Court, and if awarded, will be paid to Plaintiff in addition to his Individual Settlement Payment and Individual PAGA Payment that he is entitled to under the Settlement.

G. Settlement Administration Costs to Settlement Administrator

Payment to the Settlement Administrator is estimated not to exceed ten thousand dollars (\$10,000.00) ("Settlement Administration Costs") for the costs of the notice and settlement administration process, including and not limited to, the expense of notifying the Class Members of the Settlement, processing Requests for Exclusion, Notices of Objection, and disputes of Class Workweeks, calculating Individual PAGA Payments, Individual Settlement Shares, and Individual Settlement Payments, and distributing payments and tax forms under the Settlement, and other activities required to administer the Settlement. Subject to approval by the Court, the Settlement Administration Costs will be paid to the Settlement Administrator from the Total Settlement Amount.

V. ADDITIONAL INFORMATION

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement Agreement, you should review the detailed Settlement Agreement and other papers which are on file with the Court.

You may view the Settlement Agreement and other court records in the Actions for a fee by visiting the civil clerk's office, located at Stanley Mosk Courthouse, 111 N. Hill Street, Los Angeles, California 90012, by appointment during business hours, or by online by visiting the following website: <http://www.lacourt.org/casesummary/ui/index.aspx?casetype=civil>.

To schedule an appointment, you may call the Court Support Services at the following number: (213) 830-0800, or you may visit the Court's website at www.lacourt.org.

Individuals who come to the courthouse must wear facial coverings and maintain social distancing at all times within the public areas of the courthouse or courtroom. For more information regarding the mandatory use of facial coverings and social distancing requirements in all Los Angeles County courthouses, you may visit the Los Angeles Superior Court's *Here For You | Safe For You* page at <http://www.lacourt.org/newsmedia/ui/HfySfy.aspx>.

The First Amended Joint Stipulation of Class Action and PAGA Settlement, Plaintiff's Motion for Attorneys' Fees and Costs and Enhancement Payment, and Final Judgment will be included on the Settlement Administrator's website at [REDACTED], or may be obtained from Class Counsel.

PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT.

IF YOU HAVE ANY QUESTIONS, YOU MAY CALL THE SETTLEMENT ADMINISTRATOR AT THE FOLLOWING TOLL-FREE NUMBER: [INSERT], OR YOU MAY ALSO CONTACT CLASS COUNSEL.

Exhibit C



3194-C Airport Loop Drive
Costa Mesa, CA 92626
800-779-2104 www.simpluris.com

Estimate #:	12917	Prepared By:	Michael Sutherland
Estimate Date:	2/9/2021	Direct Dial #	321.223.5067
		Email:	msutherladn@simpluris.com

Plaintiff Attorney
Attorney/Client: **Stephanie Ponak**
Firm: Lawyers for Justice
Email: <stephanie@lfjpc.com>

Defense Attorney
Attorney/Client:
Firm:
Email:

Case Name: NP-UTC-5133: All In Settlement

Anticipated Total Cost	\$7,935
Capped Fee*	\$7,600
Postage	\$273

Terms:

1) Capped Fees assume that Simpluris will receive data in a Single Excel file with no substantial change in class size or response rate.

Total Possible Class Size:	300	Undeliverable Rate:	20%
Response Rate:	1%	Call Rate:	10%
Mailing Document Language:	English/Spanish	Fund Distribution:	Simpluris
Reminder Postcard:	No	Redistribution:	No
Unclaimed Funds:	Escheat	State(s):	CA
		Federal Tax Return	One Year

Case Setup

Website - Post Order and Settlement Agreement

Data Compilation - Develop Case Specific Response Tracking - Error Reports

Category	Unit Value	# of Units	Total
Project Manager - Case Setup	\$125.00	3	\$375.00
Translation	\$0.25	2500	\$625.00
Database Manager - Initial Data Analysis	\$140.00	3	\$420.00
Total			\$1,420.00

Notification

Notice Packet: 8 pg Notice - Double Sided - English

Category	Unit Value	# of Units	Total
Mail Notice Packet	\$1.00	300	\$300.00
Postage	\$0.42	300	\$126.00
NCOA/CASS/LACS	\$0.10	300	\$30.00
Undeliverable Processing	\$0.25	60	\$15.00
Skip Trace RUM	\$2.00	60	\$120.00
Remail Notice Packet	\$1.50	51	\$76.50
Remail Postage	\$0.42	51	\$21.42
Mailing Supervisor	\$50.00	1	\$50.00
Total			\$738.92

Call Center

Establish Case Specific Toll Free Number

Category	Unit Value	# of Units	Total
Customer Service Reps / Call Center Support	\$75.00	3	\$225.00
800 # Charges	\$0.10	180	\$18.00
Total			\$243.00

Administration

Process Mail, Opt-Outs or Objections

Category	Unit Value	# of Units	Total
Database Manager	\$125.00	1	\$125.00
Resolving Mismatched TINs	\$75.00	1	\$75.00
Dispute/Deficiencies - Send One Cure Letter	\$2.50	3	\$7.50
Opt Out Processing	\$2.00	3	\$6.00
Data Entry	\$50.00	1	\$50.00
Project Manager	\$125.00	3	\$375.00
Weekly Reporting to Counsel	WAIVED	12 Wks of Reporting	\$0.00
Total			\$638.50

Distribution

Setup a Disbursement Account

Print & Mail Checks to Class Members: W2's / 1099's - File Reports with Appropriate Federal & State Taxing Authorities

Account Management & Reconciliation

Category	Unit Value	# of Units	Total
Disbursement Data Preparation	\$140.00	3	\$420.00
Disbursement Manager - Data Validation	\$75.00	2	\$150.00
Setup Banking Account/QSF	\$300.00	1	\$300.00
Print & Mail Check	\$2.50	300	\$750.00
Postage	\$0.42	300	\$126.00
Process Returned Checks	\$0.50	3	\$1.50
Skip Trace Search Undeliverable Checks	\$5.00	3	\$15.00
Remail Checks (Includes Postage)	\$4.00	3	\$12.00
QSF Account Reconciliation	\$250.00	1	\$250.00
Individual Federal/State Tax Reporting	\$350.00	1	\$350.00
QSF Reporting/Declaration	\$500.00	1	\$500.00
QSF Annual Tax Preparation Fee(2021)	\$750.00	1	\$750.00
Reissuing Checks/Mailing	\$5.00	5	\$22.50
Reissue W2's/1099's	\$5.00	5	\$22.50
Responding to IRS, State, Agency Inquiries	\$75.00	2	\$150.00
Unclaimed Funds: Escheat Management	\$100.00	1	\$100.00
Disbursement Manager	\$125.00	3	\$375.00
Total			\$4,294.50

Case Wrap Up

Send Final Reports to Counsel

Category	Unit Value	# of Units	Total
Data Manager-Final Reporting	\$125.00	2	\$250.00
Clerical-Clean Up Any Misc	\$50.00	2	\$100.00
Project Manager-Wrap-up Final Issues	\$125.00	2	\$250.00
Total			\$600.00

Total Case Costs

\$7,934.92

All administration services to be provided by Simpluris to Client, are provided subject to the following terms and conditions:

1. **Services.** Simpluris agrees to provide Client those services set forth in the Bid (the "Services") to which these terms and conditions are attached and which has been provided to Client. As compensation for such Services, Client agrees to pay the fees for Services outlined in the Bid. However, Client such fees for Services are estimated based on the requirements provided by Client and actual fees charged by Simpluris may be greater or less than such estimate and Client will be responsible for the payment of all such fees.
2. **Billing and Payment.** Simpluris will invoice Client on a regular basis unless a specific timeframe is otherwise set forth in the Bid. Client shall pay all invoices within 30 days of receipt. Amounts unpaid after thirty (30) days are subject to a service charge at the rate of 1.5% per month or, if less, the highest rate permitted by law. Services are not provided on a contingency basis and Client shall remain liable to Simpluris for all fees for the Services, regardless of any court decisions, and/or actions by the parties, including disapproval or withdrawal of a settlement.
3. **Retention of Documents.** Unless directed otherwise in writing by the Client, Simpluris will destroy all undeliverable mail (except for undeliverable checks) on the date that it is processed and retained in Simpluris' system. Simpluris will maintain records to establish that the subject mail is undeliverable. Simpluris will retain undeliverable checks until the Qualified Settlement Fund is closed. Simpluris will also retain all other class member and putative class member correspondence (including without limitation, claims forms and opt out forms) for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later. Lastly, Simpluris will retain bank & tax documents for such period of time as it determines is required to maintain compliance with various federal and state requirements.
4. **Limitation of Liability; Disclaimer of Warranties.** Simpluris warrants that it will perform the Services diligently, with competence and reasonable care. Simpluris' only obligation will be to correct any non-conformance with the foregoing warranty. In no event will Simpluris be liable for any lost profits/opportunities, business interruption or delay or, special, consequential, or incidental damages incurred by Client relating to the performance of the Services, regardless of whether Client's claim is for breach of contract, tort (including negligence and strict liability) or otherwise. Under no circumstances will Simpluris be liable to Client for any claims, losses, costs, penalties, fines, judgment or damages, including court costs and reasonable attorney's fees (collectively, "Losses"), whether direct or indirect, arising out of, related to, or in connection with Services in an amount in excess of the total fees charged or chargeable to Client for the particular portion of the Services affected by Simpluris' omission or error. THE WARRANTIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.
5. **Force Majeure.** To the extent performance by Simpluris of any of its obligations hereunder is substantially prevented by reason of any act of God or because of any other matter beyond Simpluris' reasonable control, then such performance shall be excused and this Agreement, at Simpluris' option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.
6. **Rights in Data.** Client agrees that it will not obtain, nor does Simpluris convey, any rights of ownership in the programs, system data, or materials provided or used by Simpluris in the performance of the Services.
7. **Electronic Communications.** During the provision of the Services the parties may wish to communicate electronically with each other at a business e-mail address. However, the electronic transmission of information cannot be guaranteed to be secure or error free and such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. Accordingly, each party agrees to use commercially reasonable procedures to check for the then most commonly known viruses and to check the integrity of data before sending information to the other electronically, but each party recognizes that such procedures cannot be a guarantee that transmissions will be virus free. It remains the responsibility of the party receiving an electronic communication from the other to carry out a virus check on any attachments before launching any documents whether received on disk or otherwise.
8. **Notice.** Any notice required or permitted hereunder shall be in writing and shall be delivered personally, by, or sent by registered mail, postage prepaid, or overnight courier and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service. Notice should be addressed to an officer or principal of Client and Simpluris, as the case may be.
9. **Waiver.** Failure or delay on the part of a party to exercise any right, power or privilege hereunder shall not operate as a waiver thereof or any of other subject, right, power or privilege.
10. **Termination.** Client may terminate the Services at anytime upon 30 days prior written notice to Simpluris. Termination of Services shall in no event relieve Client of its obligation make any payments due and payable to Simpluris in respect of Services rendered up to the effective date of Termination. Simpluris may terminate this Agreement (i) for any reason upon no less than 90 days prior written notice to the Client; or (ii) upon 15 calendar days' prior written notice, if the Client is not current in payment of fees.
11. **Jurisdiction.** The parties hereto irrevocably and unconditionally submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby irrevocably and unconditionally waive any objection to the laying of venue of any such suit, action or proceeding in such Court.
12. **Survival.** Any remedies for breach of this Agreement, this Section and the following Sections will survive any expiration or termination of this Agreement: Section 4 - Limitation of Liability; Disclaimer of Warranties, Section 6 – Rights in Data, and Section 12- Jurisdiction, 14 -Confidentiality, and Section 15 – Indemnification.
13. **Entire Agreement.** These Terms and Conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.
14. **Confidentiality.** Simpluris maintains reasonable and appropriate safeguards to protect the confidentiality and security of data provided by Client to Simpluris in connection with the Services. If, pursuant to a court order or other proceeding, a third party requests that Simpluris to disclose any confidential data provided by or for Client, Simpluris will promptly notify the Client unless prohibited by applicable law. Client will then have the option to provide Simpluris with qualified legal representation at Client's expense to defend against such request. If, pursuant to a court order, Simpluris is required to disclose data, produce documents, or otherwise act in contravention of the obligation to maintain confidentiality set forth in these terms and conditions, Simpluris will not be liable for breach of said obligation.
15. **Indemnification.** Client will indemnify and hold Simpluris (and the officers, employees, affiliates and agents harmless against any Losses incurred by Simpluris, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by Simpluris in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by Simpluris pursuant to Client's instructions.
16. **Severability.** If any term or condition or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
17. **Database Administration.** Simpluris' database administration for Client assumes that Client will provide complete data that includes all information required to send notifications and calculate and mail settlement payments. Data must be provided in a complete, consistent, standardized electronic format. Simpluris' standardized format is Microsoft Excel, however, Simpluris may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by Simpluris on a time and materials basis according to Simpluris' Standard Rates.

Simpluris Security Summary – White Paper

Simpluris is committed to the security and overall protection of not only our data and information but our client's data and information, as well. As a demonstration of our commitment, we maintain SOC 2 Certification which requires strict adherence to policies and procedures surrounding information security, including processing and storage of confidential customer data. Simpluris supports a comprehensive, written Information Security Program that complies with all applicable laws and regulations (e.g. HIPAA, Gramm-Leach-Bliley Act, MA 201 CMR 17.00) and is designed to (a) ensure the security, privacy and confidentiality of Client and Class Member Information, (b) protect against any reasonably anticipated threats or hazards to the security or integrity of Client or Class Member Information, and (c) protect against unauthorized access to, use, deletion, or modification of Class Member Information. Simpluris has designated specific employees to be responsible for the administration of its Information Security Program. Also, Simpluris regularly and routinely monitors, tests, and updates our Information Security Program.

Simpluris uses Client and Class Member Information only for the purposes for which its' clients provide it, as described in any Agreements or Court Orders governing the provision of Simpluris' services in any particular case. Simpluris maintains a process for identifying, assessing, and mitigating the risks to Class Member Information in each relevant area of Simpluris' operations. At Simpluris, we continuously evaluate the effectiveness of the safeguards for controlling these risks to data and bank accounts. Simpluris restricts access to Class Member Information only to those employees, agents, or subcontractors who need to know the information to perform their jobs. Simpluris performs background checks of all its employees that will have access to Sensitive Personal Information, including a review of their references, employment eligibility, education, and criminal history to ensure they do not pose a risk to the security of Client or Class Member Information.

Simpluris adheres to the following industry best practices to safeguard its systems which process, store or transmit Client and Class Member Information:

- Identity and Access Management;
- Complex passwords are routinely and regularly changed;
- Role-based access control systems to limit individual employee access to network applications and systems based on their particular job role and function;
- Data Loss Prevention and Intrusion Prevention System software at multiple layers to prevent from internal and external threats of data leaks, malicious activity, and policy violations
- Encryption of Class Member Information if transmitted over public or wireless networks (e.g., via email, FTP, the Internet, etc.);
- Implementation of a Secure File Transfer system (using SSL encryption) for transmitting documents back and forth to clients;
- Encryption of servers, portable media, laptops, desktops, smartphones, mobile devices, and new technologies that store Class Member Information;
- Complex password authentication for remote access to Company's networks;
- Upon hire and annually after that, training of all employees with access to Class Member Information, (including any agents, and subcontractors with access to Class Member Information) about their obligations to implement the Information Security Program;
- Strict disciplinary measures for employees who violate the Information Security Program;
- Preventing terminated employees from accessing Class Member Information;
- Appropriately configured and updated firewall, antivirus, and spyware software;
- Prompt application of vendor-recommended security patches and updates to systems and other applications to avoid any adverse impact on Class Member Information;
- Separation of Duties;
- Infrastructure and Physical Security;
- Business Continuity Planning;
- Disaster Recovery Planning

EXHIBIT 3

1 **FIRST AMENDED JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT**

2 This First Amended Joint Stipulation of Class Action and PAGA Settlement (“Agreement” or
3 “Settlement Agreement”) is made and entered into by and between Plaintiff Nathan Pool (“Plaintiff” or
4 “Class Representative”), on behalf of all others similarly situated and aggrieved employees, and
5 Defendants UTC Restaurant Venture, LLC and Paseo Restaurant Venture, LLC (together, “Defendants”)
6 (collectively with Plaintiff, the “Parties”), pursuant to section 43 of the Joint Stipulation of Class Action
7 and PAGA Settlement entered into by the Parties on or around April 12, 2021.

Deleted: ”).

8 The Parties agree to supplant the Joint Stipulation of Class Action and PAGA Settlement entered
9 into by the Parties on or around April 12, 2021, with this First Amended Joint Stipulation of Class
10 Action and PAGA Settlement. This Settlement Agreement shall be binding on Plaintiff, Settlement Class
11 Members (as defined herein), and PAGA Members (as defined herein) and on Defendants, subject to the
12 terms and conditions hereof and the approval of the Court.

13 **RECITALS**

14 1. Procedural History. On January 29, 2020, Nathan Pool provided written notice to the Labor
15 and Workforce Development Agency (“LWDA”) and Defendants alleging Defendants violated specific
16 provisions of the California Labor Code (“LWDA Letter”), a true and correct copy of which is attached
17 hereto as “Exhibit A.” On February 27, 2020, Nathan Pool filed a Class Action Complaint for Damages
18 (“Class Complaint”) against Defendants in the Superior Court of California for the County of Los Angeles,
19 Case No. 20STCV07785 (“Class Action”), alleging ten (10) causes of action for violation of California
20 Labor Code and California Business & Professions Code §§ 17200, *et seq.* on behalf of all current and
21 former hourly-paid or non-exempt employees who worked for Defendants within the State of California
22 at any time since February 27, 2016 for failure to pay overtime wages, failure to provide meal periods and
23 premium payments in lieu thereof, failure to provide rest periods and premium payments in lieu thereof,
24 failure to pay minimum wages, failure to timely pay wages upon termination, failure to timely pay wages
25 during employment, failure to provide compliant wage statements, failure to maintain complete and
26 accurate payroll records, and failure to reimburse necessary business expenses. On April 3, 2020, Plaintiff
27 filed a Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code §
28 2698, *Et Seq.* (“PAGA Complaint”) against Defendants in the Superior Court of California of Los

Deleted: ”).

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Angeles, Case No. 20GDCV00377 (“PAGA Action”), alleging a single cause of action against Defendants for violation of the Private Attorneys General Act, California Labor Code section 2698, *et seq.* (“PAGA”). On August 10, 2020, Plaintiff filed an Amendment to Complaint to add Great Maple LLC as a defendant in the Class Action. On August 25, 2020, pursuant to stipulation by the Parties, the Court issued an Order consolidating the Class Action and PAGA Action (the “Actions”) and designating the Class Action as the lead case.

2. Defendants deny all material allegations set forth in the Actions and have asserted numerous affirmative defenses. Notwithstanding, in the interest of avoiding further litigation, Defendants desire to fully and finally settle the Actions.

3. Class Counsel in the Actions diligently investigated the proposed Class Members’ claims against Defendants, including any and all applicable defenses and the applicable law. The investigation included, *inter alia*, the exchange of information, data, and documents, and review of numerous corporate policies and practices.

4. On October 20, 2020, the Parties participated in mediation with Paul Grossman, Esq. (the “Mediator”), a respected mediator of complex wage and hour actions, and with the assistance of the Mediator and his evaluations, the Parties reached the settlement that is memorialized herein. The settlement discussions were conducted at arm’s-length, and the settlement is the result of an informed and detailed analysis of Defendants’ potential liability and exposure in relation to the costs and risks associated with continued litigation. Based on the documents produced, as well as Class Counsel’s own independent investigation and evaluation, Class Counsel believes that the settlement with Defendants for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the Class Members in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation and various defenses asserted by Defendants.

5. Defendants represent that no non-exempt employees worked for Great Maple LLC, and therefore, Plaintiff has agreed to dismiss Great Maple LLC as a defendant in the Class Action.

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6. The Parties expressly acknowledge that this Settlement Agreement is entered into solely for the purpose of compromising significantly disputed claims and that nothing herein is an admission of liability or wrongdoing by Defendants. If for any reason the Settlement Agreement is not approved, it will be of no force or effect, and the Parties shall be returned to their original respective positions.

DEFINITIONS

7. The following definitions are applicable to this Settlement Agreement. Definitions contained elsewhere in this Settlement Agreement will also be effective:

a. “Attorneys’ Fees and Costs” means attorneys’ fees approved by the Court for Class Counsel’s litigation and resolution of the Actions, and all actual costs incurred and to be incurred by Class Counsel in the Actions, as set forth in Paragraph 11 below.

b. “Class Counsel” or “Plaintiff’s Counsel” mean Edwin Aiwazian, Arby Aiwazian, and Joanna Ghosh of Lawyers *for* Justice, PC, who will seek to be appointed counsel for the Class.

c. “Class Member(s)” or “Class” mean Plaintiff and all current and former hourly-paid, non-exempt employees who worked for Defendants in the State of California at any time during the period from February 27, 2016 through October 20, 2020, who did not sign arbitration agreements.

d. “Class Period” means the time period from February 27, 2016 through October 20, 2020.

e. “Class Released Claims” means any and all claims and damages arising from any of the facts alleged in Plaintiff’s Class Complaint during the period from February 27, 2016 through Preliminary Approval, including Defendants’ alleged failure to pay minimum wages, failure to pay overtime wages, failure to provide meal and rest periods, failure to issue accurate itemized wage statements, and violation of California Business and Professions Code sections 17200, *et seq.*, for, *inter alia*, failure to pay overtime and minimum wages, provide meal and rest periods and associated premium payments, timely pay wages during employment and upon termination, provide compliant wage statements, maintain complete and accurate payroll records, and reimburse necessary business-related expenses. The Class Released Claims exclude any claims for penalties under the PAGA.

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1 f. "Class Released Parties" means Defendants, and all their present and former
2 parent companies, subsidiaries, divisions, related or affiliated companies, shareholders, officers,
3 directors, employees, agents, attorneys, insurers, successors and assigns.

4 g. "Class Representative" or "Plaintiff" mean Nathan Pool.

5 h. "Class Settlement" means the settlement and resolution of Class Released Claims.

6 i. "Class Workweeks" means the number of weeks each Class Member worked for
7 Defendants as an hourly-paid, non-exempt employee during the Class Period, which will be calculated
8 by determining the number of days between the start and end dates of employment during the Class
9 Period, divided by seven (7). Each Class Member will be credited with at least one (1) Class Workweek.
10 The Class Workweeks through October 14, 2020 are estimated to be approximately 6,683.

11 j. "Court" means the Superior Court of the State of California for the County of Los
12 Angeles.

13 k. "Data List" means a complete list of all Class Members and PAGA Members that
14 Defendants will diligently and in good faith compile from their records and provide to the Settlement
15 Administrator. The Data List will be formatted in a readable Microsoft Office Excel spreadsheet and
16 will include the full names, last known mailing addresses, last known telephone numbers (if available),
17 and Social Security Numbers of all Class Members and PAGA Members, as well as their dates of
18 employment, total Class Workweeks, total PAGA Workweeks, and such other information as is
19 necessary for the Settlement Administrator to administer this Settlement Agreement.

20 l. "Defendants" means UTC Restaurant Venture, LLC and Paseo Restaurant Venture,
21 LLC.

22 m. "Defendants' Counsel" means James P. Carter and Heather B. Dillion of Jackson
23 Lewis P.C.

24 n. "Effective Date" means the latter of: (a) if any timely objections are filed and not
25 subsequently withdrawn, the 60th day after the Court enters an order granting final approval of this
26 Settlement Agreement; (b) if any timely appeals are filed, the date of the resolution (or withdrawal) of
27 any such appeal in a way that does not alter the terms of the Settlement Agreement; or (c) if no timely
28 objections are filed, or if all objections are withdrawn, the date upon which the Court enters an order

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1 granting final approval of this Settlement Agreement.

2 o. "Enhancement Payment" means the amount to be paid to Plaintiff Nathan Pool in
3 recognition of his effort and work in prosecuting the Actions and in exchange for a general release, as
4 set forth in Paragraph 12 below.

5 p. "Final Approval" means the determination by the Court that the settlement is fair,
6 reasonable, and adequate, and entry of the Final Approval Order and Judgment based thereon.

7 q. "Final Approval Hearing" means the hearing at which the Court will consider and
8 determine whether the settlement should be granted Final Approval.

9 r. "Individual PAGA Payment" means the amount payable to each PAGA Member
10 from the 25% portion of the PAGA Penalties that is allocated to PAGA Members, as provided in
11 Paragraph 15(c).

12 s. "Individual Settlement Payment" means the net payment of each Settlement Class
13 Member's Individual Settlement Share, after reduction for the employee's share of taxes and
14 withholdings with respect to the wages portion of the Individual Settlement Share, as provided in
15 Paragraph 26.

16 t. "Individual Settlement Share" means the *pro rata* share of the Net Settlement
17 Amount that a Class Member may be eligible to receive under the Settlement Agreement, to be
18 calculated in accordance with Paragraph 15.

19 u. "LWDA Payment" means the amount that the Parties have agreed to pay to the
20 California Labor and Workforce Development Agency ("LWDA") as set forth in Paragraph 14.

21 v. "Net Settlement Amount" means the portion of the Total Settlement Amount that
22 is available for distribution to Settlement Class Members, which is the Total Settlement Amount less the
23 Court-approved Enhancement Payment, Settlement Administration Costs, PAGA Penalties, and
24 Attorneys' Fees and Costs.

25 w. "Notice" means the revised Notice of Class Action and PAGA Settlement,
26 substantially in the form attached as "**Exhibit B.**"

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1 x. "Notice of Objection" means a Class Member's timely written objection to the
2 Class Settlement, which should contain: (a) the case name and number of the Class Action; (b) the
3 objector's full name, signature, address, and telephone number, and the last four digits of his or her
4 Social Security number; (c) a written statement of all grounds for the objection accompanied by any
5 legal support for such objection; and (d) copies of any papers, briefs, or other documents upon which
6 the objection is based. Notwithstanding the above, the Settlement Administrator will accept any timely
7 Notice of Objection received on or before the Response Deadline if the Settlement Administrator can
8 identify the Class Member and that the Class Member clearly wishes to object to the Class Settlement.

9 y. "PAGA Member(s)" means Plaintiff and all current and former hourly-paid, non-
10 exempt employees who worked for Defendant Paseo Restaurant Venture, LLC in California at any time
11 during the period from January 29, 2019 through October 20, 2020.

12 z. "PAGA Period" means the period between January 29, 2019 through October 20,
13 2020.

14 aa. "PAGA Release" or "PAGA Released Claims" means the release by all PAGA
15 Members for all claims for PAGA that arise out of or relate to the factual allegations pled in the LWDA
16 Letter and PAGA Complaint, from January 29, 2019 through Preliminary Approval, including: failure to
17 pay minimum and overtime wages, failure to provide compliant meal periods and associated premium
18 pay, failure to provide compliant rest periods and associated premium pay, failure to provide compliant
19 wage statements, failure to timely pay wages upon termination of employment, failure to timely pay
20 wages during employment, failure to maintain requisite payroll records, and unreimbursed business
21 expenses. In light of the binding nature of a PAGA judgment on non-party employees pursuant to *Arias*
22 *v. Superior Ct. (Dairy)*, 46 Cal. 4th 969 (2009), PAGA Members who exclude themselves from the Class
23 Settlement shall still receive an Individual PAGA Payment as calculated by the Settlement Administrator.

24 bb. "PAGA Released Parties" means Defendant Paseo Restaurant Venture, LLC, and
25 all its present and former parent companies, subsidiaries, divisions, related or affiliated companies,
26 shareholders, officers, directors, employees, agents, attorneys, insurers, successor and assigns.

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1 cc. "PAGA Workweeks" means the number of weeks each PAGA Member worked
2 for Defendant Paseo Restaurant Venture, LLC as an hourly-paid, non-exempt employee during the
3 PAGA Period, which will be calculated determining the number of days between the start and end dates
4 of employment during the PAGA Period, divided by seven (7). Each PAGA Member will be credited
5 with at least one (1) PAGA Workweek.

6 dd. "Parties" means Plaintiff and Defendants, collectively, and "Party" means either
7 Plaintiff or any of Defendants.

8 ee. "Preliminary Approval" means entry of the Court order granting preliminary
9 approval of the Settlement Agreement.

10 ff. "Request for Exclusion" means a timely letter submitted by a Class Member
11 indicating a request to be excluded from the Class Settlement. The Request for Exclusion should: (a)
12 contain the case name and number of the Class Action; (b) be signed by the Class Member; (c) contain
13 the full name, address, telephone number, and the last four digits of the Social Security Number of the
14 Class Member requesting exclusion; (d) clearly state that the Class Member does not wish to be included
15 in the Class Settlement; and (e) be returned by mail, facsimile, or email to the Settlement Administrator
16 at the specified address, postmarked or fax-stamped on or before the Response Deadline.
17 Notwithstanding the above, the Settlement Administrator will accept any timely Request for Exclusion
18 received on or before the Response Deadline if the Settlement Administrator can identify the Class
19 Member and that the Class Member clearly does not wish to be included in the Class Settlement. The
20 date of the postmark or fax-stamp on the return mailing envelope, facsimile, or email on the submission
21 will be the exclusive means to determine whether a Request for Exclusion has been timely submitted.
22 A Class Member who does not request exclusion from the Class Settlement will be deemed a Settlement
23 Class Member and will be bound by all terms of the Settlement Agreement, if the settlement is granted
24 Final Approval by the Court. Any Class Member who timely requests to be excluded from the Class
25 Settlement will no longer be a Settlement Class Member and will not have any right to object, appeal,
26 or comment on the Class Settlement. Any Class Member who is also a PAGA Member and opts out of
27 the Class Settlement will remain a PAGA Member, will receive an Individual PAGA Payment, and will
28 be bound by the PAGA Release.

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1 gg. "Response Deadline" means the deadline by which Class Members must submit a
2 Request for Exclusion, objection, and/or dispute of the Class Workweeks credited to them, which shall
3 be the date that is sixty (60) calendar days from the initial mailing of the Notice by the Settlement
4 Administrator, unless the 60th day falls on a Sunday or Federal holiday, in which case the Response
5 Deadline will be extended to the next day on which the U.S. Postal Service is open. The Response
6 Deadline may also be extended by express agreement between Class Counsel and Defendants' Counsel.
7 Under no circumstances, however, will the Settlement Administrator have the authority to extend the
8 Response Deadline. In the event that a Notice is re-mailed to a Class Member, the Response Deadline
9 for that Class Member shall be the extended by fifteen (15) calendar days.

10 hh. "Settlement Administration Costs" means the costs payable from the Total
11 Settlement Amount, subject to Court approval, to the Settlement Administrator for administering this
12 settlement, as set forth in Paragraph 13 below.

13 ii. "Settlement Administrator" means Simpluris, Inc., or any other third-party class
14 action settlement administrator agreed to by the Parties and approved by the Court for purposes of
15 administering this settlement. The Parties each represent that they do not have any financial interest in
16 the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that
17 could create a conflict of interest.

18 jj. "Settlement Class Members" means all Class Members who do not submit a timely
19 Request for Exclusion.

20 kk. "Total Settlement Amount" means the amount of two hundred seventy-five
21 thousand dollars (\$275,000.00) to be paid by Defendants in full resolution of all Class Released Claims
22 and PAGA Released Claims in the Actions, which includes all Attorneys' Fees and Costs, Enhancement
23 Payment, LWDA Payment, Net Settlement Amount to be paid to the Settlement Class Members,
24 Individual PAGA Payments to be paid to PAGA Members, and Settlement Administration Costs. The
25 employer's share of taxes on the wages portion of Individual Settlement Shares will be paid separately
26 and in addition to the Total Settlement Amount.

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CLASS CERTIFICATION

8. For the purposes of this settlement only, the Parties stipulate to the certification of the following Class: all current and former hourly-paid, non-exempt employees who worked for Defendants at any time during the Class Period, who did not sign arbitration agreements.

9. The Parties agree that certification for the purpose of settlement is not an admission that certification is proper under Section 382 of the California Code of Civil Procedure. Should, for whatever reason, the Court not grant Final Approval, the Parties' stipulation to class certification as part of the settlement shall become null and void *ab initio* and shall have no bearing on, and shall not be admissible in connection with, the issue of whether or not certification would be inappropriate in a non-settlement context.

TERMS OF AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements set forth herein, the Parties agree, subject to the Court's approval, as follows:

10. Funding of the Total Settlement Amount. Within fifteen (15) calendar days after the Effective Date, the Settlement Administrator will provide the Parties with an accounting of the amounts to be paid by Defendants pursuant to the terms of the Settlement Agreement. Within twenty-five (25) calendar days of the Effective Date, Defendants will make a one-time deposit of the Total Settlement Amount into a settlement account to be established by the Settlement Administrator. Within five (5) calendar days of the funding of the Total Settlement Amount, the Settlement Administrator will issue Individual Settlement Payments to Settlement Class Members and Individual PAGA Payments to PAGA Members. Within seven (7) calendar days of the funding of Total Settlement Amount, the Settlement Administrator will issue payments due under the settlement and approved by the Court, as follows: (a) LWDA Payment to the Labor and Workforce Development Agency; (b) Enhancement Payment to Plaintiff; and (c) Attorneys' Fees and Costs to Class Counsel. The Settlement Administrator will also issue a payment to itself for Court-approved services performed in connection with the settlement. In no way shall the Attorneys' Fees and Costs and Enhancement Payment be paid before Settlement Class Members and PAGA Members are issued payment under the Settlement.

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1 11. Attorneys' Fees and Costs. Class Counsel will request and Defendants will not oppose
2 attorneys' fees of up to thirty-five percent (35%) of the Total Settlement Amount (i.e., up to ninety-six
3 thousand two hundred fifty dollars (\$96,250.00)) and reimbursement of actual costs and expenses
4 associated with Class Counsel's litigation and settlement of the Actions, in an amount not to exceed
5 thirty-five thousand dollars (\$35,000.00), both of which will be paid from the Total Settlement Amount
6 subject to Court approval. These amounts will cover any and all work performed and any and all costs
7 incurred by Class Counsel in connection with the litigation of the Actions, including without limitation
8 all work performed and costs incurred to date, and all work to be performed and all costs to be incurred
9 in connection with obtaining the Court's approval of this Settlement Agreement, including any
10 objections raised and any appeals necessitated by those objections. Class Counsel shall be solely and
11 legally responsible for correctly characterizing this compensation for tax purposes and for paying any
12 taxes on the amounts received. With respect to the Attorneys' Fees and Costs to Class Counsel, the
13 Settlement Administrator may purchase an annuity to utilize United States Treasuries and bonds or other
14 attorney fee deferral vehicles, for Class Counsel. Any additional expenses for the purchase of an annuity
15 by the Settlement Administrator shall be paid separately by Class Counsel and shall not be included
16 within the Settlement Administration Costs. Any portion of the Attorneys' Fees and Costs not awarded
17 to Class Counsel shall be a part of the Net Settlement Amount for the benefit of Settlement Class
18 Members.

19 12. Enhancement Payment. In recognition of his efforts and work in prosecuting the Actions,
20 Defendants agree not to oppose or impede any application or motion for Enhancement Payment in an
21 amount up to seven thousand five hundred dollars (\$7,500.00) to Plaintiff Nathan Pool. The Enhancement
22 Payment, which will be paid from the Total Settlement Amount, subject to Court approval, will be in
23 addition to his Individual Settlement Payment and Individual PAGA Payment that are to be paid pursuant
24 to the settlement. The Settlement Administrator will issue an IRS Form 1099 to Plaintiff for the
25 Enhancement Payment, and Plaintiff shall be solely and legally responsible for correctly characterizing
26 this compensation for tax purposes and for paying any taxes on the amounts received. Plaintiff agrees
27 to indemnify and hold Defendants harmless from any claim or liability for taxes, penalties, or interest
28 arising as a result of the Enhancement Payment. Should the Court approve the Enhancement Payment

1 to Plaintiff in an amount that is less than that set forth above, the difference between the lesser amount
2 approved by the Court and the amount allocated toward the Enhancement Payment will be part of the
3 Net Settlement Amount for the benefit of Settlement Class Members.

4 13. Settlement Administration Costs. The Settlement Administrator will be paid for the
5 reasonable costs of administration of the Settlement and distribution of payments under the settlement,
6 not to exceed Ten Thousand Dollars (\$10,000.00). A true and correct copy of the estimated quote
7 provided by the Settlement Administrator for purposes of administration of the settlement is attached
8 hereto as "Exhibit C". These costs, which will be paid from the Total Settlement Amount, subject to
9 Court approval, will include, *inter alia*, translating the Notice in Spanish, printing, distributing, and
10 tracking Notices and other documents for this settlement, calculating and distributing payments due under
11 the settlement, issuing of 1099 and W-2 IRS Forms and all required tax reporting, filings, withholdings,
12 and remittances, providing necessary reports and declarations, and other duties and responsibilities set
13 forth herein to process this settlement, and as requested by the Parties. Any portion of the estimated,
14 designated, and/or awarded Settlement Administration Costs which are not in fact required to fulfill
15 payment to the Settlement Administrator to undertake the requirement settlement administration duties
16 will become part of the Net Settlement Amount.

17 14. PAGA Penalties. Subject to approval by the Court, the Parties agree that the amount of
18 fifty thousand dollars (\$50,000.00) from the Total Settlement Amount will be allocated toward penalties
19 under the Private Attorneys General Act, California Labor Code Section 2698, *et seq.* ("PAGA
20 Penalties"), of which seventy-five percent (75%), or \$37,500.00, will be paid to the LWDA (i.e., the
21 LWDA Payment) and twenty-five percent (25%) or, \$12,500.00, will be distributed to PAGA Members
22 ("Employee PAGA Amount") on a *pro rata* basis, based on PAGA Workweeks.

23 15. Individual Settlement Share and Individual PAGA Payment Calculations. Class Members
24 shall not be required to submit a claim in order to receive a share of the Net Settlement Amount, and no
25 portion of the Total Settlement Amount shall revert to Defendants. Individual Settlement Shares will be
26 calculated and apportioned from the Net Settlement Amount based on each Class Member's Class
27 Workweeks and Individual PAGA Payments will be calculated and apportioned from the Employee
28 PAGA Amount based on each PAGA Member's PAGA Workweeks, as follows:

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Commented [SP1]: Will the Notice need to be translated in Spanish or any other language?

Commented [DHB(C2R1)]: Yes.

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1 a. After Preliminary Approval of the Settlement, the Settlement Administrator will
2 divide the Net Settlement Amount by the Class Workweeks of all Class Members to yield the “Estimated
3 Workweek Value,” and multiply each Class Member’s individual Class Workweeks by the Estimated
4 Workweek Value to yield his or her estimated Individual Settlement Share that he or she may be eligible
5 to receive under the Settlement.

6 b. After Final Approval of the Settlement, the Settlement Administrator will divide
7 the final Net Settlement Amount by the Class Workweeks of all Settlement Class Member to yield the
8 “Final Workweek Value,” and multiply each Settlement Class Member’s individual Class Workweeks
9 by the Final Workweek Value to yield his or her Individual Settlement Share.

10 c. To determine the Individual PAGA Payment for each PAGA Member, the
11 Settlement Administrator will divide the Employee PAGA Amount, i.e., \$12,500, by the total of all
12 PAGA Members’ PAGA Workweeks resulting in the PAGA Workweek Value and then multiplying the
13 PAGA Workweek Value by each PAGA Member’s individual PAGA Workweeks.

14 16. Settlement Awards Do Not Trigger Additional Benefits. All payments made under the
15 settlement shall be deemed to be paid to the payee solely in the year in which such payments actually
16 are issued to the payee. It is expressly understood and agreed that payments made under this settlement
17 shall not in any way entitle Plaintiff or any Settlement Class Member and/or PAGA Member to additional
18 compensation or benefits under any new or additional compensation or benefits, or any bonus, contest
19 or other compensation or benefit plan or agreement in place during the Class Period, nor will it entitle
20 any Settlement Class Member and/or PAGA Member to any increased retirement, 401K benefits or
21 matching benefits, or deferred compensation benefits (notwithstanding any contrary language or
22 agreement in any benefit or compensation plan document that might have been in effect during the Class
23 Period).

24 17. Delivery of the Data List. Within fifteen (15) calendar days of Preliminary Approval,
25 Defendants will provide the Data List to the Settlement Administrator.

26 18. Notice by First-Class U.S. Mail.

27 a. Within fourteen (14) calendar days after receiving the Data List from Defendants,
28 the Settlement Administrator will perform a search based on the National Change of Address Database

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1 or any other similar services available, such as provided by Experian, for information to update and
2 correct for any known or identifiable address changes, and will mail a Notice in English and Spanish (in
3 the form attached as “**Exhibit B**” to this Settlement Agreement) to all Class Members and PAGA
4 Members via First-Class U.S. Mail, using the most current, known mailing addresses identified by the
5 Settlement Administrator.

6 b. With respect to Notices that are returned as undeliverable on or before the
7 Response Deadline, the Settlement Administrator will search for an alternate address by way of skip-
8 trace and re-mail the Notice within five (5) calendar days.

9 19. Dispute Regarding Class Workweeks. Class Members will have an opportunity to dispute
10 the number of Class Workweeks to which they have been credited, as reflected in their respective
11 Notices. In order to dispute Class Workweeks, Class Members must submit a written letter to the
12 Settlement Administrator that: (a) contains the case name and number of the Class Action, (b) is signed
13 by the Class Member, (c) contains the full name, address, telephone number, and the last four digits of
14 the Social Security Number of the disputing Class Member, (d) clearly states that the Class Member
15 disputes the number of Class Workweeks credited to him or her and what he or she contends is the
16 correct number to be credited to him or her, (e) includes information and/or attaches documentation
17 demonstrating that the number of Class Workweeks that he or she contends should be credited to him
18 or her are correct, and (f) is returned by mail, facsimile, or email to the Settlement Administrator at the
19 specified address, postmarked or fax-stamped on or before the Response Deadline. The date of the
20 postmark or fax-stamp on the return mailing envelope, facsimile, or email on the submission will be the
21 exclusive means to determine whether a dispute has been timely submitted. Absent evidence rebutting
22 the accuracy of Defendants’ records and data as they pertain to the number of Class Workweeks to be
23 credited to a disputing Class Member, Defendants’ records will be presumed correct and determinative
24 of the dispute. However, if a Class Member produces information and/or documents to the contrary,
25 the Settlement Administrator will evaluate the materials submitted by the Class Member and the
26 Settlement Administrator will resolve and determine the number of eligible Class Workweeks that the
27 disputing Class Member should be credited with under the settlement. The Settlement Administrator’s
28 decision on such disputes will be final and non-appealable.

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1 20. Settlement Checks. The Settlement Administrator will be responsible for undertaking
2 appropriate deductions, required tax reporting, and issuing the Individual Settlement Payments to the
3 Settlement Class Members and Individual PAGA Payments to PAGA Members in accordance with this
4 Settlement Agreement. To the extent that a Settlement Class Member is also a PAGA Member, the
5 Settlement Administrator will issue both Individual Settlement Payments and Individual PAGA
6 Payments by way of a single check. Settlement checks will be valid and negotiable for one hundred and
7 eighty (180) calendar days from the date the checks are issued, and thereafter, shall be cancelled. All
8 funds associated with such cancelled checks will be transmitted to the State Controller's Office
9 Unclaimed Property Division in the names of the Settlement Class Members and/or PAGA Members
10 whose checks are cancelled. The Settlement Administrator shall undertake amended and/or supplemental
11 tax filings and reporting, required under applicable local, state, and federal tax laws, that are necessitated
12 due to the cancellation of any settlement checks.

13 21. Procedure for Requesting Exclusion from the Settlement. Any Class Member wishing to
14 be excluded from the Class Settlement must submit a written Request for Exclusion to the Settlement
15 Administrator, by mail, facsimile, or email, no later than the Response Deadline. The date of the
16 postmark or fax-stamp on the return mailing envelope, facsimile, or email will be the exclusive means
17 to determine whether a Request for Exclusion has been timely submitted. The Settlement Administrator
18 will certify jointly to Class Counsel and Defendants' Counsel the Requests for Exclusion that were
19 timely submitted, and also identify the individuals who have submitted a timely Request for Exclusion
20 in a declaration that is to be filed with the Court in advance of the Final Approval Hearing. Any Class
21 Member who submits a Request for Exclusion is prohibited from making any objection to the Class
22 Settlement. Any Class Member who timely requests to be excluded from the Class Settlement will not
23 be a Settlement Class Member and will not have any right to object, appeal, or comment on the Class
24 Settlement; however, if the Class Member is also a PAGA Member, he or she will still receive an
25 Individual PAGA Payment, and will be bound by the PAGA Released Claims.

26 22. Settlement Terms Bind All Class Members Who Do Not Request Exclusion. Any Class
27 Member who does not affirmatively request exclusion from the Class Settlement by submitting a timely
28 Request for Exclusion will be bound by all of the terms of the Settlement Agreement, including and not

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1 limited to those pertaining to the Class Released Claims, as well as any judgment that may be entered
2 by the Court if it grants Final Approval to the settlement.

3 23. Procedures for Objecting to the Settlement. To object to the Class Settlement, Class
4 Members who have not opted out of the Class Settlement (i.e., Settlement Class Members) must submit
5 a timely Notice of Objection to the Settlement Administrator, by mail, facsimile, or email, on or before
6 the Response Deadline. The Notice of Objection should be signed by the Settlement Class Member and
7 contain all information required by this Settlement Agreement. The date of postmark or fax-stamp on
8 the return mailing envelope, facsimile, or email will be deemed the exclusive means for determining
9 that the Notice of Objection is timely. At no time will any of the Parties or their counsel seek to solicit
10 or otherwise encourage Settlement Class Members to object to the Class Settlement or appeal from the
11 Final Approval Order and Judgment. Settlement Class Members may also present their objection at the
12 Final Approval Hearing regardless of whether they have submitted a Notice of Objection.

13 24. Reports by the Settlement Administrator Regarding Settlement Administration. The
14 Settlement Administrator will provide Defendants' Counsel and Class Counsel a weekly report which
15 certifies: (a) the number of Class Members who have submitted a dispute of Class Workweeks; (b) the
16 number of Class Members who have submitted timely Requests for Exclusion or timely Notices of
17 Objection; and (c) the number of undeliverable and re-mailed Notices. Additionally, the Settlement
18 Administrator will provide to counsel for both Parties any updated reports regarding the administration
19 of the Settlement Agreement as needed or requested, and immediately notify the Parties when it receives
20 a request from an individual or any other entity regarding inclusion in the settlement.

21 25. Certification of Completion. Upon completion of administration of the settlement, the
22 Settlement Administrator will provide a written declaration under oath to certify such completion to the
23 Court and counsel for all Parties.

24 26. Treatment of Individual Settlement Payments and Individual PAGA Payments. Each
25 Individual Settlement Share will be allocated as follows: one-third (1/3) wages and two-thirds (2/3)
26 penalties, interest, and non-wage damages. The portion allocated to wages will be reported on an IRS
27 Form W-2 and the portions allocated to interest and penalties will be reported on an IRS Form-1099 by
28 the Settlement Administrator. The Settlement Administrator will withhold the employee's share of taxes

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1 and withholdings with respect to the wages portion of the Individual Settlement Shares, and issue checks
2 to Settlement Class Members for their Individual Settlement Payments (i.e., payment of their Individual
3 Settlement Share net of these taxes and withholdings). The employer's share of taxes and contributions
4 on the wages portion of Individual Settlement Shares will be paid separately and in addition to the Total
5 Settlement Amount. Any payment for an Individual PAGA Payment will be allocated as 100% penalties,
6 will not be subject to taxes or withholdings, and will be reported on an IRS Form-1099, if necessary.

7 27. Administration of Taxes by the Settlement Administrator. The Settlement Administrator
8 will be responsible for issuing to Plaintiff, Settlement Class Members, PAGA Members, and Class
9 Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid pursuant to
10 this Settlement Agreement. The Settlement Administrator will also be responsible for forwarding all
11 payroll taxes, contributions, and withholdings to the appropriate government authorities.

12 28. Tax Liability. Plaintiff, Class Counsel, Defendants, and Defendants' Counsel do not
13 intend anything contained in this Settlement Agreement to constitute advice regarding taxes or
14 taxability, nor shall anything in this Settlement Agreement be relied on as such. Plaintiff and Settlement
15 Class Members understand and agree that Plaintiff and Settlement Class Members will be solely
16 responsible for correctly characterizing any compensation received under the settlement on his/her
17 personal income tax returns and paying any and all taxes due for any and all amounts paid to them under
18 the settlement.

19 29. Circular 230 Disclaimer. EACH PARTY TO THIS SETTLEMENT AGREEMENT (FOR
20 PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS
21 SETTLEMENT AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER
22 PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS SETTLEMENT
23 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR
24 AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS
25 INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE
26 OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF
27 UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS
28 AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS,

1 HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING
2 TAX ADVICE) IN CONNECTION WITH THIS SETTLEMENT AGREEMENT, (B) HAS NOT
3 ENTERED INTO THIS SETTLEMENT AGREEMENT BASED UPON THE RECOMMENDATION
4 OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND
5 (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
6 ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY
7 BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISOR TO
8 ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE
9 CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISOR'S TAX STRATEGIES
10 (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON
11 DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX
12 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED
13 BY THIS SETTLEMENT AGREEMENT.

14 30. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant
15 that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,
16 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause
17 of action or right herein released and discharged.

18 31. Release of Claims by Settlement Class Members. Upon the Effective Date and full
19 funding of the Total Settlement Amount, Plaintiff and all Class Members who do not submit a timely
20 Request for Exclusion (i.e., Settlement Class Members) will be deemed to have fully, finally and forever
21 released, settled, compromised, relinquished, and discharged the Class Released Parties of all Class
22 Released Claims he or she may have or had.

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23 32. PAGA Release by PAGA Members. Upon the Effective Date and full funding of the
24 Total Settlement Amount, Plaintiff and all PAGA Members will be deemed to have fully, finally and
25 forever released, settled, compromised, relinquished, and discharged the PAGA Released Parties of all
26 PAGA Released Claims he or she may have or had during the PAGA Period.

27 33. General Release of Claims by Plaintiff. In addition, upon the Effective Date and full
28 funding of the Total Settlement Amount, Plaintiff will be deemed to have fully released and discharged

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1 the Released Parties of and from all claims arising from his employment with Defendants, separation of
2 employment from Defendants, and any acts that have or could have been asserted in any legal action or
3 proceeding against Defendants, whether known or unknown, arising under any federal, state, or local law,
4 or statute, including, *inter alia*, those arising under the California Labor Code, Fair Labor Standards Act,
5 Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, Employee Retirement Income
6 Security Act, National Labor Relations Act, California Corporations Code, California Business and
7 Professions Code, California Fair Employment and Housing Act, California Constitution (all as amended),
8 and law of contract and tort, as well as for discrimination, harassment, retaliation, wrongful termination,
9 lost wages, benefits, other employment compensation, emotional distress, medical expenses, other
10 economic and non-economic damages, attorney fees, and costs, arising on or before the date on which the
11 Settlement is executed. With respect to those claims released by Plaintiff in an individual capacity,
12 Plaintiff acknowledges and waives any and all rights and benefits available under California Civil Code
13 Section 1542, which provides:

14 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR
15 OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR
16 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.

17 Plaintiff understands and agrees that claims or facts in addition to or different from those which are now
18 known or believed by him to exist may hereafter be discovered. It is Plaintiff's intention to settle fully
19 and release all claims he now has against the Class Released Parties, whether known or unknown,
20 suspected or unsuspected. The Enhancement Payment will be paid to Plaintiff specifically in exchange
21 for the general release of the Class Released Parties from all claims, including those specified in this
22 paragraph and a covenant not to sue the Class Released Parties. Notwithstanding the above, the general
23 release by Plaintiff shall not extend to claims for workers' compensation benefits, claims for
24 unemployment benefits, or other claims that may not be released by law.

25 34. Duties of the Parties with Respect to Obtaining Preliminary Approval of the Settlement.

26 Upon execution of this Settlement Agreement, Plaintiff shall promptly obtain a hearing date for
27 Plaintiff's Motion for Preliminary Approval of the Settlement, which Plaintiff and Class Counsel will
28 be responsible for drafting, and submit this Settlement Agreement to the Court in support of said motion.

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1 Class Counsel will provide Defendants' Counsel a draft of the Preliminary Approval Motion before the
2 filing deadline. Defendants agree not to oppose the Motion for Preliminary Approval of the Settlement
3 consistent with this Settlement Agreement. Said motion shall apply to the Court for the entry of an order
4 ("Preliminary Approval Order"), which shall be mutually agreed upon by the Parties, seeking the
5 following:

- 6 a. Conditionally certifying the Class for settlement purposes only;
- 7 b. Granting Preliminary Approval of the Settlement;
- 8 c. Preliminarily appointing Plaintiff as representative of the Class;
- 9 d. Preliminarily appointing Plaintiff's Counsel as counsel for the Class;
- 10 e. Approving, as to form and content, the mutually-agreed upon and proposed Notice
11 and directing its mailing to the Class Members and PAGA Members by first class mail;
- 12 f. Approving the manner and method for Class Members to request exclusion from
13 the Class Settlement as contained herein and within the Notice; and
- 14 g. Scheduling a Final Approval Hearing at which the Court will determine whether
15 the Settlement should be finally approved as fair, reasonable and adequate.

16 35. Duties of the Parties with Respect to Obtaining Final Approval of the Settlement. After
17 the Response Deadline, and with the Court's permission, a Final Approval Hearing will be conducted to
18 determine whether Final Approval of the Settlement should be granted, along with the amounts properly
19 payable for (a) Individual Settlement Payments; (b) Individual PAGA Members; (c) LWDA Payment;
20 (d) Attorneys' Fees and Costs; (e) Enhancement Payment; and (f) Settlement Administration Costs. The
21 Final Approval Hearing will not be held earlier than thirty (30) calendar days after the Response
22 Deadline. Plaintiff and Class Counsel will be responsible for drafting the motion seeking Final Approval
23 of the Settlement. Class Counsel will provide Defendants' Counsel a draft of the Final Approval Motion
24 before the filing deadline. By way of said motion, Plaintiff will apply for the entry of the mutually-
25 agreed upon proposed order and judgment ("Final Approval Order and Judgment"), which will provide
26 for, in substantial part, the following:

- 27 a. Approval of the Settlement as fair, reasonable, and adequate, and directing
28 consummation of its terms and provisions;

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- 1 b. Certification of the settlement Class;
- 2 c. Approval of the application for Attorneys' Fees and Costs to Class Counsel;
- 3 d. Approval of the application for Enhancement Payment to Plaintiff;
- 4 e. Directing Defendants to fund all amounts due under the Settlement Agreement
- 5 and ordered by the Court; and
- 6 f. Entering judgment in the Actions barring and enjoining all Settlement Class
- 7 Members from prosecuting the Class Released Claims against any of the Class Released Parties and
- 8 PAGA Members from prosecuting the PAGA Released Claims against the PAGA Released Parties, while
- 9 maintaining continuing jurisdiction, in conformity with California Rules of Court 3.769 and the
- 10 Settlement Agreement.

11 36. Termination or Revocation of Settlement.

- 12 a. If five percent (5%) or more of the Class Members submit timely and valid
- 13 Requests for Exclusion, Defendants may elect to rescind the Settlement Agreement. Defendants must
- 14 exercise this right of rescission in writing that is provided to Class Counsel within twenty-one (21)
- 15 calendar days of the Response Deadline. If Defendants exercise this option, Defendants shall pay any
- 16 costs of settlement administration owed to the Settlement Administrator incurred up to that date.
- 17 b. If the Court finds the Total Settlement Amount to be insufficient to warrant
- 18 Preliminary Approval or Final Approval of the Settlement, Defendants may, at their election, rescind the
- 19 Settlement Agreement and all actions taken in furtherance of it will thereby be null and void.

20 37. Effects of Termination of the Settlement. Termination of the Settlement Agreement shall

21 have the following effects:

- 22 a. The Settlement Agreement shall be void and shall have no force or effect, and no
- 23 Party shall be bound by any of its terms;
- 24 b. In the event the Settlement Agreement is terminated, Defendants shall have no
- 25 obligation to make any payments to any Party, Class Member or attorney, except that the terminating
- 26 Party shall pay the Settlement Administrator for services rendered up to the date the Settlement
- 27 Administrator is notified that the settlement has been terminated;

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1 c. The Preliminary Approval Order, Final Approval Order and Judgment, including
2 any order certifying the Class, shall be vacated;

3 d. The Settlement Agreement and all negotiations, statements and proceedings
4 relating thereto shall be without prejudice to the rights of any of the Parties, all of whom shall be restored
5 to their respective positions in the Actions prior to the execution of the Settlement Agreement;

6 e. Neither this Settlement Agreement, nor any ancillary documents, actions,
7 statements or filings in furtherance of the Settlement (including all matters associated with the mediation)
8 shall be admissible or offered into evidence in the Actions or any other action for any purpose whatsoever;
9 and

10 f. Any documents generated to bring the settlement into effect, will be null and void,
11 and any order or judgment entered by the Court in furtherance of this Settlement Agreement will
12 likewise be treated as void from the beginning.

13 38. Escalator Clause. Defendants represent that, for the period of February 27, 2016 to
14 October 14, 2020, there were approximately 6,683 Class Workweeks. If it is determined that the total
15 number of Class Workweeks is actually ten percent (10%) more than 6,683 during the Class Period, then,
16 the Total Settlement Amount will be increased on a *pro rata* basis.

17 39. Continued Jurisdiction. After entry of judgment pursuant to the Settlement, the Court
18 will have continuing jurisdiction pursuant to Rule 3.769 of the California Rules of Court and Section
19 664.6 of the California Code of Civil Procedure, for purposes of addressing: (a) the interpretation and
20 enforcement of the terms of the settlement, (b) settlement administration matters, and (c) such post-
21 judgment matters as may be appropriate under court rules or as set forth in this Settlement Agreement.

22 40. Exhibits Incorporated by Reference. The terms of this Settlement Agreement include the
23 terms set forth in any attached exhibits, which are incorporated by this reference as though fully set
24 forth herein. Any exhibits to this Settlement Agreement are an integral part of the settlement.

25 41. Entire Agreement. This Settlement Agreement and any attached exhibits constitute the
26 entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements
27 may be deemed binding on the Parties. The Parties expressly recognize California Civil Code § 1625
28 and California Code of Civil Procedure § 1856(a), which provide that a written agreement is to be

1 construed according to its terms and may not be varied or contradicted by extrinsic evidence, and the
2 Parties agree that no such extrinsic oral or written representations or terms will modify, vary or
3 contradict the terms of this Settlement Agreement.

4 42. Interim Stay of Proceedings. The Parties agree to hold in abeyance all proceedings in the
5 Actions (including with respect to California Code of Civil Procedure section 583.310), except such
6 proceedings necessary to implement and complete the Settlement Agreement, pending the Final
7 Approval Hearing to be conducted by the Court.

8 43. Waiver and Amendment. The Parties may not waive, amend, or modify any provision of
9 this Settlement Agreement except by written agreement signed by counsel for all Parties, and subject to
10 any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement
11 will not constitute a waiver of any other provision.

12 44. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and
13 represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement
14 Agreement and to take all appropriate actions required or permitted to be taken by such Parties pursuant
15 to this Settlement Agreement to effectuate its terms and to execute any other documents required to
16 effectuate the terms of this Settlement Agreement. The Parties warrant that they understand and have
17 full authority to enter into this Settlement Agreement, and further intend that this Settlement Agreement
18 will be fully enforceable and binding on all parties, and agree that it will be admissible and subject to
19 disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality
20 provisions that otherwise might apply under state or federal law.

21 45. Signatories. It is agreed that because the members of the Class are so numerous, it is
22 impossible or impractical to have each Settlement Class Member execute this Settlement Agreement.
23 The Notice will advise all Class Members of the binding nature of the release as to the Settlement Class
24 Members, and the release shall have the same force and effect as if this Settlement Agreement were
25 executed by each Settlement Class Member.

26 46. Binding on Successors and Assigns. This Settlement Agreement will be binding upon,
27 and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

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1 47. California Law Governs. All terms of this Settlement Agreement and attached exhibits
2 hereto will be governed by and interpreted according to the laws of the State of California.

3 48. Execution and Counterparts. This Settlement Agreement is subject only to the execution
4 of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All
5 executed counterparts and each of them, including facsimile, electronic, and scanned copies of the
6 signature page, will be deemed to be one and the same instrument.

7 49. Acknowledgment that the Settlement is Fair and Reasonable. The Parties believe this
8 Settlement Agreement is a fair, adequate, and reasonable settlement of the Actions and have arrived at
9 this settlement after arm's-length negotiations and in the context of adversarial litigation, taking into
10 account all relevant factors, present and potential. The Parties further acknowledge that they are each
11 represented by competent counsel and that they have had an opportunity to consult with their counsel
12 regarding the fairness and reasonableness of this Settlement Agreement. In addition, the Mediator may
13 execute a declaration supporting the Settlement and the reasonableness of the Settlement and the Court
14 may, in its discretion, contact the Mediator to discuss the Settlement and whether or not the Settlement
15 is objectively fair and reasonable.

16 50. Invalidity of Any Provision. Before declaring any provision of this Settlement
17 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent
18 possible consistent with applicable precedents so as to define all provisions of this Settlement
19 Agreement valid and enforceable.

20 51. Plaintiff's Waiver of Right to Be Excluded. Plaintiff agrees to sign this Settlement
21 Agreement and, by signing this Settlement Agreement, is hereby bound by the terms herein.

22 52. Non-Admission of Liability. The Parties enter into this Settlement Agreement to resolve
23 the dispute that has arisen between them and to avoid the burden, expense and risk of continued
24 litigation. In entering into this Settlement Agreement, Defendants do not admit, and specifically deny,
25 that they have violated any state, federal, or local law; violated any regulations or guidelines
26 promulgated pursuant to any statute or any other applicable laws, regulations or legal requirements;
27 breached any contract; violated or breached any duty; engaged in any misrepresentation or deception;
28 or engaged in any other unlawful conduct with respect to their employees. Neither this Settlement

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1 Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, shall be
2 construed as an admission or concession by Defendants of any such violations or failures to comply with
3 any applicable law. Except as necessary in a proceeding to enforce the terms of this Settlement
4 Agreement, this Settlement Agreement and its terms and provisions shall not be offered or received as
5 evidence in any action or proceeding to establish any liability or admission on the part of Defendants or
6 to establish the existence of any condition constituting a violation of, or a non-compliance with state,
7 federal, local or other applicable law.

8 53. Captions. The captions and paragraph numbers in this Settlement Agreement are inserted
9 for the reader's convenience, and in no way define, limit, construe or describe the scope or intent of the
10 provisions of this Settlement Agreement.

11 54. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and
12 conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed
13 more strictly against one party than another merely by virtue of the fact that it may have been prepared
14 by counsel for one of the Parties, it being recognized that, because of the arms-length negotiations
15 between the Parties, all Parties have contributed equally to the preparation of this Settlement Agreement.

16 55. Representation by Counsel. The Parties acknowledge that they have been represented by
17 counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and that
18 this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed in
19 full.

20 56. Limitation on Publicity. Plaintiff and Class Counsel will not make any public disclosure
21 of the settlement or discuss the settlement or this Settlement Agreement with anyone other than those
22 necessary to effectuate the filing of the Motion for Preliminary Approval, until after the Motion for
23 Preliminary Approval is filed. Class Counsel further agrees not to use the settlement of the Actions or
24 any of its terms for any marketing or promotional purposes. Nothing herein will restrict Class Counsel
25 from including publicly available information regarding this settlement in future judicial submissions
26 regarding Class Counsel's qualifications and experience. Furthermore, Plaintiff and Class Counsel will
27 undertake any and all disclosures required to be made to the LWDA in conformity with PAGA.

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1 57. All Terms Subject to Final Court Approval. All amounts and procedures described in
2 this Settlement Agreement herein will be subject to final Court approval.

3 58. Notices. All notices, demands, and other communications to be provided concerning this
4 Settlement Agreement shall be in writing and delivered by overnight mail at the addresses set for below,
5 or such other addresses as either Party may designate in writing from time to time:

6 To Plaintiff and Class Counsel:
Edwin Aiwanian, Esq.
7 **LAWYERS for JUSTICE, PC**
410 West Arden Avenue, Suite 203
8 Glendale, California 91203

To Defendants:
James P. Carter, Esq.
Heather P. Dillion, Esq.
9 **JACKSON LEWIS P.C.**
200 Spectrum Center Drive, Suite 500
Irvine, California 92618

10 59. Final Judgment. The Parties shall provide the Settlement Administrator with a copy of
11 the Final Judgment once it is entered by the Court, and the Settlement Administrator shall post the Final
12 Judgment on its website within three (3) business days of receipt. No individualized notice to the Class
13 will be required.

14 60. Cooperation and Execution of Necessary Documents. All Parties and their counsel will
15 cooperate with each other in good faith and use their best efforts to implement the settlement, including
16 and not limited to, executing all documents to the extent reasonably necessary to effectuate the terms of
17 this Settlement Agreement. If the Parties are unable to reach agreement on the form or content of any
18 document needed to implement the Settlement Agreement, or on any supplemental provisions that may
19 become necessary to effectuate the terms of this Settlement Agreement, the Parties may seek the
20 assistance of the Mediator and then the Court to resolve such disagreement.

21 61. Integration Clause. This Settlement Agreement contains the entire agreement between
22 the Parties relating to the settlement and transaction contemplated hereby, and all prior or
23 contemporaneous agreements, understandings, representations, and statements, whether oral or written
24 and whether by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be
25 waived except in writing.

26 **IN WITNESS WHEREOF**, the Parties hereto knowingly and voluntarily executed this **First**
27 **Amended** Joint Stipulation of Class Action and PAGA Settlement between Plaintiff and Defendants:
28 **IT IS SO AGREED.**

PLAINTIFF NATHAN POOL

Dated: _____, 2021

Nathan Pool, Plaintiff

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DEFENDANT UTC RESTAURANT VENTURE, LLC

Dated: _____, 2021

Full Name: _____

Title: _____
On behalf of UTC Restaurant Venture, LLC

DEFENDANT PASEO RESTAURANT VENTURE, LLC

Dated: _____, 2021

Full Name: _____

Title: _____
On behalf of Paseo Restaurant Venture, LLC

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APPROVED AS TO FORM

LAWYERS *for* JUSTICE, PC

Dated: _____, 2021

Edwin Aiwarzian
Attorneys for Plaintiff Nathan Pool and Proposed Class
Counsel

JACKSON LEWIS P.C.

Dated: _____, 2021

James P. Carter
Heather P. Dillion
Attorneys for Defendants UTC Restaurant Venture, LLC
and Paseo Restaurant Venture, LLC

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Exhibit B

NOTICE OF CLASS ACTION AND PAGA SETTLEMENT

Pool v. UTC Restaurant Venture, LLC, et al.
Superior Court of California for the County of Los Angeles, Case No. 20STCV07785

PLEASE READ THIS NOTICE CAREFULLY.

You have received this Notice because Defendants' records indicate that you may be eligible to take part in the class action settlement reached in the above-referenced case.

You do not need to take any action to receive a settlement payment.

This Notice is designed to advise you of your rights and options with respect to the settlement, and how you can request to be excluded from the settlement, object to the class settlement, and/or dispute the number of Class Workweeks that you are credited with, if you so choose.

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YOU ARE NOTIFIED THAT: A class and representative action settlement has been reached between Plaintiff Nathan Pool ("Plaintiff") and Defendants UTC Restaurant Venture, LLC and Paseo Restaurant Venture, LLC ("Defendants") (collectively referred to as the "Parties") in the cases entitled *Pool v. UTC Restaurant Venture, LLC, et al.*, Los Angeles County Superior Court, Case No. 20STCV07785 ("Class Action") and *Pool v. UTC Restaurant Venture, LLC, et al.*, Los Angeles County Superior Court, Case No. 20GDCV00377 ("PAGA Action"), which may affect your legal rights if you are part of the Class, as a current or former hourly-paid, non-exempt employee who worked for Defendants in the State of California at any time during the Class Period, who did not sign arbitration agreements.

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Deleted: . On [date of Preliminary Approval], the Court granted preliminary approval of the settlement and scheduled a hearing on [hearing date] at [hearing time] ("Final Approval Hearing") to determine whether or not the Court should grant final approval of the settlement.

I. WHAT ARE YOUR RIGHTS AND OPTIONS AS A CLASS MEMBER?

A. Participate in the Settlement

If you want to participate in the Settlement and receive money from the Class Settlement, you do not have to do anything. You will automatically be included in the Settlement and issued your Individual Settlement Payment and, if eligible, your Individual PAGA Payment, unless you decide to exclude yourself from the Class Settlement, in which case you will not receive an Individual Settlement Payment.

Unless you elect to exclude yourself from the Class Settlement, you will be bound by all terms of the Settlement, as well as any judgment that may be entered by the Court based thereon, and will release of all claims described in Section IV.D below. As a Class Member, you will not be separately responsible for the payment of attorney's fees or litigation costs and expenses, unless you retain your own counsel, in which event you will be responsible for your own attorney's fees and expenses.

B. Request Exclusion from the Class Settlement

If you do not wish to participate in the Class Settlement, you must seek exclusion from the Class Settlement by submitting a written letter ("Request for Exclusion") to the Settlement Administrator.

A Request for Exclusion should: (a) contain the case name and number of the Class Action (*Pool v. UTC Restaurant Venture, LLC, et al.*, Case No. 20STCV07785); (b) be signed by you; (c) contain your full name, address, telephone number, and last four digits of your Social Security Number; (d) clearly state that you do not wish to be included in the Class Settlement; and (e) be returned to the Settlement Administrator by mail, fax, or email, postmarked or fax-stamped on or before [Response Deadline], at the following mailing address, email address, or facsimile number:

[Settlement Administrator]

[Mailing Address]

[Email Address]

[Facsimile Number]

If you submit a timely Request for Exclusion, you will not be entitled to receive any payment from the Class Settlement, you will not be bound by the Class Settlement (and the Released Class Claims described in Section IV.D below), and you will not have any right to object to, appeal, or comment on the Class Settlement.

C. Object to the Class Settlement

You can object to the terms of the Class Settlement as long as you have not submitted a Request for Exclusion, by submitting a written objection (“Notice of Objection”) to the Settlement Administrator or presenting your objection at the Final Approval Hearing.

A Notice of Objection should: (a) contain the case name and number of the Class Action (*Pool v. UTC Restaurant Venture, LLC, et al.*, Case No. 20STCV07785); (b) contain your full name, signature, address, and telephone number; (c) contain a written statement of all grounds for the objection accompanied by any legal support for such objection; (d) contain copies of any papers, briefs, or other documents upon which the objection is based; and (e) be mailed, faxed, or emailed to the Settlement Administrator at the mailing address, email address, or facsimile number listed in Section I.B. above, postmarked on or before **[Response Deadline]**.

D. Final Approval Hearing

The Court will hold a Final Approval Hearing in Department SSC7 of the Los Angeles County Superior Court, located at Spring Street Courthouse, 312 N. Spring Street, Los Angeles, California 90012, on **[date]**, at **[time]**, to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court also will be asked to approve and award Attorneys’ Fees and Costs to Class Counsel, Enhancement Payment to Plaintiff, and Settlement Administration Costs to the Settlement Administrator.

The hearing may be continued without further notice to Class Members. It is not necessary for you to appear at the Final Approval Hearing, although you may appear remotely if you wish to.

According to Defendants’ records, you have been identified as a member of the Class, and therefore are receiving this Notice. Based on Defendants’ records, and the Parties’ current assumptions, **your Individual Share is estimated to be \$ [redacted] and your Individual PAGA Payment is estimated to be \$ [redacted]**. The actual amount you may receive may be different and will depend on a number of factors.

Your options are further explained in this Notice. To exclude yourself from, or object to, the settlement you must take action by certain deadlines. If you want to join the settlement as proposed, you don’t need to do anything to obtain your share of the settlement. Defendants will not retaliate against you for any actions you take with respect to the settlement.

II. IMPORTANT DEFINITIONS

“Class” means Plaintiff and all current and former hourly-paid, non-exempt employees who worked for Defendants in the State of California at any time during the Class Period, who did not sign arbitration agreements.

“Class Member” means a member of the Class.

“Class Period” means the time period from February 27, 2016 through October 20, 2020.

“Class Settlement” means the settlement and resolution of the Class Released Claims (as defined in section III.D).

“PAGA Member(s)” means Plaintiff and all current and former hourly-paid, non-exempt employees who worked for Defendant Paseo Restaurant Venture, LLC in California at any time during the PAGA Period.

“PAGA Period” means the time period between January 29, 2019 through October 20, 2020.

III. BACKGROUND OF THE LAWSUIT

On February 27, 2020, Nathan Pool **started** the Class Action by filing the Class Action Complaint for Damages (“Class Complaint”) in the Los Angeles County Superior Court, Case No. 20STCV07785. On April 3, 2020, Plaintiff filed a

Questions? Please call: **[settlement administrator’s 800-number]**

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Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. (“PAGA Complaint”) against Defendants in the Superior Court of California of Los Angeles, Case No. 20GDCV00377 and commenced an action under the Private Attorneys General Act, California Labor Code section 2698, *et seq.* (“PAGA”) (i.e., the PAGA Action). Plaintiff **claims** that Defendants failed to properly pay minimum and overtime wages, provide compliant meal and rest breaks and associated premiums, timely pay wages during employment and upon termination of employment and associated waiting-time penalties, provide accurate wage statements, keep requisite payroll records, and reimburse business expenses, and thereby engaged in unfair business practices and conduct that gives rise to penalties under PAGA. Plaintiff seeks, among other things, recovery of unpaid wages and meal and rest period premiums, restitution, penalties, interest, and attorneys’ fees and costs.

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Defendants deny all of the allegations in the Class Action and PAGA Action (together, “Actions”) or that they violated any law.

The Parties participated in **a full-day mediation session (a process where parties try to resolve their dispute with a third-party neutral mediator)** with a respected class action mediator, and as a result, the Parties reached a settlement. The Parties have since entered into the **First Amended** Joint Stipulation of Class Action and PAGA Settlement, (“Settlement” or “Settlement Agreement”).

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On **[date of Preliminary Approval]**, the Court entered an order preliminarily approving the Settlement. The Court has appointed Simpluris, Inc. as the administrator of the Settlement (“Settlement Administrator”), Plaintiff Nathan Pool as representative of the Class (“Class Representative”), and the following Plaintiff’s attorneys as counsel for the Class (“Class Counsel”):

Edwin Aiwarzian
Arby Aiwarzian
Joanna Ghosh
Lawyers for Justice, Professional Corporation
410 West Arden Avenue, Suite 203
Glendale, California 91203
Telephone: (818) 265-1020 / Fax: (818) 265-1021

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The Settlement represents a compromise and settlement of highly disputed claims. Nothing in the Settlement is intended or will be **taken** as an admission by Defendants that the claims in the **Actions** have merit or that Defendants **owe anything to** Plaintiff or to Class Members and/or PAGA Members. Plaintiff and Defendants, and their respective counsel, have concluded and agree that, in light of the risks and uncertainties to each side of continued **lawsuit**, the Settlement is fair, reasonable, and adequate, and is in the best interests of Class Members, PAGA Members, and the State of California. The Court has made no ruling on the merits of the **Class Members’** claims and has determined only that **a class action is the best option to manage** the Class for settlement purposes is appropriate under California law.

Deleted: If you are a Class Member, you do not need to take any action to receive an Individual Settlement Payment and, if eligible, an Individual PAGA Payment, but you have the opportunity to request exclusion from the Class Settlement (in which case you will not receive an Individual Settlement Payment), object to the Class Settlement, and/or dispute the Class Workweeks credited to you, if you so choose, as explained more fully in Section III below. Regardless of whether you exclude yourself from the Class Settlement, you will still release the PAGA Released Claims (as defined in section III.D) and will receive your Individual PAGA Payment, as defined herein, if you are a PAGA Member.

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IV. **SUMMARY OF THE PROPOSED SETTLEMENT**

A. **Settlement Formula**

The total gross settlement amount is two hundred seventy-five thousand dollars (\$275,000.00) (the “Total Settlement Amount”). The portion of the Total Settlement Amount that is available for payment to Class Members is referred to as the “Net Settlement Amount.” The Net Settlement Amount will be the Total Settlement Amount less the following payments which are subject to approval by the Court: (1) Attorneys’ Fees and Costs, consisting of attorneys’ fees in an amount not to exceed 35% of the Total Settlement Amount (i.e., \$96,250.00) and reimbursement of litigation costs and expenses in an amount not to exceed thirty-five thousand dollars (\$35,000.00) to Class Counsel; (2) Enhancement Payment in an amount not to exceed seven thousand five hundred dollars (\$7,500.00) to Plaintiff for his services in the Actions; (3) allocation for penalties under the PAGA (“PAGA Penalties”) in the amount of fifty thousand dollars (\$50,000.00); and (4) Settlement Administration Costs in an amount not to exceed ten thousand dollars (\$10,000.00) to the Settlement Administrator. Note: the California Labor and Workforce Development Agency (“LWDA”) will be paid 75% of the PAGA Penalties, or thirty-seven thousand five hundred dollars (\$37,500.00), and the remaining 25% of the PAGA Penalties (i.e., twelve thousand five hundred dollars (\$12,500.00)) will be distributed to PAGA Members (“Employee PAGA Amount”).

Each Class **Member is** eligible to receive payment under the Settlement of **his or her** *pro rata* share of the Net Settlement Amount (“Individual Settlement Share”), to be determined as follows:

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- Individual Settlement Shares are based on the number of weeks that each Class Member was credited to have worked for Defendants as an hourly-paid, non-exempt employee during the Class Period (“Class Workweeks”), which will be calculated by determining the number of days between the start and end dates of employment during the Class Period, divided by seven (7).
- The Settlement Administrator has divided the Net Settlement Amount by the Class Workweeks of all Class Members to yield the “Estimated Workweek Value,” and multiplied each Class Member’s individual Class Workweeks by the Estimated Workweek Value to yield his or her estimated Individual Settlement Share that he or she may be eligible to receive under the Class Settlement (which is listed in Section III.C below). Class Members who do not submit a valid and timely Request for Exclusion (“Settlement Class Members”) will be issued payment of their final Individual Settlement Share.

Each PAGA Member will receive payment under the Settlement of ~~his or her~~ pro rata share of the Employee PAGA Amount (i.e., 25% of the PAGA Penalties) (“Individual PAGA Payment”), to be determined as follows:

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- Individual PAGA Payments are based on the number of weeks that each PAGA Member was credited to have worked for Defendant Paseo Restaurant Venture, LLC as an hourly-paid, non-exempt employee during the PAGA Period (“PAGA Workweeks”), which will be calculated by determining the number of days between the start and end dates of employment during the PAGA Period, divided by seven (7).
- The Settlement Administrator has divided the Employee PAGA Amount, i.e., \$12,500, by the PAGA Workweeks of all PAGA Members to yield the “PAGA Workweek Value,” and multiplied each PAGA Member’s individual PAGA Workweeks by the PAGA Workweek Value to yield his or her estimated Individual PAGA Payment that he or she may be eligible to receive under the Settlement (which is listed in Section III.C below). Class Members who do not submit a valid and timely Request for Exclusion (“Settlement Class Members”) will be issued payment of their final Individual Settlement Share.

Each Individual Settlement Share will be allocated as one-third (1/3) wages which will be reported on an IRS Form W2 and two-thirds (2/3) penalties, interest, and non-wage damages which will be reported on an IRS Form 1099 (if applicable). Each Individual Settlement Share will be subject to reduction for the employee’s share of taxes and withholdings with respect to the wages portion of Individual Settlement Shares, resulting in a net payment to the Settlement Class Member (“Individual Settlement Payment”).

If the Court grants final approval of the Settlement, Individual Settlement Payments will be mailed to Settlement Class Members at the address that is on file with the Settlement Administrator. To the extent that a Settlement Class Member is also a PAGA Member, the Settlement Administrator will issue both the Individual Settlement Payment and Individual PAGA Payment by way of a single check. **If the address to which this Notice was mailed is not correct, or if you move after you receive this Notice, you must provide your correct mailing address to the Settlement Administrator as soon as possible to ensure you receive any payment that you may be entitled to under the Settlement.**

B. Your Workweeks Based on Defendants’ Records

According to Defendants’ records:

From February 27, 2016 to October 20, 2020, you worked for Defendant as an hourly-paid, non-exempt employee in California for [REDACTED] Class Workweeks.

From January 29, 2019 to October 20, 2020, you worked for Defendant as an hourly-paid, non-exempt employee in California for [REDACTED] PAGA Workweeks.

If you wish to dispute the Class Workweeks credited to you, you must submit your dispute by way of written letter that is sent to the Settlement Administrator. The written letter must: (a) contain the case name and number of the Lawsuit (*Pool v. UTC Restaurant Venture, LLC, et al.*, Case No. 20STCV07785); (b) be signed by you; (c) contain your full name, address, telephone number, and the last four digits of your Social Security Number; (d) clearly state that you dispute the number of Class Workweeks credited to you and what you contend is the correct number to be credited to you; (e) include information and/or attach documentation demonstrating that the number of Class Workweeks that you contend should be credited to you is correct; and (f) be returned by mail to the Settlement Administrator at the address specified in Section IV.B below, postmarked **no later than [the Response Deadline]**.

C. Your Estimated Individual Settlement Share and Individual PAGA Payment

As explained above, your estimated Individual Settlement Share is based on the number of Class Workweeks credited to you.

Under the terms of the Settlement, your Individual Settlement Share is estimated to be \$ [REDACTED]. The Individual Settlement Share is subject to reduction for the employee's share of taxes and withholding with respect to the wages portion of the Individual Settlement Share and will only be distributed if the Court approves the Settlement and after the Settlement goes into effect.

As explained above, your estimated Individual PAGA Payment is based on the number of PAGA Workweeks credited to you.

Under the terms of the Settlement, your Individual PAGA Payment is estimated to be \$ [REDACTED].

The settlement approval process may take multiple months. Your Individual Settlement Share and Individual PAGA Payment reflected in this Notice are only estimates. Your actual Individual Settlement Payment and Individual PAGA Payment may be higher or lower.

D. Release of Claims

Upon the Effective Date and full funding of the Total Settlement Amount, Plaintiff and all Class Members who do not submit a valid and timely Request for Exclusion (i.e., Settlement Class Members) will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Class Released Parties of all Class Released Claims he or she may have or had.

"Class Released Claims" any and all claims, demands, rights, liabilities and damages arising from any of the facts alleged in Plaintiff's Class Complaint during the period from February 27, 2016 through Preliminary Approval, including Defendants' alleged failure to pay minimum wages, failure to pay overtime wages, failure to provide meal and rest periods, failure to issue accurate itemized wage statements, and violation of California Business and Professions Code sections 17200, et seq., for, inter alia, failure to pay overtime and minimum wages, provide meal and rest periods and associated premium payments, timely pay wages during employment and upon termination, provide compliant wage statements, maintain complete and accurate payroll records, and reimburse necessary business-related expenses. The Class Released Claims exclude any claims for penalties under the PAGA

"Class Released Parties" means Defendants, and all their present and former parent companies, subsidiaries, divisions, related or affiliated companies, shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns.

Upon the Effective Date and full funding of the Total Settlement Amount, Plaintiff and all PAGA Members will be deemed to have fully, finally and forever released, settled, compromised, relinquished, and discharged the PAGA Released Parties of all PAGA Released Claims he or she may have or had during the PAGA Period.

"PAGA Released Claims" or "PAGA Release" means the release by all PAGA Members for all claims for PAGA that arise out of or relate to the factual allegations pled in the LWDA Letter and PAGA Complaint, from January 29, 2019 through Preliminary Approval, including: failure to pay minimum and overtime wages, failure to provide compliant meal periods and associated premium pay, failure to provide compliant rest periods and associated premium pay, failure to provide compliant wage statements, failure to timely pay wages upon termination of employment, failure to timely pay wages during employment, failure to maintain requisite payroll records, and unreimbursed business expenses. In light of the binding nature of a PAGA judgment on non-party employees pursuant to *Arias v. Superior Ct. (Dairy)*, 46 Cal. 4th 969 (2009), PAGA Members who exclude themselves from the Class Settlement shall still receive an Individual PAGA Payment as calculated by the Settlement Administrator.

"PAGA Released Parties" means Defendant Paseo Restaurant Venture, LLC, and all its present and former parent companies, subsidiaries, divisions, related or affiliated companies, shareholders, officers, directors, employees, agents, attorneys, insurers, successor and assigns.

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E. Attorneys' Fees and Costs to Class Counsel

Class Counsel will seek attorneys' fees in an amount of up to thirty-five percent (35%) of the Total Settlement Amount (i.e., an amount of up to \$96,250.00) and reimbursement of litigation costs and expenses in an amount of up to thirty-five thousand dollars (\$35,000.00) (collectively, "Attorneys' Fees and Costs"), subject to approval by the Court. All Attorneys' Fees and Costs awarded by the Court will be paid from the Total Settlement Amount. Class Counsel has been prosecuting the **Actions** on behalf of Plaintiff and Class Members on a contingency fee basis (that is, without being paid any money to date) and has been paying all **costs and expenses of the Actions**. As of this date, Class Counsel has incurred **\$33,525.68** in litigation costs and expenses.

F. Enhancement Payment to Plaintiff

Plaintiff will seek the amount of seven thousand five hundred dollars and no cents (\$7,500.00) to him ("Enhancement Payment"), in recognition of his services in connection with the Actions. The Enhancement Payment will be paid from the Total Settlement Amount, subject to approval by the Court, and if awarded, will be paid to Plaintiff in addition to his Individual Settlement Payment and Individual PAGA Payment that he is entitled to under the Settlement.

G. Settlement Administration Costs to Settlement Administrator

Payment to the Settlement Administrator is estimated not to exceed ten thousand dollars (\$10,000.00) ("Settlement Administration Costs") for the costs of the notice and settlement administration process, including and not limited to, the expense of notifying the Class Members of the Settlement, processing Requests for Exclusion, Notices of Objection, and disputes of Class Workweeks, calculating Individual PAGA Payments, Individual Settlement Shares, and Individual Settlement Payments, and distributing payments and tax forms under the Settlement, and **other activities required to administer the Settlement**. Subject to approval by the Court, the Settlement Administration Costs will be paid to the Settlement Administrator from the Total Settlement Amount.

V. ADDITIONAL INFORMATION

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement Agreement, you should review the detailed Settlement Agreement and other papers which are on file with the Court.

You may view the Settlement Agreement and other court records in the **Actions** for a fee by visiting the civil clerk's office, located at Stanley Mosk Courthouse, 111 N. Hill Street, Los Angeles, California 90012, by appointment during business hours, or by online by visiting the following website: <http://www.lacourt.org/casesummary/ui/index.aspx?casetype=civil>.

To schedule an appointment, you may call the Court Support Services at the following number: (213) 830-0800, or you may visit the Court's website at www.lacourt.org.

Individuals who come to the courthouse must wear facial coverings and maintain social distancing at all times within the public areas of the courthouse or courtroom. For more information regarding the mandatory use of facial coverings and social distancing requirements in all Los Angeles County courthouses, you may visit the Los Angeles Superior Court's *Here For You | Safe For You* page at <http://www.lacourt.org/newsmedia/ui/HfySfy.aspx>.

The First Amended Joint Stipulation of Class Action and PAGA Settlement, Plaintiff's Motion for Attorneys' Fees and Costs and Enhancement Payment, and Final Judgment will be included on the Settlement Administrator's website at <http://www.lacourt.org/newsmedia/ui/HfySfy.aspx>, or may be obtained from Class Counsel.

PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT.

IF YOU HAVE ANY QUESTIONS, YOU MAY CALL THE SETTLEMENT ADMINISTRATOR AT THE FOLLOWING TOLL-FREE NUMBER: [INSERT], OR YOU MAY ALSO CONTACT CLASS COUNSEL.

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Deleted: <#>WHAT ARE YOUR RIGHTS AND OPTIONS AS A CLASS MEMBER? Participate in the Settlement

If you want to participate in the Settlement and receive money from the Class Settlement, you do not have to do anything. You will automatically be included in the Settlement and issued your Individual Settlement Payment and, if eligible, your Individual PAGA Payment, unless you decide to exclude yourself from the Class Settlement, in which case you will not receive an Individual Settlement Payment.

Unless you elect to exclude yourself from the Class Settlement, you will be bound by the terms of the Settlement and any judgment that may be entered by the Court based thereon, and you will release the claims described in Section III.D above. As a Class Member, you will not be separately responsible for the payment of attorney's fees or litigation costs and expenses, unless you retain your own counsel, in which event you will be responsible for your own attorney's fees and expenses.

Request Exclusion from the Class Settlement

If you do not wish to participate in the Class Settlement, you must seek exclusion from the Class Settlement by submitting a written request ("Request for Exclusion") to the Settlement Administrator.

A Request for Exclusion must: (a) contain the case name and number of the Action (*Pool v. UTC Restaurant Venture, LLC, et al.*, Case No. 20STCV07785); (b) be signed by you; (c) contain your full name, address, telephone number, and last four digits of your Social Security Number; (d) contain a statement clearly indicating that you do not wish to be included in the Class Settlement; and (e) be submitted to the Settlement Administrator by mail, postmarked **no later than [Response Deadline]**, at the following mailing address: [Settlement Administrator] [Mailing Address]

If the Court grants final approval of the Settlement, any Class Member who submits a valid and timely Request for Exclusion will not be entitled to receive any payment from the Class Settlement, will not be bound by the Class Settlement (and the Released Class Claims described in Section III.D above), and will not have any right to object to, appeal, or comment on the Class Settlement. Any Class Members who do not submit a valid and timely Request for Exclusion will be deemed Settlement Class Members and will be bound by all terms of the Settlement, including those pertaining to the release of all claims described in Section III.D above, as well as any judgment that may be entered by the Court based thereon.

Object to the Class Settlement

You can object to the terms of the Class Settlement as long as you have not submitted a Request for Exclusion, by submitting a written objection ("Notice of Objection") to the Settlement Administrator or presenting your objection at the Final Approval Hearing.

A Notice of Objection must: (a) contain the case name and number of the Action (*Pool v. UTC Restaurant Venture, LLC, et al.*, Case No. 20STCV07785); (b) contain your full name, ... [1]

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EXHIBIT 4

Robert A. Parris, Curriculum Vitae



43364 10th Street West
Lancaster, CA 93534
(661) 382-2262

Work Experience:

Currently I am self-employed with the Robert A. Parris, Professional Corporation, working as an attorney, mediator, wage and hour and catastrophic injury valuation expert consultant. I have been an attorney for approximately 30 years, working as a partner for the Parris Law firm for 23 years, and presently serving of counsel. Before becoming an attorney, I was a sworn member of the California Highway Patrol (CHP), and completed my career at the rank of Captain. Upon leaving the CHP I became a sworn member of the Los Angeles County Sheriff's Department Reserve Forces retiring in 2016.

Education:

- J.D. (December 1991) – Loyola Law School, Los Angeles, California
- University of California Davis School of Law (August 1987-June 1988)
- B.S. in Criminal Justice (December 1982) (*Magna Cum Laude*) – California Polytechnic State University at San Luis Obispo
- A.A. in General Education (June 1975) – Antelope Valley College, Lancaster, California

Professional Licenses:

Admitted to Practice – Bar of the District of Columbia Court of Appeals (2020), United States District Court (1998), California Superior Court (1992) and California State Bar (1991).

Professional Memberships:

- Mediator, United States District Court for the Central District of California (2012-present)
- Volunteer Judge Pro Tempore – L.A. County Superior (2006 – 2010)
- Mediator, Los Angeles County Superior Court Alternate Dispute Resolution (2009-2011)
- Mediator, Los Angeles County Superior Court Civil Arbitration Panel, Civil Mediation Panel and Civil Neutral Evaluation Panel (2012-2013)
- Southern California Mediation Association (2013)
- Designated Mediator, The Mediator Registry (2013)

Robert A. Parris, Curriculum Vitae

Community Involvement:

- Member of the Board of Directors (Division 5) - Antelope Valley-East Kern Water Agency (2014- Present)
- Chairman of the Antelope Valley Water Master Board (2016- Present)
- Chairman of the Antelope Valley State Water Contractors Board (2018-Present)
- Chairman of the Board of Directors – Friends of the Antelope Valley Fair (1998-Present)
- Chairman of the Board of Directors – Antelope Valley Fair Joint Powers Authority (2018-2019)
- Member – City of Santa Clarita Planning Commission (2002-2004)
- Member of the Board of Directors – Grace Resource Center (2010-2014)
- L.A. County Sheriff's Reserve Deputy (1994-2016) (retired)
- Member – California Highway Patrol (1978-1993) (retired as captain)
- Past President and Board Member – Antelope Valley Bar Association (1994-1999)

Dispute Resolution Training:

- May 2018: Association of California Water Agencies: 2018 Spring Conference Attorney Programs: Groundwater Adjudications and SGMA training; Water transfer and SGMA
- November 2017: Association of California Water Agencies: CLE Workshop for Water professionals
- June 2017: Straus Institute: Professional Skills Program in Conflict Resolution Consulting
- June 2016; Advanced Mediation Workshop: Mediating Complex Disputes, Program on Negotiation, Harvard Law School
- June 2014; Straus Institute: Professional Skills Program in Dispute Resolution
- December 12, 2013 – United States District Court: ADR Program – Analyzing Interests to Facilitate Settlement
- November 16, 2013 – CAOC Annual Convention – Mediation: Maximizing Your Client's Settlement
- June 2013; Straus Institute: Professional Skills Program in Dispute Resolution
- May 15, 2013; United States District Court: ADR Program – Advanced Mediation Training
- Fall 2012; Kenneth Cloke's Center for Dispute Resolution: Mediation Training
- November 9, 2012; United States District Court: Cross-Cultural Challenges in Mediation
- November 2, 2012; Straus Institute: Apology, Forgiveness and Reconciliation
- September 21, 2012; United States District Court: ADR Program – Mediation Training
- June 2009; Straus Institute: Negotiating the Litigated Case I&II
- March 3, 2009 - Los Angeles Superior Court: ADR VSC Orientation
- June 2004 - Straus Institute: Mediating the Litigated Case
- September 11, 1993 - California Bar CLE: Effective Legal Negotiation

Awards and Honors:

- Super Lawyers (2014 -Present)
- Consumer Attorneys of California's Consumer Attorney of the Year Finalist (2013)
- Antelope Valley Fair Association's Distinguished Director Award (2012)
- Appointed by California Governor Pete Wilson to the 50th District Agricultural Association as President (1999-2000) and Member of the Board of Directors (1994-2000)
- Los Angeles County Sheriff's Reserve Deputy of the Year – Lancaster Station (1999)
- Bachelor's Degree in Criminal Justice awarded *Magna Cum Laude* (1982)

PARRIS LAW FIRM – SELECTED CLASS ACTION EXPERIENCE

- ***Gutierrez vs. State Farm***, Los Angeles Superior Court Case No. BC 236552
 - Plaintiffs' counsel in class action seeking overtime compensation for insurance claims adjusters employed by defendant in the State of California. Certification granted, and then summary adjudication as to liability granted in favor of the class. Case settled in 2004 for **\$135,000,000.00**, with Final Approval granted in Department 309 and no objections filed.
- ***Sekly vs. Allstate Insurance Company***, Los Angeles Superior Court Case No. BC240813
 - Plaintiffs' counsel in class action seeking overtime compensation for insurance claims adjusters employed by defendant in the State of California. Certification granted, and then summary adjudication as to liability granted in favor of the class. Case settled in 2005 for **\$120,000,000.00**, with Final Approval granted in Department 309 and no objections filed.
- ***CNA Class Action Litigation***, Los Angeles Superior Court Case No. BC242487, Orange County Superior Court Case No. 01CC08868
 - Plaintiffs' counsel in class action misclassification case seeking overtime compensation for insurance claims adjusters employed by defendant in the State of California. Case settled in 2005 for **\$33,000,000.00**, with Final Approval granted and no objections filed.
- ***Parris v. Lowe's Home Improvement***, Los Angeles Superior Court Case No. BC260702
 - Plaintiffs' counsel in class action seeking payment of "off the clock" hours worked by all hourly employees of Lowe's in the State of California. Class certification ordered by the Court of Appeal. Case settled in 2009 for **\$29,500,000.00**, with Final Approval granted and no objections filed.
- ***Chavoya v. Southern California Edison Company***, Los Angeles County Superior Court Case No. BC366032 and BC425358
 - Plaintiffs' counsel in class action seeking overtime compensation for employees that were reclassified in February 2006 that were not employed at Edison's San Onofre Nuclear Generator facility. Class certification granted, in part, by the trial court. Class was provisionally certified for settlement purposes. Case settled in 2010 for **\$29,000,000.00**, with Final Approval granted and no objections filed.
- ***Roberts vs. Coast National Insurance***, Orange County Superior Court Case No 01CC08478
 - Plaintiffs' counsel in class action seeking overtime compensation for insurance claims adjusters employed by defendant in the State of California. Certification granted, and then the matter was tried in binding arbitration. Case settled for in excess of **\$18,000,000.00** during arbitration.
- ***Dotson vs. Royal Sun Alliance***, Orange County Superior Court Case No. 02CC01787
 - Plaintiffs' counsel in class action seeking overtime compensation for insurance claims adjusters employed by defendant in the State of California. Case settled in 2005 for **\$12,300,000.00** with Final Approval granted and no objections filed.
- ***Ingalls v. Hallmark***, Central District of California Case Nos. CV08-04342-VBF (Ex) C/W; CV08-05330-VBF (FFMx)
 - Plaintiffs' counsel in class action seeking payment of "off the clock" hours worked by all hourly employees of Hallmark in the State of California. Class was provisionally certified. Case settled in 2009 for **\$5,625,000.00**, with Final Approval granted and no objections filed.

- ***Rodriguez v. Pacific Bell Telephone Company***, Los Angeles County Superior Court Case No. BC415309
 - Plaintiffs' counsel in class action seeking overtime compensation for employees employed by defendant in the State of California that were reclassified in May 2009. Class was provisionally certified. Case settled in 2010 for **\$5,500,000.00**, with Final Approval granted and no objections filed.
- ***Kim v. Jamison Services, Inc.***, Los Angeles County Superior Court Case No. BC400414
 - Plaintiffs' counsel in misclassification class action seeking overtime compensation for all salaried, exempt employees (except for high-level management and Receptionists) employed by defendant in the State of California. Class was provisionally certified. Case settled in 2009 for **\$2,797,861.24**, with Final Approval granted and no objections filed.
- ***Lippold v. Godiva Chocolatier, Inc.***, Northern District of California Case No. CV-10-00421-SI
 - Plaintiffs' counsel in misclassification class action seeking overtime compensation for all salaried, exempt Store Managers employed by Godiva in the State of California. Class was provisionally certified. Case settled in 2010 for **\$1,000,000.00**, with Final Approval granted and no objections filed.